DRAFTING INSTRUCTIONS FOR LEGISLATION

(Version following the 10th amendment, version 9/11/2017)

PART 1 AREA OF APPLICATION

Instruction 1.1 Scope

These Instructions relate to regulations created under ministerial responsibility and, in so far as expressly indicated, to treaties, binding decisions of institutions of the European Union and other decisions of organisations under international law.

NOTES

These Instructions mainly focus on legislative drafting techniques and the quality of legislation. See, with regard to the more procedural and organisational aspects of the legislative process, the Roadmap for Regulation (Draaiboek voor de regelgeving), available on the website of the Knowledge Centre for Legislation and Legal Affairs (www.kcwj.nl). The Roadmap also contains the model letters belonging to the various stages of the legislative process.

See, with regard to the applicability of the Instructions to international regulations and binding EU legal acts, chapters 8 and 9. See also, with regard to the preparation, creation and national implementation of European legislation, see the Guidelines for Legislation and Europe (Handleiding Wetgeving en Europa), which can also be consulted on the site of the Knowledge Centre.

Instruction 1.2 Instructions for the civil service

1. These Instructions shall be followed by the ministers and state secretaries and the individuals reporting to them who are involved in preparing and laying down regulations.
2. Deviation from these Instructions is permitted only if their full application would not lead to acceptable results from the perspective of sound legislation.

NOTES

First paragraph. The nature of the Instructions is such that they cannot be directed at participants active in the legislation process, such as the States General and advisory bodies in the field of legislation, non-departmental public bodies and local authorities that do not operate under the supervision of ministers and state secretaries. The Instructions therefore cannot bind these bodies. Nevertheless, it is recommended that the States General take the Instructions into account. As regards the Lower House, it is recommended that the Instructions should be taken into consideration when amendments and initiative legislative proposals are prepared. It is important that any advisory bodies and non-departmental public bodies involved in the preparation of regulations or advising on them take account of the Instructions.

Second paragraph The Instructions have binding force for the parties mentioned in the first paragraph. Cases may arise where the application of an Instruction can lead to unacceptable results from the perspective of sound legislation. In such cases, the Instructions may be deviated from. Needless to say, there can be no deviating from elements contained in these Instructions which ensue from binding rules of general application. In particular, it is the task of the ministerial legislative departments to ensure that cautious and justified use is made of this option.

Instruction 1.3 Definitions

1. For the purposes of these Instructions, the term regulations is taken to mean:
   a. binding rules of general application;

   b. internal rules;
   c. policy rules.
2. For the purposes of these Instructions, the term EU legislation is taken to mean:
   a. Regulations and
   b. Directives adopted by the institutions of the European Union or the European Atomic Energy Community.
3. For the purposes of these Instructions, the term binding EU legal acts is taken to mean:
   a. Regulations adopted by the institutions of the European Union or the European Atomic Energy Community.
   b. Directives;
   c. decisions with no specific addressee;
   d. decisions with specific addressees, in so far as also addressed to the Netherlands.

NOTES

First paragraph. For a further definition of these terms, see Instruction 2.17 and Title 4.3 of the General Administrative Law Act (Awb). Internal rules and policy rules need not always satisfy the requirement that, in terms of legislation, they have the character of legislation. However, if possible, policy rules should be divided into sections. Instructions relating to regulations will apply in full to policy rules in section form. Instructions as regards content, particularly those relating to the use of legislation as an instrument (paragraph 2.1), can be applied to all forms of policy rules. In the case of internal rules, the design will largely depend on the target group. A regulation-based design would seem the more obvious choice for the rules of procedure for the cabinet than, for example, codes of conduct for all sections of the national government. In that case, a less formal design may be more appropriate.

Second paragraph: For a further definition of these terms, see Article 288 of the TFEU. This name is also understood to include regulations, directives and framework decisions adopted prior to the entry into force of the Treaty of Lisbon, as well as regulations and directives adopted on the basis of Article 106a of the Euratom Treaty.

Third paragraph. This paragraph refers to the legally binding acts referred to in Article 288 of the TFEU. This, too, may involve legally binding acts adopted on the basis of Article 106a of the Euratom Treaty. The addition of 'binding' to 'EU legal acts' excludes the other legal instruments provided for in Article 288 of the TFEU.

With the Treaty of Lisbon, the old term 'beschikking' [individual decision] used in Article 249 of the EC Treaty was replaced by 'besluit' [a decision without specified addressees]. The requirement that a decision must specify the addressee therefore no longer applies. The new definition of decision in Article 288 of the TFEU comprises two types of legal acts: decisions with an addressee that are primarily used for cases where individual decisions under the EC Treaty applied, and decisions with no specific addressee. See also the Guidelines for Legislation and Europe.

PART 2 GENERAL TOPICS RELATING TO LEGISLATION

§ 2.1 Principles for the use of legislation as an instrument

Instruction 2.1 Opting for legislation

Binding rules of general application, internal rules or policy rules shall be used to standardise actions, acts or powers.

NOTES

The status of instruments such as guidelines and circulars is not unambiguous and clear. The use of these instruments for standardisation should therefore be refrained from as far as possible. Circulars shall be used only to provide information, which may well relate to legislation.

Instruction 2.2 Need for legislation

A decision to introduce a regulations shall be taken only where the need for one has been established.

NOTES

Legislation is necessary if it is likely that the specific proposal constitutes an effective, efficient and proportionate response to the social problem giving rise to it. This requires sufficient certainty that the proposed regulation will actually lead to the resolution or mitigation of that problem, that there are no less burdensome alternatives, and that the costs and burdens thereof are justified by the seriousness of the problem. Unless each of these conditions is met, there is insufficient reason to introduce legislation (in the proposed form). In such cases, an alternative, less burdensome control instrument may be used, or government intervention should simply be refrained from.

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part b.

Instruction 2.3 Prior examination

The following steps shall be taken before deciding to introduce a regulation:

a. knowledge of the relevant facts and circumstances pertaining to the topic in question shall be acquired;
b. the objectives aimed at shall be defined in the most specific and accurate terms possible;
c. an examination shall be carried out to establish whether the objectives can be achieved using the capacity for self-regulation in the sector or sectors concerned, or whether government intervention is required;
d. if government intervention is necessary, an examination shall be carried out to determine whether the objectives chosen could be achieved by amending or making better use of existing instruments or, if this proves impossible, what new instruments could be used to achieve the objectives;
e. the various possibilities shall be compared and considered carefully.

NOTES

This Instruction shows that choosing legislation as a control instrument, as well as the decisions

subsequently made with regard to the content and design of that legislation, should be based on knowledge of all relevant factors and on a thorough analysis thereof. These decisions are accounted for in the explanatory memorandum to the regulation, so that other actors in the process (for example advisory bodies, parliament and the public) are able to form an opinion on the (proposed) product. In addition, the explanatory notes regarding the decisions made also serve a function for legal practice because they can aid the interpretation of the regulation (see also paragraph 4.9 for details of the requirements set for explanatory notes).

The objective of the Integrated Assessment Framework for Policy and Regulations (IAK) (which can be read at www.naarhetIAK.nl) is to support the assessment and accountability process when formulating policy and legislation. In 2011, the government decided that this assessment framework should be applied when preparing and justifying policy and legislation (Parliamentary Papers II 2010/11, 29515, no. 330).

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43.

Part a: Knowledge of facts and circumstances. A knowledge of the relevant facts and circumstances is required for a sound decision-making process. Firstly, the knowledge in question must be used to formulate the objectives, and secondly in determining the extent to which government intervention is necessary and in weighing up the various options for government intervention. As a rule, information is collected in stages, as new - more detailed - information is required at each step in the decision-making process.

Part b: Well-defined objectives. Objectives must be clearly identified to enable them to be defined specifically and accurately. The time limit within which an objective must be achieved should also be established, where possible and relevant. If an objective can be quantified, in financial terms or otherwise, this should also be done.

Part c: Need for government intervention. Government measures should be considered only if a matter cannot be dealt with by society's own capacity for self-regulation. See Instruction 2.5.

Part d: Alternatives to government intervention. All conceivable alternatives should be considered when examining the possible ways in which the government may achieve an objective. These may include instruments created by legislation (such as those prescribing or prohibiting particular courses of action, or introducing licensing or levy systems) as well as other instruments (such as providing for actual government action or subsidy schemes). The principle of the rule of law also makes it necessary for statutory provisions to be introduced in respect of many such instruments, in order to provide legal safeguards, for example.

An examination of the government intervention options may also lead to the conclusion that the government cannot achieve the objectives in question. In that case, the government should take no action.

As regards statutory regulations, the options to be examined include the format of a statutory regulation as such and elements of such a regulation (for example, the system of legal protection chosen).

It will depend on the nature of the case in question whether the examination referred to in this Instruction should be comprehensive or may remain limited. However, all the steps referred to in this Instruction will have to be taken if the creation of a regulation is among the options available.

Instruction 2.4 Caution with regard to promises

Great caution shall be employed in making pronouncements or promises concerning new regulations.

NOTES

Already specified proposals need not be presented in advance in order to address the assessment and justification process described in Instructions 2.3 and 4.42. Moreover, it is often difficult, if not impossible, to go back on them, even when further consideration indicates there are good reasons for doing so.

Instruction 2.5 Self-regulation

In determining what form government intervention to achieve an objective should take, society's capacity for self-regulation should be taken into account where possible.

NOTES

It follows from the requirements of, in particular, efficiency and proportionality, that direct government intervention is called for only if society's capacity for self-regulation, even with the addition of government measures, cannot be expected to produce adequate results.

Any kind of necessary government intervention must align as closely as possible with existing forms of self-regulation. To this end, for each of the regulatory aspects (namely: standard setting, supervision/information collection, opinion forming and intervention/sanctioning), consideration will be given as to whether alignment with existing self-regulation mechanisms in society is possible.

The use of standardisation and certification is one example of alignment with such mechanisms. For example, it may be provided by or pursuant to the law that compliance with standardisation norms or the possession of a certificate satisfies statutory requirements or that there is a legal presumption that these have been complied with (see Instruction 3.48). See also, in this respect, the policy instruments index in the IAK.

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part b.

Instruction 2.6 Clarity, simplicity and durability

The aim shall be to ensure the clarity, simplicity and durability of regulations.

NOTES

In assessing whether legislation is clear and simple, account should also be taken of the characteristics of the target group. A different style of language from that used in rules of conduct that are generally aimed at citizens is acceptable for technical regulations that are primarily addressed to professional parties to which a certain standard applies.

A regulation can be described as durable if it does not need to be amended frequently. From the perspective of legal certainty, it is advisable to make every effort to ensure regulations are as durable as possible. This also requires the essential policy choices to have been made in a well-considered manner before a regulation is drafted.

Instruction 2.7 Enforceability

1. The decision to draft a regulation shall not be taken before it has been established that it can be adequately enforced.
2. Enforcement by means of administrative, civil or criminal law or by other means shall be looked into.

NOTES

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part c.

Paragraph 1: Enforcement options. Enforcement is essential if a regulation is to achieve the intended objective. The decision to introduce a regulation should therefore be preceded by an examination to determine whether it can be adequately enforced. This applies in particular if the regulation prescribes or prohibits certain courses of action, although enforceability is also relevant, for example, in the case of regulations associated with an authorisation.

The examination should show which steps are necessary for the preventive and repressive enforcement of a regulation. If it is discovered that proposed legislation will bring about drastic changes in relation to implementation and enforcement, those findings should be recorded in enforcement and feasibility test reports. Before a decision is made to introduce a regulation, those drafting it should discuss the enforcement options with the bodies that will be responsible for its implementation and enforcement.

In assessing enforceability, the following basic principles are in any event important:
- a rule should leave as little scope as possible for disputes over interpretation;
- exception provisions should be kept to a minimum;
- where possible, rules must be directed at situations that are visible or that can be objectively established;
- rules should be practicable in the view of both those at whom they are aimed and those who are responsible for their enforcement.

See also, in this respect, the instruments relating to the assessment of enforceability in part 7 (What are the consequences?) of the IAK.

The examination referred to in this Instruction should involve not only an assessment of theoretical enforceability, but also the actual availability of the resources necessary for enforcement. At the same time as the decision to proceed with the introduction of the regulation, a decision to make those resources available must be taken.

Second paragraph: Methods of enforcement. The various methods of enforcement, primarily administrative, civil or criminal law, should also be compared in this context. Consideration could also be given to the options provided by disciplinary law and to preventive methods such as information campaigns. Possible sanctions should be considered for each of the repressive enforcement methods. In assessing the various options, account should be taken of the burden the decision will have on society and the government. In certain cases, it is advisable to opt for a combination of several methods rather than a single enforcement method. However, care should be taken to avoid a situation where an unnecessary number of sanctions is provided for in order to enforce a single obligation.

See, with regard to deciding between criminal law and administrative law, the government memorandum on the basic principles to apply when choosing a sanctions system (Parliamentary Papers II 2008/09, 31700 VI, no. 69). Enforcement by means of administrative law may offer an effective alternative, providing the requirements arising from Article 6 of the ECHR are met. See also Instruction 5.40. If it is decided to back the regulation with criminal law penalties, extreme care should be taken in defining the elements in offence definitions (see Instruction 5.44), and the Ministry of Justice and Security or the Public Prosecution Service should be consulted.

Instruction 2.8 Limiting conflicts

A regulation shall be worded in such a way as to provoke as few conflicts as possible. To this end, the following requirements shall be met:

a. the number of decisions required if the regulation is applied shall be kept to a minimum;
b. if provision is made for administrative fines, binding minimum rates shall be laid down;
c. the nature and level of benefit payments, services and any other advantages shall be defined as clearly as possible.

NOTES

Necessity to limit conflicts. To a certain extent, it is inevitable that regulations that impose burdens on citizens or entitle them to certain advantages will provoke conflicts. It is desirable, however, for such conflicts to be kept to a minimum, principally from a social point of view. Another reason for limiting the number is to keep the costs of legal protection associated with applying the regulation as low as possible. In view of this, the extent to which different versions of a regulation are likely to give rise to conflicts should also be taken into account.

Factors causing conflicts. Regulations are particularly likely to provoke conflicts if they possess any of the following characteristics:

- entitlement to a benefit, service, reimbursement or any other advantages is made dependent on particular individual circumstances, such as illness or injury or being in business;
- interested parties are confronted by a series of individual decisions;
- administrative authorities are accorded considerable discretionary powers;
- only vague standards are set for determining the amount of a benefit payment or the nature of an advantage;
- entitlement to a benefit payment or any other advantage or the obligation to pay tax or a levy is determined by numerous personal circumstances, which must be verified by the administrative authority on the basis of information supplied by the person concerned;
- advantages or other consequences are associated with special, not strictly defined circumstances;
- the decision on whether to grant a benefit or any other advantage is made after the person concerned has been notified of recommendations made by a body other than the authority responsible for the decision-making process, although the latter need not adhere to the recommendation;
- the provisional decisions taken are favourable, but they are followed by decisions that are less favourable;
- a body that has been declared competent to impose administrative sanctions is allowed considerable discretion to determine the nature and scope of the sanctions;
- fiscal instruments are used to exercise excessive control over developments in a wide range of fairly narrow areas of social life;
- target groups are not clearly defined.

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part c.

Instruction 2.9 Side effects

When drafting a regulation, consideration shall also be given its potential side effects on existing or proposed legislation or policy fields and their impact on the proposal.

NOTES

The drafter of a regulation is responsible, where necessary in consultation with other actors involved, for forming the fullest possible picture of the actual and legal side effects of that regulation and to consider the potential consequences the findings may have.
In order to answer the question of which regulations will be affected by the proposal, consideration should in any event be given to which regulations are based on or refer to the provisions affected by the proposal, by reading the legal and technical information in the Basiswettenbestand [database containing almost all Dutch laws and decisions] at www.wetten.nl. Consideration should also be given to European legislation, if the regulations concerned have ever been used or designated as a means of implementing it. Account shall also be taken of regulatory proposals being developed at the same time.

If a particular side effect is intended, this constitutes a secondary objective, and should be designated as such. In the event of unintended side effects, their adverse effects on the acceptability of the regulation should be examined, as this may constitute grounds for not introducing the regulation. On the other hand, the decision to introduce a regulation should be taken only if it appears capable of achieving the objectives decided on. If positive, albeit unintended, side effects tip the balance in

favour of introducing a regulation that appears incapable of achieving the objectives decided on, the cost-benefit analysis has not been conducted correctly.

The potential negative side effects of a regulation should always be examined in a broad context. Consideration should be given here, for example, to the extent to which a measure might disturb the effect of existing regulations, for instance by making it less attractive or straightforward for the public to comply with a previously existing regulation. In addition, when introduced alongside already existing regulations, a new regulation could add to the total accumulation of obligations and reduce the public's willingness to comply.

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part b.

Instruction 2.10 Burdens on society and the government

In selecting the form and content of a regulation, every effort shall be made to minimise the burden on individuals, companies and institutions, and on the government itself.

NOTES

This Instruction does not preclude the imposition of burdens where that is a consciously accepted, necessary consequence of the chosen control instrument. However, to the extent possible, efforts must be made to avoid imposing burdens that do not contribute to the achievement of the objective of the regulation, or if alternatives exist with which the same result can be achieved in a less burdensome manner. When deciding between different versions of a regulation, it may be necessary to weigh the government's burden against the burden on society.
Examples of burdens on society include:

a. substantive compliance costs;
b. administrative burdens.

For details of how those burdens should be determined and quantified, see part 7 (What are the consequences?) of the IAK. See also Instruction 9.5 on minimising the administrative burden during implementation.

Examples of burdens on the government include:

a. costs directly arising from implementing the regulation, including provision of information, dealing with applications for authorisations and dispensations, collecting taxes and levies, and performing the acts provided for in the regulation;
b. costs stemming from procedures prescribed in the regulation, including rules imposing an obligation to seek advice, public participation, forms of preventive supervision, planning procedures, and obligations to render account or conduct evaluations;
c. the cost of monitoring compliance with and enforcing the regulation (enforcement refers to the cost of, for example, government-funded legal assistance, the Public Prosecution Service, the police, the prison system, other judicial services and the courts);
d. the costs of legal protection, including government-funded legal assistance, dealing with notices of objection, and the administration of justice, as well as the costs to implementing bodies arising from proceedings.

In order to gain insight into these burdens and their impact on an organisation it is necessary, in any event, to have an implementation test performed in good time in the event of far-reaching proposals.

The burden on the government listed under b may be limited, inter alia, by efforts to minimise procedural regulations, and by clearly allocating and demarcating administrative powers at central and local level. If powers are decentralised, intervention from a higher level in the exercise of these powers (e.g. preventive monitoring) and obligations imposed on local authorities vis-a-vis the centre (e.g. compulsory rendering of account) in particular should be avoided wherever possible. For more information on burdens on the government see part 7 (Consequences for the Government) of the IAK.

The inclusion of several objectives in one regulation tends to complicate its implementation and thus increase the burden on the government. However, citizens may find it more burdensome to cope with

a number of parallel regulations than with a single integrated regulation. See also Instruction 2.34.

See, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part e.

Instruction 2.11 Proportionality

The adverse consequences of a proposed regulation for one or more interested parties shall not be disproportionate to the objectives to be served by the regulation.

NOTES

Even where no less burdensome, equally effective alternatives to the proposed regulation are apparent, the question must be asked whether the seriousness and extent of the problem can justify the burden and negative consequences the proposed regulation would create. This is a matter that requires particular attention in legislation proposed as a direct response to an incident, because at that time there is still insufficient knowledge of the objective need for and reasonableness of the proposed measure.

This Instruction corresponds to Section 3:4(2) of the General Administrative Law Act.

Instruction 2.12 Other quality requirements

When drafting a regulation, account shall be taken of the other relevant requirements and conditions that form part of the government's regulatory policy.

NOTES

The substantive quality requirements laid down in Instructions 2.5 to 2.11 are of a general nature and are therefore normally relevant to every type of legislation. In addition to the requirements laid down in those Instructions, requirements of a more specific nature that are only relevant in certain cases or are applicable only in certain sectors of society or policy fields also apply. These requirements are laid down elsewhere in the Instructions or may be found in the part covering mandatory quality requirements in the IAK, and are therefore part of the entirety of requirements that must be taken into account when drafting legislation.

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part l.

Instruction 2.13 Opting for decentralisation

Tasks and powers shall be decentralised unless the matter in question cannot be dealt with efficiently and effectively at local level.

NOTES

Territorial decentralisation. The basic principle is that if tasks can be performed efficiently and effectively by provincial or municipal authorities, water boards or the public bodies Bonaire, Sint Eustatius and Saba, they should not be performed by the central government. Nor should tasks that can be performed efficiently and effectively by municipal authorities or water boards be the responsibility of provincial authorities. See also Instructions 5.23 and 5.24.

General or functional administration. A choice will always have to be made between territorial or functional decentralisation. The basic principle is that general administrative authorities (central government, provincial or municipal authorities and the public bodies Bonaire, Sint Eustatius and Saba) should be responsible for the majority of the political and administrative activity. In some circumstances, functional administration may complement general administration, for instance in view of the nature of the task concerned or the scale on which it needs to be dealt with. With regard to functional administrative bodies (non-departmental public bodies), see paragraph 5.4 of these

Instructions.

Discretionary power for provincial and municipal authorities. The Netherlands is a decentralised unitary state. As decentralised tiers of government responsible for general administrative with direct democratic legitimacy, the power to regulate and administer their own internal affairs, regulatory powers and their own powers of taxation, provincial and municipal authorities, jointly with the central government, form the main administrative structure of our country. The greater part of public tasks should be performed within the main administrative structure. Provincial and municipal authorities are not hierarchically subordinate to the central government, but perform their tasks independently within the framework of the law and the Constitution. They have autonomous powers, but may also be required by law to perform certain tasks (co-administration). The Gemeentewet (Municipalities Act) (Section 116(1)) and the Provinces Act (Provinciewet) (section 114(1)) instruct the Minister of the Interior and Kingdom Relations to promote discretionary power. Discretionary power allows these local authorities, enjoying democratic legitimacy and taking into account local circumstances, to make a balanced assessment in order to implement policy effectively and efficiently.

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part g.

Instruction 2.14 Standardisation of administrative powers

1. When administrative powers are conferred, standards shall be set where possible for their exercise.
2. In view of this, discretionary powers and powers whose criteria for application have not been clearly defined shall not be conferred, unless there is good reason to do so.

NOTES

In order to afford citizens with adequate legal safeguards, administrative powers must be fixed as carefully as possible in a statutory framework. This applies equally to administrative instruments that the government may use with or without a statutory foundation (e.g. the granting of one-off subsidies). See also Instruction 2.8.

In view of the desirability of affording legal safeguards, each power conferred should be examined to determine the degree of legal protection required. The system of legal protection laid down in the General Administrative Law Act is used as a basic principle here. See also paragraph 5.11.

Instruction 2.15 Compatibility with higher-ranking law

When drafting regulations, it shall be determined whether, and if so how, freedom to regulate the matter in question has been restricted by higher-ranking rules.

NOTES

These may include international legislation or binding EU legal acts, the Charter, constitutional regulations, legal principles and - in the case of regulations laid down by order in council or ministerial regulation - rules embodied in an Act of Parliament in the formal sense. International legislation refers in particular to, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union and the International Convention on Civil and Political Rights. As far as EU legislation and other legislation are concerned, in addition to directives, regulations and decisions, this includes general doctrines such as citizenship of the European Union, the free movement of goods, persons, services and capital, data protection and European competition rules. The Services Directive is a good example as far as services are concerned: Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006, L 376). See also Instructions 5.29 and 5.30. With regard to data protection, see Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal

data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016, 119). See also Instructions 5.33 and 5.34.

With regard to Article 1 of the Constitution, it is noted that the phrase "on any ground whatsoever" contained in that article means that undue discrimination on grounds other than those explicitly mentioned in the article - e.g. age or disability, is prohibited. Moreover, with regard to the ground for distinction "age," the level of the age limit may not result in undue discrimination either.

The principles of law may include, in particular, the principle of legal certainty, the principle of equality and the principle of proportionality.

As far as rules laid down in an Act of Parliament are concerned, account must be taken not only of the Act on which the relevant order in council or ministerial regulation is based, but also on other Acts.

See also Section 6.2.1 (Alignment with the Constitution and higher law) of the IAK. See, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part f.

§ 2.2 European and Caribbean Netherlands

Instruction 2.16 Territorial applicability of legislation within the Netherlands

When a regulation is drafted, an assessment shall be carried out to establish whether the regulation should apply to the entire territory of the Netherlands, or exclusively to the European part of the Netherlands, or only to Bonaire, Sint Eustatius and Saba.

NOTES

Under Section 2 of the Public Bodies of Bonaire, Sint Eustatius and Saba (Implementation) Act (Invoeringswet openbare lichamen Bonaire, Sint Eustatius and Saba) Bonaire Sint Eustatius and Saba have their own legal system, which largely consists of adopted Netherlands-Antillean legislation or legislation specifically created for those islands. Only a limited number of regulations apply to both the European part of the Netherlands and Bonaire, Sint Eustatius and Saba. Another important difference compared with the European part of the Netherlands is that Bonaire, Sint Eustatius and Saba have the status of overseas countries and territories (OCTs) vis-à-vis the European Union, meaning that EU legislation generally does not apply to Bonaire, Sint Eustatius and Saba. This means that Bonaire, Sint Eustatius and Saba will generally have to be considered "third countries" from a European law perspective, and that "Member State" refers only to the European part of the Netherlands.

In determining whether a new regulation should also apply to Bonaire, Sint Eustatius and Saba, account should be taken - in addition to the OCT status of the islands - both of the desire to create the greatest possible legal uniformity and also the factors specified in Article 1(2) of the Charter for the Kingdom, which distinguishes Bonaire, Sint Eustatius and Saba from the European part of the Netherlands. Those factors may be reason to have a regulation apply only to the European part of the Netherlands for the time being, or to create a specific regulation for Bonaire, Sint Eustatius and Saba. Owing to the differences between the islands, it is also conceivable in special cases that a specific regulation will be created for a particular island.

See also Instructions 4.43, part h and 5.4.

§ 2.3 Binding rules of general application

Instruction 2.17 The term binding rule of general application

A rule applying to the general public, laid down by or pursuant to an Act of Parliament, or, in special cases, by or pursuant to a separate order in council shall be regarded as a binding rule of general application, laid down by central government.

NOTES

The definition of a binding rule of general application used here is based on the current corpus of case law.

In addition to binding rules of general application, general rules laid down by central government include internal rules and policy rules. Internal rules lack the "having application to the general public" element of binding rules of general application. Examples of internal rules include the Standing Orders for the Cabinet, the Drafting Instructions for Legislation and the Integrity Code of Conduct for the Central Government Sector 2016. See Section 1:3(4) of the General Administrative Law Act for the definition of the term "policy rule".

See, with regard to separate orders in council, Instruction 2.22.
The consequence of this Instruction is also that binding rules of general application that are not based on an Act of Parliament or an order in council cannot be laid down by ministerial regulation.

Binding rules of general application need not originate from central government. They may also be embodied in binding EU legal acts and decisions of local authorities and public bodies as referred to in Article 134 of the Constitution.

Instruction 2.18 Issue of binding rules of general application

Binding rules of general application may be issued by central government only in the following ways:

a. by Act of Parliament;
b. by order in council;
c. by ministerial regulation; or
d. by a regulation of a non-departmental public body with due observance of Instruction 5.10.

NOTES

It follows from this Instruction that binding rules of general application issued by the government must be laid down by order in council. They may not, therefore, be laid down by royal decree in an individual case, i.e. a royal decree that does not meet the special requirements of an order in council, namely that it must have been discussed in cabinet, the Council of State's Advisory Division must have been consulted and it must have been published in the Bulletin of Acts and Decrees.

Such royal decrees may be used to regulate internal matters, one example being the Royal Decree of 18 October 1988 containing regulations on the position and responsibilities of the Secretary-General (Bulletin of Acts and Decrees 1988, 499).

This Instruction also means that powers to lay down binding rules of general application should not be vested in individual civil servants who do not constitute a non-departmental public body, Such civil

servants may, however, be vested with powers to issue rules concerning the functioning of the organisation in which they work.

Instruction 2.19 Primacy of the legislature

If the elements of a regulation are divided between an Act of Parliament and binding rules of general application laid down at a lower level, the main elements of the regulation shall, at least, be contained in the Act. The primacy of the legislature shall be the guiding principle in deciding which elements shall be laid down in the Act and which shall be permitted by delegated legislation.

NOTES

Involvement of Parliament. The primacy of the legislature does not imply that Parliament should be concerned with every part of a regulation. By no means all parts of a regulation are of such significance as to warrant direct parliamentary involvement. In such cases, the option of parliamentary scrutiny of government policy is sufficient.

It follows from the foregoing that the decision on which elements of a regulation should be regulated by Act of Parliament and which should be delegated should always take into account an assessment of which parts of the regulation are important enough to warrant the direct involvement of Parliament. This means that at least the principal elements of a regulation should be incorporated in an Act.

Principal elements of a regulation. These include, in any event, the scope and the structural elements of the regulation, and in many cases the main permanent norms being laid down. However, in the interests of accessible legislation, it may be advisable not to include substantive norms in an Act of Parliament, but to leave it to a subordinate legislative authority to prepare an integrated substantive regulation.

The Instruction does not pertain to regulations governing the legal status of civil service personnel, as these are largely of an internal nature.

See also, with regard to the explanatory memorandum to the regulation, Instruction 4.43, part g.

Instruction 2.20 Constitutional bans on delegated legislation

1. An Act of Parliament shall include in any event provisions on subjects that the Constitution requires to be regulated by Act of Parliament and does not permit delegated legislation.
2. A Constitutional ban on delegated legislation means that:
   a. every essential provision concerning the matter in question must be laid down by Act of Parliament and
   b. it is not sufficient for the Act to confer general administrative powers and leave the interpretation of the regulation in part or wholly to administrative authorities.

NOTES

Examples of regulations that the Constitution requires to be laid down by Act of Parliament include those containing restrictions on certain fundamental rights (Articles 2(4), 4, 6, 7(1) and (3), 8, 9, 12(2) and 13), penalties that the courts may impose for offences (Article 89(2)) and the adjudication of disputes other than civil-law disputes (Article 112(2)).

Delegated legislation is permitted only if the Constitution uses the phrase "by or pursuant to an Act of Parliament" or the verb "to regulate" in any form or the nouns "rules" or "regulation". A Constitutional ban on delegated legislation does not rule out the possibility of conferring powers on a subordinate regulatory authority to lay down detailed rules for implementation (see Instruction 2.26), with the

exception of Constitutional bans on delegated legislation for classic fundamental rights (see Parliamentary Papers II 1975/76, 13872, no. 3, pp. 22 ff.) If the Constitution does allow delegated legislation, an assessment as described in Instruction 2.19 must take place.

Article 104 of the Constitution, which provides that taxes imposed by the State shall be levied pursuant to an Act of Parliament, is a special case. The wording "pursuant to an Act of Parliament" indicates that delegation of legislative powers is permissible in relation to state taxes is permitted, but only to a very limited extent. Matters such as the basis for assessment, the taxable event, the definition of those liable for tax and the basis on which tax rates should be set should, in any event, be laid down by Act of Parliament. See also Parliamentary Papers II 1978/79, 15575, nos. 1-5, pp. 4-5.
Article 23 of the Constitution (article provided for education) is another special case. It follows from the legislative history of that article that the constitutional delegation terminology does not apply to that article (see Parliamentary Papers II 1982/83, 17450, no. 5, p. 4).

Instruction 2.21 Rules to be laid down by Act of Parliament

Where possible, the following shall be laid down by Act of Parliament:

a. rules that form the basis for an authorisation scheme or a system under which the government must give permission for certain acts by some other means;
b. rules on the sharing of powers with other authorities;
c. rules establishing new administrative authorities;
d. rules concerning legal protection;
e. rules concerning sanctions under administrative or civil law;
f. rules conferring supervisory or investigative powers;
g. rules concerning the reciprocal rights and obligations of citizens;
h. rules designed to furnish citizens with procedural safeguards in respect of the use of government powers.

NOTES

This Instruction contains a list of several categories of rules that, under the Constitution, need not be laid down by Act of Parliament, although this is desirable with a view to the primacy of the legislature. This is a non-exhaustive list for clarification purposes.

Part a: Authorisation schemes. This part allows scope for an authorisation scheme not to be established by Act of Parliament itself, provided explicit provision is made in the Act for the option to introduce an authorisation requirement for specific activities by order of council.

Part a also applies if the term used is not "authorisation" but, for example, "recognition". However, the regulation does not concern cases where exemption may be granted from a provision prescribing or prohibiting a certain course of action in exceptional circumstances.

Part c: Administrative authorities. See, with regard to non-departmental public bodies, paragraph 5.4.

Part h: Procedural safeguards for citizens. Part h concerns procedural safeguards afforded to citizens against actions of the government. This does not refer to administrative rules designed to facilitate smooth and orderly relations between the public and the government and the operation of the civil service apparatus. Examples of procedural safeguards include rules making it compulsory for interested parties to be heard before a decision is taken, entitling parties to inspect certain documents, and creating an obligation to lay down and publish policy proposals or imposing an obligation to seek advice from certain bodies. Administrative rules could include, for instance, regulations concerning models or forms, the obligation to submit certain documents or how to do so.

See, with regard to rules concerning financial claims against the government, Title 4.2 of the General Administrative Law Act (Subsidies).

Instruction 2.22 Separate orders in council

Separate orders in council shall not be used to lay down binding rules of general application, except in exceptional situations by way of an interim arrangement.

NOTES

Possibilities of application. Separate orders in council are not based on an Act of Parliament. The current interpretation of the law allows scope for such regulations in exceptional cases only. Given their exceptional nature, explanatory memorandums to separate orders in council must state reasons for their use. Reference to Article 89(1) of the Constitution shall therefore be made in the opening words of a separate order in council.

Constitutional restrictions. Firstly, the Constitution severely restricts the scope for separate orders in council. Article 89(2) of the Constitution prevents the inclusion of regulations to which penalties are attached in such orders in council. Nor do subjects that the Constitution stipulates shall be governed by Act of Parliament or requires provisions in respect of them to be laid down by or pursuant to an Act of Parliament lend themselves to regulation by separate order in council.

Restrictions owing to the primacy of the legislature. This route is similarly undesirable in cases where the Constitution does not preclude the laying down of binding rules of general application by separate order in council because the primacy of the legislature is not taken into account (see Instruction 2.19). According to the current interpretation of the law, provisions limiting the rights and freedoms vested in the parties involved cannot be laid down by a separate order in council. This always applies to the imposition of rules that are enforced by means of administrative coercion. In other cases, such as those involving binding rules of general application, a separate order in council may, if necessary, be laid down in exceptional situations, but also only to allow interim arrangements to be made.

See also paragraph 5.16 (Interim regulations).

Restrictions pursuant to individual pieces of legislation. The Grants to Municipal Authorities Act (Financiële-verhoudingswet) (Section 17) and the Wet financiën openbare lichamen Bonaire, Sint Eustatius en Saba Bonaire (Public Bodies of Bonaire, Sint Eustatius and Saba (Finances) Act) (Section 92) contain special provisions regarding the permissibility of setting rules on specific benefits for provincial or municipal authorities and on special benefits for the public bodies Bonaire, Sint Eustatius and Saba by separate order in council.

General orders in council for the Kingdom The Charter for the Kingdom provides specific broader possibilities for the use of separate orders in council for the Kingdom (see Articles 14 and 38 of the Charter).

§ 2.4 Delegation and mandate of regulatory powers

Instruction 2.23 Limiting delegation

Any regulation delegating regulatory powers shall be as specific and accurate in limiting the powers delegated.

NOTES

Delegated legislative powers may be limited by, for example, specifying the circumstances in which and the purposes for which the powers delegated may be used, and the matters to be regulated.

Instruction 2.24 Permissibility of delegating powers to a minister

1. The delegation of regulatory authority to a minister shall be limited to administrative rules, elaborating the details of a regulation, rules requiring frequent amendment, and rules that will probably have to be laid down at short notice.
2. The delegation of regulatory authority to a minister shall also be permitted when it comes to incorporating into Dutch legislation international regulations that allow the Dutch legislature no scope for policy decisions, except in minor matters.

NOTES

If powers are delegated, it is preferable to confer the power to lay down rules by means of orders in council. Delegation or sub-delegation to a minister is permissible only in certain cases. This Instruction indicates which cases these are. In certain circumstances, this may also involve a ministerial regulation or a temporary ministerial regulation creating an authorisation requirement (see Section 2 of the Special Medical Procedures Act (Wet op bijzondere medische verrichtingen)). See also Instruction 9.8.

The Instruction does not refer to regulations governing the legal status of civil service personnel, as these are largely of an internal nature.

Instruction 2.25 Direct delegation of powers to a minister

Where possible, the power to lay down regulations shall be delegated directly to a minister by the Act of Parliament concerned.

NOTES

If it becomes clear during the drafting of a bill that certain regulations will have to be laid down by ministerial regulation, power to lay down these rules should be directly delegated to the minister concerned by the empowering Act, providing this does not lead to technical legislative problems. This will rule out the option whereby powers are delegated to the government, which in turn delegates them to the minister. For example, if at the time of drafting a bill it is foreseeable that matters will arise that (in accordance with the criteria listed in Instruction 2.24) could be included in a ministerial regulation, but the extent to which the more substantive aspects of those matters should be regulated by an order in council remains unclear, there may be reason to take that course of action.

Instruction 2.26 Terminology used for delegation and sub-delegation

1. The wording "*by order in council or by general order in council for the Kingdom*" shall be used for the delegation of regulatory power to the government.
2. In order to enable sub-delegation by the government, the wording used shall be "*by or pursuant to an order in council or general order in council for the Kingdom*".

NOTES

The use of the wording "by order in council" makes it impossible for the government to sub-delegate regulatory powers (see Supreme Court 25 January 1926, Dutch Law Reports 1926, p. 246, and Supreme Court 26 November 1957, Dutch Law Reports 1958, p. 53). Nevertheless, it has been accepted in case law that, if this wording is used, the order in council concerned may confer powers on the minister to lay down a regulation on the implementation in practice of certain detailed points referred to in the order in council (Supreme Court 8 May 1953, Dutch Law Reports 1953, p. 614, and Supreme Court 11 January 1977, ECLI:NL:HR:1977:AC1784). This will not be considered sub-delegation of regulatory powers but rather as leaving it to a minister to implement the regulation laid down by order in council. However, it is advisable not to take this option as a basis, but rather always to use the wording "by or pursuant to" where it is desirable to also make sub-delegation possible. The wording "by or pursuant to" was not always used in older legislation, although the intention was not to

make sub-delegation impossible. In such cases, it may become clear from the Act's passage through the legislative process or from case law that sub-delegation is permitted.
In addition to the wording "by or pursuant to", the power to delegate regulatory powers is expressed in the Constitution by the legislature by the use of the verb "to regulate" in some form or the use of the nouns "rules" or "regulations." However, such use of the terms is restricted to the Constitution.

Instruction 2.27 Regulations concerning the recommendation for and signature of an order in council

No regulations shall be laid down in a delegating Act with regard to the proposal and signature of an order in council. If desired, arrangements in this respect may be stated in the explanatory memorandum.

Notes

In general, it is clear from the matters to be regulated which minister or ministers should sign an order in council. The minister or ministers signing an order in council should ensure that other ministers whose sphere of activity is affected by the regulation are involved in its preparation, irrespective of whether the order in council supports the policy of those other ministers and where this not the case. Coordination with regard to orders in council is ultimately guaranteed by the fact that draft orders are discussed in cabinet.

It is not necessary, and therefore not desirable, to lay down a statutory regulation to the effect that a proposal for an order in council must be made in agreement with or also on behalf of one or more other ministers, or by two or more ministers. Even where the Act provides for a proposal by two or more ministers, a proposal "also on behalf of" is preferable (see Instruction 4.7). Agreement may be reached on any joint proposal when drafting the delegating Act, such agreement being referred to in the explanatory memorandum.

Instruction 2.28 Terminology used where powers are delegated to a minister

1. The wording used to delegate regulatory powers to a minister shall be "*by ministerial regulation*" or *"by order of Our Minister*".
2. If it is not apparent from the delegating regulation to which minister powers have been conferred, or if a different conferral of powers is intended, the wording *"by order of Our Minister of/for ..."* shall be used.
3. If it is desirable to determine that a ministerial regulation should be laid down under the responsibility of more than one minister, the wording "*by order of Our Minister of/for…, acting in agreement with Our Minister …*" shall be used, unless "*Our Minister*" has already been defined in the delegating order as: "*Our Minister of/for …, acting in agreement with Our Minister of/for …*'".

Notes

An order issued by a State Secretary is also referred to as a ministerial regulation. See Instruction 3.26.

Second paragraph. In the case of a ministerial regulation, too, it should generally be apparent from the matter being regulated or from the signatures on the delegating order to which minister powers have been conferred. However, if there is any room for doubt, or if a different conferral of powers is intended, the wording "by order of Our Minister of/for …" should be used in the delegating order. Since, unlike Acts of Parliament and orders in council, the signing of ministerial regulations by the minister or ministers constitutes the adoption of the order, in the latter case the order may be signed only by the person to whom the regulatory powers have been delegated.

Third paragraph. The adoption of a ministerial regulation by a single minister in agreement with one or more other ministers means that the order can be adopted only where there is agreement between the ministers concerned and the order is signed only by the first named minister (see Instruction 4.33).

Instruction 2.29 Use of the terminology "rules" and "further rules"

The words "set rules*" shall be used in connection with the delegation of regulatory powers if the matter in question has not yet been regulated in the delegating order.* If this is not the case, the expression "*set further rules*" shall be used.

Instruction 2.30 No mandate to exercise regulatory powers

Except in special circumstances, a mandate to exercise regulatory powers shall be granted in a regulation.

Notes

The concept of granting a mandate to lay down binding rules of general application to, for example, a secretary-general or a director-general is generally undesirable and unnecessary. It is important that the politically accountable minister lays down the regulation themselves. See also Section 10:3(2) of the General Administrative Law Act.

See, for examples of the granting of mandates in special circumstances: Section 31a of the Animal Health and Welfare Act (Gezondheids- en welzijnswet voor dieren) and Section 5.2 of the Animals Act (Wet dieren).

Instruction 2.31 Derogation by subordinate legislation

1. A higher-ranking regulation may not be derogated from by a subordinate regulation.
2. Paragraph 1 shall not apply to:
   a. derogating regulations introduced by way of experiment;
   B. derogating regulations for emergencies.

Notes

A subordinate regulatory authority has no powers to derogate from a regulation laid down by a higher-ranking regulatory authority, unless the higher-ranking regulatory authority declares the former competent to do so. The term "derogate" refers to a situation where the subordinate legislation contains provisions that not only entail an elaboration or specification of procedural provisions, but are therefore "conflicting", as it were. Even if, strictly speaking, such a procedure is permitted, it leads to unclear legislation and therefore should, as a general rule, not be applied.

Derogating provisions introduced by way of experiment should be of a temporary nature and must also meet certain conditions. See, in this regard, Instructions 2.41 and 2.42 and paragraph 5.16.

The granting of broad powers that depart from an Act to administrative authorities in the event of disasters, war situations or other threats to security is an example of an amendment that may be made in an emergency. Example: Section 35 of Financial Transactions (Emergencies) Act (Noodwet financieel verkeer).

Article 103 of the Constitution also contains a provision for exceptional situations. This Instruction does not pertain to the situation as described in that article.

Nor may a higher-ranking regulation be derogated from by a subordinate one when implementing

international and EU legislation. The problem of the legislation's clarity and recognisability is even more evident here. The possibilities for delegation for the implementation of international and EU legislation provide sufficient opportunity to ensure timely implementation. See the detailed government position regarding accelerated implementation of EU legislation (Parliamentary Papers I 2004/05, 29200 VI, F (2nd reprint)) and Instructions 2.24 and 9.13.

It should also be noted with regard to the case referred to here that a subordinate regulation may make exceptions to a higher-ranking regulation, subject to conditions or requirements and specifying a certain group or situation or a period of time. This concerns, in particular, the concept of exemption or dispensation. Such an approach is quite acceptable and indeed is sometimes the most appropriate course of action.

Instruction 2.32 Amendment by a subordinate regulation

1. A higher-ranking regulation may not be amended by a subordinate regulation.
2. Paragraph 1 shall not apply to:
   a. routine adjustments to amounts, rates and percentages;
   b. legal and technical adjustments to references to binding EU legal acts and treaties.
3. As with subordinate regulations, only the term "amend" or "replace" shall be used in a delegation provision allowing a higher-ranking regulation to be amended by a subordinate regulation.

Notes

First and second paragraphs. The same objection as that set out in Instruction 2.31 regarding a departure from a regulation by a subordinate regulation, namely that it may lead to confusion, applies to the amendment of a regulation by a subordinate regulation. For that reason, an exception is made only in two specific cases, namely for adjustments to rates, amounts and percentages and for technical amendments of references to (parts of) binding EU legal acts or treaties.

References have been subject to a legal and technical adjustment where parts of a binding EU legal act or treaty have been renumbered or where a binding EU legal act has been re-adopted in the context of "codification," without there being any substantive change. An adjustment of a reference is therefore purely legal and technical in character and is usually of an urgent nature owing to the absence of an implementation period.

Third paragraph. The use of other terms (such as revise, adjust, replace, index) leads to unclear delegation instructions. For this reason, the delegation provision uses the term "amend" or "replace" and the delegated regulation is implemented as an amending regulation. Nor are any statutory provisions ordering the amendment or replacement "by operation of law" used. See also Instruction 6.1.

Instruction 2.33 Time when an order in council is issued

1. An order in council shall not be issued until the Act of Parliament on which it is based has been adopted.
2. In exceptional situations, an order in council may be issued after the bill on which the order in council is based has been accepted by the Lower House.
3. The model referred to in Instruction 4.22, under E, shall be used for the provision on the entry into force of an order in council referred to in the second paragraph.
4. This Instruction shall apply by analogy to the issue of a ministerial regulation.

Notes

An implementing regulation cannot enter into force before or have retroactive effect extending further than the delegating regulation. The same may not apply to its establishment. There may be

exceptional situations where matters that cannot be regulated effectively in the Act itself (administrative regulations, matters regarding implementation) need to be known to individuals or implementing bodies in good time in order to give them the opportunity to make adequate preparations, and where the Act must enter into force at very short notice. However, consideration must always be given as to whether whether the desired clarity could be provided in a timely fashion in another way, for example by means of circulars or information campaigns. Of course, there must be sufficient certainty about the final wording and numbering of the sections of the delegating Act to ensure there can be no subsequent doubt regarding the legal basis of the decision.

Second paragraph As a general rule, the Advisory Division of the Council of State will not deal with a request for advice on the subject of an order in council until the Lower House has accepted the bill on which that order in council is based.

Instruction 2.34 Limited number of implementing regulations

If a regulation provides for the obligation or the power to lay down implementing regulations, a single order in council or ministerial regulation shall, if possible, be laid down in order to implement the higher-ranking regulation.

EXAMPLES

- Working Conditions Act (Arbeidsomstandighedenwet), Working Conditions Decree (Arbeidsomstandighedenbesluit) and Working Conditions Regulations (Arbeidsomstandighedenregeling)
- Inland Navigation Act (Binnenvaartwet), Inland Waterway Decree (Binnenvaartbesluit) and Inland Shipping Regulations (Binnenvaartregeling).

§ 2.5 Parliamentary involvement in delegated legislation

Instruction 2.35 Preliminary scrutiny procedures

An Act of Parliament shall not provide for parliament to be formally involved in delegated legislation unless there are exceptional grounds for this.

NOTES

Restraint in respect of parliamentary involvement. When dividing the substance of a regulation between the Act of Parliament and binding rules of general application laid down at a lower level, clear decisions should be made whereby a subject is either regulated by Act of Parliament or the issue of rules in that regard is delegated to a subordinate regulatory authority. Ideally, efforts should be made to avoid situations where the laying down of specific provisions is delegated to a lower-ranking regulatory authority while it is also established that parliament will have to be involved in that legislation. However, in occasional cases it will be impossible to avoid parliamentary involvement in delegated legislation. See, with regard to the coordination of the entry into force of a preliminary scrutiny provision and a delegated regulation to be created with due observance thereof, the explanatory note to Instruction 4.19.

Types of parliamentary involvement. Four types of parliamentary involvement may be distinguished: controlled (Instruction 2.36), conditional (Instruction 2.37), temporary (Instruction 2.39) and delegation subject to approval by Act of Parliament (Instruction 2.40), each with a different degree of involvement of parliament.

In general, provision is made for parliamentary involvement in rules to be laid down by order in council, although provision may also be made for parliamentary involvement in rules to be laid down by ministerial regulation. In view of the nature of such rules (see Instruction 2.24), however, this is not an obvious course of action for controlled and temporary delegation. The situation is quite

different, however, in cases of temporary delegation and delegation subject to approval by Act of Parliament.

If regulations to be laid down by ministerial regulation provide for controlled or conditional delegation, Instructions 2.36, 2.37 and 2.38 will apply by analogy. The same applies to special cases where parliamentary involvement is provided for in respect of an implementing decree.

Instruction 2.36 Controlled Delegation

1. Controlled delegation shall be applied only if regulation by Act of Parliament is justified but is not appropriate because the matter is of a highly technical nature or because rapid amendments or a large number of rules are required.
2. One of the following models shall be used for controlled delegation:
   A. *The recommendation for an order in council to be laid down pursuant to Section [...] shall not be made before four weeks have elapsed since the bill has been submitted to both Houses of the States General.*
   B. *The recommendation for an order in council to be laid down pursuant to Section […] shall be made only after the bill has been published in the Government Gazette and all parties have been allowed four weeks after the date of publication in which to inform Our Minister [of/for ...] of their wishes or reservations. The bill shall be submitted to both Houses of the States General simultaneously with the publication.*

NOTES

First paragraph. Controlled delegation means that regulations may be laid down by a subordinate regulation but that a draft of the regulations should be submitted to parliament. Parliament should then be allowed some time to comment on the draft and to discuss it with the minister concerned.

Second paragraph, model a. This model refers to situations where it is deemed desirable for the States General to express its views on a draft order in council, without a broader-based public consultation being provided for (see, in this regard, model b).

Second paragraph, model b. This model refers to situations where it is deemed desirable not only for the States General to have an opportunity to make known its views before the entry into force of the order in council but also to enable a broader-based public consultation to take place.

In both models, the draft must have been discussed in cabinet prior to submission to both Houses of the States General, unless there are special reasons to depart from this and agreement has been reached with the Ministry of General Affairs. See, in this regard, Article 4(2), opening words and (d) of the Rules of Procedure for the Cabinet. During the discussion in cabinet, the lead minister shall also be authorised to make the proposal to the King with a view to submitting the draft for advice to the Advisory Division of the Council of State after the preliminary scrutiny procedure, provided that no drastic changes are made.

Instruction 2.37 Conditional delegation

1. Conditional delegation shall be used with great restraint, indeed only if, in general, subordinate regulation is sufficient to regulate the matter in question, but it is desirable to provide for the possibility that the enactment procedure will be adhered to in certain cases.
2. The following model shall be used for conditional delegation:
   An order in council laid down pursuant to Section […] shall be submitted to both Houses of the States General. It shall enter into force on a date to be laid down by royal decree four weeks after such submission, unless within that time one of the

Houses or at least one fifth of the constitutional number of members of one of the Houses expresses the wish that [the matter/the entry into force] of the order in council be regulated by Act of Parliament. In that event case, a bill to that effect shall be introduced at the earliest opportunity. If the bill is withdrawn or if one of the Houses of the States General decides against approving the bill, the order in council shall be withdrawn.

NOTES

First paragraph. Conditional delegation means that a subordinate regulation must be submitted, before its entry into force, to parliament and parliament or part thereof may require the regulation to be laid down by Act of Parliament within a specified time limit.

Second paragraph. It is a practical move to submit an order in council to the States General in the form in which it appears in the Bulletin of Acts and Decrees. If urgently required, an order in council may be submitted to the States General in another form before it appears in the Bulletin of Acts and Decrees. In that event, however, it is desirable for the text to be forwarded to the Ministry of Justice and Security for publication in the Bulletin of Acts and Decrees at the same time as it is forwarded to the States General.

Instruction 2.38 Preliminary scrutiny during parliamentary recess

1. Notifications or submissions to both Houses of the States General as referred to Instructions 2.36 and 2.37 should be made at a time such that at least three quarters of the period referred to in the Instructions falls outside a parliamentary recess.
2. If the provisions of the first paragraph cannot be observed, this shall be stated explicitly in the notification or submission, giving reasons.
3. If the provisions of the first paragraph cannot be observed in the case of a notification or submission as referred to in Instruction 2.36, where possible, a date following the end of the recess shall be specified before which the Houses may make their views known.
4. If, in the opinion of the minister concerned, an extension as referred to in the third paragraph is not possible, this will be stated explicitly and with reasons.

NOTES

First paragraph. In order to ensure that the States General are in fact able to exercise their rights in the case of controlled or conditional delegations, it is desirable that account be taken of the States General's recess periods.

Second paragraph. In very urgent cases, it is conceivable that more than a quarter of the period will fall within a parliamentary recess. In such cases, the minister concerned shall then state in the accompanying letter to the Houses why the three-quarter rule has been deviated from.

Third and fourth paragraphs. In the case of controlled delegation (Instruction 2.36), the model provisions allow the response deadline for the Houses to be extended. However, if the minister concerned finds an extension problematic, for example because an international body will make a decision before that deadline, that problem must also be explicitly mentioned in the accompanying letter.

Instruction 2.39 Temporary delegation

1. Temporary delegation shall remain restricted to cases where the regulations are of such significance that they ought to be laid down by Act of Parliament, but there is no time to wait for an Act to be passed.
2. The following model shall be used for temporary delegation:

After publication in [the Bulletin of Acts and Decrees/the Government Gazette] of [an order in council/a ministerial regulation] laid down pursuant to Section […], a bill regulating the matter in question shall be submitted to the Lower House of the States General at the earliest possible opportunity. If the bill is withdrawn or if one of the two Houses of the States General decides against approving it, the [order in council/ministerial regulation] shall be withdrawn immediately. If the bill is enacted, the [order in council/ministerial regulation] shall be withdrawn with effect from the date of entry into force of the Act.

NOTES

First paragraph. Temporary delegation means that regulations may be laid down temporarily by order in council or by ministerial regulation but that the order must be superseded by an Act within a short space of time. This procedure may be adopted if swift action is required with regard to a subject that needs to be regulated by Act of Parliament, or if anticipation of forthcoming measures must be prevented (for example in the field of socio-economic legislation).

An obvious disadvantage of this procedure is that it creates extra work: regulations first have to be laid down by subordinate legislation, followed by regulation by Act of Parliament. This disadvantage can be mitigated by delegating the powers subject to approval by Act of Parliament. See Instruction 2.40.

Second paragraph. In the situation described in the last sentence of this paragraph, it is preferable for provision to be made in the Act in question for the withdrawal of the order in council or the ministerial regulation.

Instruction 2.40 Delegation subject to approval by Act of Parliament

1. Delegation subject to approval by Act of Parliament shall remain restricted to cases where temporary delegation is acceptable and which involve regulations that the Lower House may, in principle, only approve or refuse to approve.
2. The following model shall be used for delegation subject to approval by Act of Parliament:
   A bill to approve the [order in council/ministerial regulation] laid down pursuant to Section […] shall be submitted to the Lower House of the States General as soon as possible, but no later than eight weeks after the issue of the [order in council/ministerial regulation]. If the bill is withdrawn or if one of the Houses of the States General decides against approving the bill, the [order in council/ministerial regulation] shall be withdrawn immediately.

NOTES

First paragraph. One objection to the procedure involving delegation subject to approval by Act of Parliament is that the Lower House might have reason to amend the regulation during the debate on the Act approving it. This would give rise to an unclear situation. For that reason, this concept should be limited to regulations that do not lend themselves to partial amendment, but that the Lower House can, as a general rule, only approve or refuse to approve.

§ 2.6 Experimental legislation

Instruction 2.41 Experimentation regulation

1. If it is desirable to provide the possibility of departing in a subordinate regulation from a higher-ranking regulation by way of experiment, the following shall be provided for in the higher-ranking regulation:
   a. the purpose of the experiment;
   b. the scope of the experimental regulation;
   c. which parts of the higher-ranking regulation may be departed from; and
   d. the maximum period of validity of the departure.
2. An Act of Parliament may be departed from only by order in council, with sub-delegation being provided for.
3. The experimental regulation shall state which parts of the higher-ranking regulation are departed from.

NOTES

First paragraph. An experiment involves determining by way of experiment whether a particular instrument contributes to solving a social problem. If legislation is necessary for an experiment, this will constitute a departure from the basic principle of Instruction 2.6, because it will be impossible to foresee its effects. Since it is undesirable to have a regulation whose impact is uncertain implemented nationally and uniformly with immediate effect, it may be appropriate to lay down a regulation that departs from the Act that is limited in time and scope. Based on the experience gained from the experiment, it may be decided to amend the Act. A move to lay down an experimental regulation should not be made too quickly, in part in view of the principle of equality and the principle of legal certainty. The legislator must be convinced that departing from legislation will enable the necessary information to be gathered.

As with every basis for delegation, the subject matter to which an experimental regulation to be laid down may pertain must also be delineated as specifically and accurately as possible in the basis of an experiment. It is also important that the purpose and function of experiments is specified in the basis for the experiment. The scope must also be delineated as clearly as possible: for example, territorial or extending to particular groups of persons or institutions. It must also be clearly stated which sections or parts of the Act may be departed from. The experimental regulation itself must then specify the purpose and function and indicate the points on which the power to derogate was used. Given the nature of an experiment, that regulation must be accorded a temporary nature. See, in this regard, see paragraph 5.16.

See also, in this regard, the information about experiments in the index of policy instruments in part 6.1 (A-Z of Policy Instruments) of the IAK.

Second paragraph. Departures from a higher-ranking regulation generally take place at the "next level down". Departures from the Act of Parliament therefore take place by order in council only. In so far as the experimental regulation requires further elaboration of administrative rules and details, the basis for delegation may, with due observance of Instruction 2.24, provide for sub-delegation to a Minister.

Instruction 2.42 Evaluation of an experimental regulation

1. The explanatory notes to an experimental regulation shall specify how the regulation should be evaluated.
2. If an experimental regulation contains an evaluation provision, the following model shall be taken as the starting point:

Our Minister [of/for …] shall [in agreement with Our Minister of/for …] send to the States General a report on the effectiveness and effects of the experiment in practice, as well as an opinion regarding the continuation of [that measure/this decree] nine months before the end of the term of validity of [an order in council as referred to in Section … / this decree] other than as an experiment.

NOTES

First paragraph. If, at the end of an experiment, it is decided to convert the experiment into generally applicable legislation, consideration should be given as to whether the experiment should be temporarily extended. From the perspective of legal certainty, it may be undesirable and also less efficient to apply the old regime again for a short period of time in the areas to which the experiment relates. The experimental regulation should therefore continue to apply until the time when the amendment of the Act takes effect. An experimental regulation can only be extended until a legislative amendment has been introduced if the basis for that regulation provides the power to extend such an extension.

See, with regard to experimental regulations, the "Het proberen waard [Worth a Try]," final report of the Interdepartmental Legislative Council on experimental provisions, submitted to the Lower House by letter from the Minister of Justice dated 4 August 2000. The report can be consulted at www.kcwj.nl.

Second paragraph. The limited duration of experimental regulations means that at some point the experiment will end and the subsequent course of action must be decided on. In order to determine the extent to which the experiment can be called successful, several minimum procedural guarantees must be in place. An obvious guarantee is one that enables the citizens directly involved in the experiment, and in some circumstances other agencies as well, for example implementing organisations, to present their views on the desirability of converting the experiment into a final regulation in good time before the experiment ends. However, an obligation to include an explicit evaluation provision in all cases is unnecessary. The explanatory notes to an experimental provision must indicate how evaluation will take place, though. If it is desirable to provide explicitly that experimentation regulations shall be evaluated, the model included in the second paragraph should be taken as the starting point. The nine-month deadline set out therein is desirable as it allows sufficient time to conduct consultations with Parliament and, if necessary, to implement an extension of the experimental regulation. The alternative "this decree" in the model is appropriate for cases where explicit evaluation is considered necessary for an experimental regulation, whereas the basis for the experiment is not mandatory. In that case, the provision will therefore be included in the order in council, i.e. the experimental regulation itself.

If the evaluation requires the cooperation of a body that does not fall under ministerial responsibility, a statutory provision must be included for that purpose.

§ 2.7 Policy rules

Instruction 2.43 Explicit designation as policy rule

The word *"policy rule"* shall be used expressly in a statutory provision on the basis of which a policy rule is set and in the heading and the short title of the policy rule.

NOTES

In the existing legislative tradition, the granting of a regulatory power generally refers to the power to impose binding rules of general application, unless there is clear evidence of a different intention on the part of the legislature. Any such different intention should be expressed by the express use of the

word "policy rule" in the wording of the Act. Example: *[name of administrative body] may lay down policy rules on (…).*

Even if the power to set policy rules does not ensue from a statutory provision (see Section 4:81(1) of the General Administrative Law Act), the policy rule must make clear that it is a policy rule. This is done, inter alia, by using this term in the heading and the short title of the regulation. See Instructions 3.37, 4.2 and 4.25.

EXAMPLE

– Policy rule for applications for licences under the Betting and Gaming Act.

Instruction 2.44 Policy rule set by mandate

Policy rules set by mandate shall be set at least at the level of a director-general or comparable official.

§ 2.8 Harmonisation

Instruction 2.45 Harmonisation of legislation

1. When similar matters are being regulated, every effort shall be made to harmonise legislation.
2. When amending a regulation, it shall be ascertained whether other amendments can be made in the interests of harmonisation.

NOTES

First paragraph. Harmonisation should be given higher priority if the matters in question fall within one policy area. In any event, harmonisation is called for if more than one matter is being regulated by one regulation. Harmonisation should not, of course, preclude the implementation of desirable innovations.

Second paragraph. The need to amend a regulation may sometimes be a good opportunity to bring the regulation into line, as far as possible, with other regulations that are similar in form and content. In such cases, the desire for harmonisation will necessarily have to be weighed against the costs of legislation and the time involved in harmonisation. Given the time limits on the implementation of EU directives, it will often not be desirable to link amendments aimed at harmonisation with the implementation of EU directives in Dutch legislation.

Instruction 2.46 Departures from general Acts

1. Specific Acts of Parliament shall provide for departures from general Acts only where necessary. The reasons for any such departure shall be given in the explanatory memorandum to the specific Act.
2. The first paragraph shall apply by analogy to additions in specific Acts to a regulation in a general Act that is intended to be exhaustive.

NOTES

First paragraph. The term General Acts means Acts that lay down general rules for a particular area or field of law. Examples of general Acts for a particular area of law include the law Codes, the General Extension of Time-Limits Act (Algemene termijnenwet), the General Administrative Law Act (Algemene wet bestuursrecht), the Publication Act (Bekendmakingswet), the Municipalities Act (Gemeentewet), the Provinces Act (Provinciewet), the Water Boards Act (Waterschapswet), Advisory Bodies Framework

Act (Kaderwet adviescolleges), the Non-Departmental Public Bodies Framework Act (Kaderwet zelfstandige bestuursorganen), the Personal Data Protection Act (Wet bescherming persoonsgegevens), the Recognition of EU vocational qualifications Act (Algemene wet erkenning EU-beroepskwalificaties), the Services Act (Dienstenwet), the Economic Offences Act (Wet op de economische delicten), the Judiciary (Organisation) Act (Wet op de rechterlijke organisatie), the Government Information (Public Access) Act (Wet openbaarheid van bestuur) and the General Act on Entry into Dwellings (Algemene wet op het binnentreden). General laws for a particular field of law include the State Taxes Act (Algemene wet inzake rijksbelastingen), the Social Insurance (Funding) Act (Wet financiering sociale verzekeringen) and the Work and Income (Implementation Organization Structure) Act (Wet structuur uitvoeringsorganisatie werk en inkomen).

Second paragraph. One example is the introduction into special legislation of supervisory powers that supplement the powers provided for by the General Administrative Law Act: in that case, explicit consideration shall be given as to whether the expected results of the use of the power could be achieved using existing powers, the extent to which the power can be exercised, and the extent of its effectiveness and proportionality. The experience with enforcement, the nature of the infringement, the nature of the target group, the nature of the supervision and the nature of the additional power should be taken into account.

In order to avoid ambiguities regarding the relationship between a specific Act and a general Act, where there is a departure from the mandatory law of the general Act, that departure should be made clear in the wording of the Act. See also Instruction 3.35.

Instruction 2.47 Terminology used in the General Administrative Law Act

1. *In administrative law regulations applicable in the European part of the Netherlands,* the terms *administrative body, interested party, decision, order, application, policy rule, administrative court, objection, administrative appeal, appeal, subsidy, subsidy cap, writ of execution, infringer, supervisory authority, administrative enforcement order, order subject to a penalty for non-compliance, administrative penalty, mandate* and *delegation* shall be used in the sense in which they are used in the General Administrative Law Act.
2. *In administrative law regulations applicable in the European part of the Netherlands,* the terms *adviser, infringement, administrative sanction, remedial sanction, punitive sanction* and *approval* shall be used wherever possible in the sense in which they are used in the General Administrative Law Act.
3. In administrative law regulations applicable in Bonaire, Sint Eustatius and Saba, alignment shall be sought with the terminology used in the Administrative Justice (BES Islands) Act (Wet administratieve rechtspraak BES).

Notes

First and second paragraphs. Every effort should be made to employ uniform terminology in legislation. This is of particular importance in relation to the central terms of administrative law. The terms referred to in the first paragraph have been given a generally applicable meaning in the General Administrative Law Act and should therefore also be used in that sense in other administrative law regulations. It is also advisable to use the terms in this sense. The terms referred to in the second paragraph formally apply only within the General Administrative Law Act itself. However, it is important to apply those terms in special administrative law legislation.
The terms "view" or "reservations" should be used in preference to "objection" to refer to reactions connected with public participation procedures.

Third paragraph. In principle, the General Administrative Law Act has no application in Bonaire, Sint Eustatius and Saba. The terminology used in regulations applicable to those island shall be in line with the terminology of the Administrative Justice (BES Islands) Act (WarBES), which Act is, in a sense, the counterpart of Chapters 6 to 8 of the General Administrative Law Act. There are no general regulations

comparable with the other chapters of the General Administrative Law Act for Bonaire, Sint Eustatius and Saba.

In a regulation that applies in the European part of the Netherlands and also in Bonaire, Sint Eustatius and Saba, alignment with both the General Administrative Law Act and the Administrative Justice (BES Islands) Act must be guaranteed.

Instruction 2.48 Publication and communication

1. The term *notification* shall be used to indicate the notification of a decision to the parties involved, whereby the decision takes effect as a legal act.
2. In all other cases the term *communication* shall be used.

NOTES

The distinction between "publication" and "communication" is of relevance in the light of Section 3.6 of the General Administrative Law Act.

CHAPTER 3 ASPECTS OF DESIGN

§ 3.1 General terminological points

Instruction 3.1 Conciseness

Provisions shall be worded concisely.

NOTES

Where conclusive but complicated wording has been identified when drafting a provision, efforts must always be made to see if the wording could be simplified. Consideration should also be given to omitting superfluous words. For example, instead of "The provisions of the second paragraph of Section 5 shall apply", use "Section 5(2) shall apply".

Instruction 3.2 The terms "must" and "should"

Unless this is unavoidable, provisions should not be worded using the verbs *"must"* or *"should"*.

NOTES

Thus, for instance, instead of: "The application should be substantiated", use: "The application shall be substantiated". This Instruction refers only the wording of provisions in the regulation itself. There is no objection to the use of the words "must" or "should" in the Explanatory Memorandum to a regulation.

Instruction 3.3 Clarity

1. Normal speech shall be adhered to as far as possible.
2. Words whose meanings are insufficiently specific or unclear shall not be used.

NOTES

See also Instruction 5.1.

Instruction 3.4 Terminology used in implementing regulations

The terminology used in an implementing regulation shall be in line with that of the regulation on which it is based.

NOTES

The same applies to the structure of implementing regulations: see Instruction 3.63. See also Instructions 2.34, 3.63 and 5.3.

Instructions 3.5 Alignment with terminology used in international regulations

1. As a general rule, the terminology used in national regulations shall align with that used in related binding EU legal acts and international regulations.

2. The first paragraph may be departed from where:
   a. the terminology of the binding EU legal acts and international regulations has not been sufficiently specified;
   b. this would result in closer alignment with terminology used elsewhere in national regulations; or
   c. this would constitute better Dutch.

NOTES

This Instruction is of particular relevance to implementing regulations. Alignment with the terminology of related EU and international legislation can be achieved by adopting their provisions verbatim, by referring to them or by a combination of those options.

Instruction 3.6 Dutch Language Glossary

The Dutch Language Glossary shall be adhered to, unless words originating from foreign languages or derived from foreign languages reflect the intention more clearly than Dutch words and have entered common parlance.

Instruction 3.7 Uniformity of terms

1. The same concept shall not be referred to by different terms.
2. The same term shall not be used for different concepts.

NOTES

This Instruction must be observed, in particular, within a single regulation. It is also important that this rule is followed for related legislation. See also Instruction 3.4.

Instruction 3.8 Gender-neutral personal identifiers

1. Where possible, gender-neutral personal identifiers shall be used.
2. Combinations of designations of men and women shall not be used.

NOTES

First paragraph. For example, use the term "obstetrician" instead of "midwife" and "the person who" instead of "he who." See also Instruction 3.3, first paragraph.

Second paragraph. Formulations such as "employee/female employee," "employee (female employee)" or "he/she" shall not be used.

Instructions 3.9 Abbreviations

Abbreviations shall be used only where this cannot reasonably be avoided. When used, they shall be included in the definition of terms.

NOTES

For the designation of currency and measuring units, see Instructions 3.21 and 3.22, for the citing of sources, see Instructions 3.42 to 3.46, for the use of abbreviations in a short title, see Instruction 4.25, first paragraph, and for the abbreviated citation of regulations or treaties in explanatory notes, see Instructions 3.34, 3.39, 4.24, third paragraph, and 4.50. Abbreviations may also be used in headings of articles (see Instruction 3.57), if this is necessary to keep the heading concise.

Instruction 3.10 Fictions and legal presumptions

1. The wording of a rule in the form of a fiction shall be avoided.
2. The wording *"shall be presumed"* shall be used for a rebuttable legal presumption.

Notes

First paragraph. A fiction in a statutory provision ("shall be considered") constitutes a rebuttable legal presumption. It is often possible to choose the form of equal status instead of a fiction or to declare other rules applicable by analogy. See also Instruction 5.1, second paragraph.

Second paragraph. A rebuttable legal presumption may be used, inter alia, to refer to standardisation norms in a non-binding manner. Also see Instruction 3.48.

Example for the second paragraph

– Safety components, subsystems and cableway installations that correspond with national standards to be designated by Our Minister for the transposition of harmonised standards as referred to in Article 3(2) of the Directive shall be presumed to satisfy the essential requirements. (Section 4(1) of the Cableway Equipment Act (Wet kabelbaaninstallaties))

Instruction 3.11 The phrase "in so far as"

1. Instead of *"if and in so far as,"* the phrase *"in so far as"* shall be used.
2. The phrase *"in so far as"* shall be used in a statutory regulation only in the meaning of *"to the extent that"*.

Notes

A claim for compensation for damage "if" it exceeds a certain amount will confer entitlement to compensation for the full damage where the condition that it exceeds the threshold amount has been met. A claim for compensation for damage "in so far as" it exceeds a certain amount, on the other hand, only confers entitlement to compensation for the part of the damage that exceeds that amount.

Instruction 3.12 The phrase "and/or"

The term *"and/or"* shall not be used.

Notes

If "or" is used in a list of cases, this will include a situation where more than one of the cases named occur at the same time. See also Instruction 3.60. In order to convey the fact that two or more of the cases named cannot occur simultaneously, words such as "or" may be used.

Instruction 3.13 Use of brackets

Sentences or phrases shall not be placed in brackets.

Notes

Placing sentences or phrases in brackets leads to ambiguities in legislation. However, this may be acceptable where a single word is involved. See, for example, Article 70 of the Constitution. See also Instruction 3.30 with regard to citing phrases using brackets in an amending regulation.

Instruction 3.14. The phrase "to ... inclusive"

The end of a period or series shall be indicated using the phrase *"to ... inclusive"*.

NOTES

The use of a dash or the word "to" may give rise to misunderstandings. See also Instruction 5.63, second paragraph.

EXAMPLES

- Subsections 1 to 4 inclusive shall not apply.
- Applications may be submitted in the period between 1 January 2017 and 31 December 2017 inclusive.

Instruction 3.15 The terms "or" and "c.q."

1. The term *"or"* shall be used in accordance with the following example:
   In the case of the election of the members of provincial states or the municipal council, the notification shall be made in the manner customary in the province or the municipality.
2. The term *"c.q."* shall not be used.

NOTES

Instead of "or," "respectively," could also be used.

Instruction 3.16 The term "legislative proposal"

A legislative proposal for an Act of Parliament shall be referred to in official documents as a *"bill"* from the moment it is proposed to the King. In national legislation, it shall be referred to as a *"Kingdom Act legislative proposal"*.

NOTES

In any event, this constitutional designation shall be used in the proposal to the King (the letter to the King to refer a bill to the Advisory Division of the Council of State), the opening words and the end of the report to the King, the letter in which a follow-up document is sent to the Lower House or the Upper House and sections of law in which reference is made to a bill. In all other cases, the term "legislative proposal" or "bill" may be used. This also applies during the period prior to the proposal to the King.

Instruction 3.17 The terms "AMVb [order in council]" or "kb [royal decree]"

The terms *"order in council or general order in council for the Kingdom"* or *"royal decree"* shall be used to indicate orders to be laid down or orders that have been laid down by the government.

NOTES

See also Instruction 2.26. The word "Royal" before "Decree" shall be omitted in the heading. See Instructions 4.2, 4.21, 4.22 and 4.31, second and third paragraphs. The term "We" or "Our" is outdated and shall no longer used, except in the opening words of an Act of Parliament or an order in council.

Instruction 3.18 The term "ministerial regulation"

A binding rule of general application or any other decision of a regulatory nature issued by a minister or state secretary shall be referred to as a *"ministerial regulation"*.

NOTES

The word "ministerial" before "order" shall be omitted in the heading. See Instructions 4.2 and 4.31, fourth paragraph. The term "ministerial regulation" shall also be used for binding rules of application issued by a minister or state secretary in the context of national legislation. See also Instruction 3.25.

Decisions of general application that are not, or are not primarily, of a regulatory nature, such as decisions to establish a committee, shall generally be referred to as "decisions." The term "individual decision [beschikking]" shall be used only for decisions on a specific case. See also Section 1:3 of the General Administrative Law Act.

Instruction 3.19 The term "ministry"

1. The entirety of the department sections led by a minister shall be called a *"ministry"*.
2. The term "departmental" shall be used as an adjective for the term *ministry.*

NOTES

First paragraph. Since the Constitution uses the term "ministry", the term "department [departement]" should be avoided. A ministry includes all departments, institutions and branches of industry coming under a minister. If a regulation is not intended to pertain to them, they must be explicitly excluded, unless it is clear from the nature of the case that the regulation has no application.

Second paragraph. The term "ministerial" refers only to "minister" not to "ministry."

Instruction 3.20 The terms "The Netherlands" and "Kingdom [Koninkrijk]"

1. The words *"the European part of the Netherlands"* shall be used to indicate the European part of the territory of the Netherlands. In a regulation applying only to the European part of the Netherlands, the words *"the Netherlands"* may also be used to indicate the European part of the territory of the Netherlands.
2. In a regulation of the Kingdom or a regulation that applies in whole or in part to Bonaire, Sint Eustatius and Saba, the words *"the Netherlands"* shall be used solely to indicate the territory of the European part of the Netherlands, Bonaire, Sint Eustatius and Saba jointly.
3. The word *"Kingdom"* shall be used when indicating the territory of the Netherlands, Aruba, Curaçao and Sint Maarten jointly.
4. The word *"country"* shall be used to indicate the Netherlands, Aruba, Curaçao or Sint Maarten as a component of the Kingdom.
5. The word *"kingdom" [Rijk]* to indicate the Netherlands or the Kingdom shall be avoided where there is a possibility of confusion arising as to its meaning.

NOTES

First and second paragraphs. Owing to the largely separate legal systems of the European part of the Netherlands on the one hand and Bonaire, Sint Eustatius and Saba on the other, it is important that a regulation clearly shows whether a certain rule applies to both the European part of the Netherlands and Bonaire, Sint Eustatius and Saba, or only to one of the two parts of the Netherlands. It follows from Section 4 of the Public Bodies of Bonaire, Sint Eustatius and Saba (Implementation) Act that, in a regulation that applies exclusively in the European part of the Netherlands, the term "the Netherlands" may also be used to indicate the European part of the territory of the Netherlands. The term "Kingdom in Europe" [Rijk in Europa] to indicate the European part of the Netherlands is outdated. The terms "European Netherlands" or, to indicate the joint territory of Bonaire, Sint Eustatius and Saba, "Caribbean Netherlands" may be used in explanatory notes. The term "Caribbean Netherlands" should not be confused with the term "the Caribbean parts of the Kingdom", which

include, in addition to Bonaire, Sint Eustatius and Saba, the countries of Aruba, Curaçao and Sint Maarten.

Third paragraph. The term "Kingdom of the Netherlands" [Koninkrijk van Nederlanden] shall be used when the country is party to a treaty (see Instruction 8.1).

Instruction 3.21 Term used for amounts

1. The euro sign "EUR" shall be used to indicate amounts in euros.
2. The following NEN/ISO designations shall be used to indicate amounts in the currencies of the Caribbean parts of the Kingdom:
   a. Aruba (the Aruban florin): AWG;
   b. Curaçao and Sint Maarten (the Netherlands Antillean guilder): ANG;
   c. Bonaire, Sint Eustatius and Saba (the US dollar): USD.

NOTES

A space shall be inserted between the currency designation and the amount, including when the euro sign is used. In Dutch, thousands shall always be separated by a decimal point. As a decimal sign, the comma shall also be used for amounts in dollars in Dutch.

EXAMPLES

- € 12,75
- € 14
- € 25.000
- USD 1.367,25
- USD 10.000.000.

Instruction 3.22 The terms used for units of measurement

The statutory terms shall be used for units of measurement.

NOTES

See, for details of these terms, the Units of Measurement Decree 2006 (Meeteenhedenbesluit 2006), which implements the relevant EU directives.

§ 3.2 Terms used for ministers and state secretaries

Instruction 3.23 The term "Our Minister"

In an Act of Parliament, an order in council or a royal decree, a minister is referred to as *"Our Minister of [name of the Ministry]/Our Minister for [name of the minister without portfolio]"* or, if that term is defined in the definitions, as *"Our Minister".*

NOTES

The term "Our Minister (of/for …)" shall be used only in regulations laid down by the King. In ministerial regulations a minister shall be referred to "the Minister (of/for …)". See, with regard to the terms used for state secretaries, Instruction 3.26.

In a regulation, a minister without a portfolio is referred to by the name laid down for them.

EXAMPLES
- Our Minister of Defence
- Our Minister for Foreign Trade and Development Cooperation.

Instruction 3.24 The terms used for other ministers involved

1. In the event of the formal involvement of more than one minister in the implementation of an Act of Parliament or an order in council, they shall, if possible, be referred using the name of their Ministry.
2. If mention by name would be inexpedient, the wording *"Our Minister[s] whom it also concerns"* may be used.

NOTES

If necessary, it may be determined that the appointment of ministers involved in the implementation of the regulation will take place by royal decree. If the wording "Our Minister[s] whom it also concerns" is used, it is advisable to explain in the explanatory memorandum which ministers those are. See also Instruction 2.28. A change of portfolio will not result in competence-related problems and is therefore not on its own reason to amend a regulation.

The terms "Our Minister charged with the implementation of this Act" and "Our Minister, responsible for …" are not used.

Instruction 3.25 The term used for the minster for Kingdom affairs

In a Kingdom Act or a general order in council for the Kingdom, a minister responsible for Kingdom affairs shall be referred to as *"Our Minister of/for […] in their capacity as Minister of the Kingdom*," unless there can be no confusion in this respect.

NOTES

If a minister sometimes acts as a Dutch minister and in other cases as minister responsible for Kingdom affairs, confusion can be avoided by designating the minister as such in the latter case. See, in this regard, Parliamentary Papers II 2002/03, 28836 (R 1735), A, point 1a, and no. 3, pp. 1-2).

EXAMPLE
- Our Minister of the Interior and Kingdom Relations in their capacity as Minister of the Kingdom (Section 1 (k) of the Passport Act (Paspoortwet)).

Instruction 3.26 The terms used for state secretaries

1. In the heading, the opening words and the signature of a regulation, a state secretary shall be referred to as *"the State Secretary of [name of the Ministry]"*.
2. In a regulation, duties and powers shall always be assigned to a minister, even if a state secretary acts as the responsible government member in the field concerned.

NOTES

When the term state secretary is used, reference is made to the name of the ministry and not to the duties of the state secretary, even if a ministry has more than one state secretary; it will be apparent from the signature which state secretary is involved. Since a state secretary is not part of the government, the term "Our State Secretary" is not used.

The second paragraph also applies to the closing formula of a royal decree in an individual case. See Instruction 4.31, third paragraph.

§ 3.3 Citing and and references

Instruction 3.27 References

1. Reference to other provisions shall be avoided if this unnecessarily renders the regulation less accessible.
2. Efforts should be made to avoid references to provisions that themselves entail a reference and refer to subsequent provisions of the regulation.
3. The subordinate regulation shall not be referred to by name in the regulation.
4. References within a section shall be avoided as far as possible.

NOTES

First paragraph. References may be desirable if the same provision would otherwise have to be written out in full in a regulation.

Second paragraph. In the case of definitions of terms, in particular, references to subsequent provisions may be unavoidable.

Third paragraph. By not specifying the name of the subordinate regulation but rather referring to the latter's basis, a reference will remain valid even in the event of the amendment or replacement of the subordinate regulation whose substance is referred to.

Fourth paragraph. Not including any unnecessary references among the various paragraphs or subparagraphs in a section improves its readability. For example, if it is clear from the first paragraph of a section that the section pertains only to applications for a certain type of authorisation, the words "the application" will suffice in the remaining paragraphs of the section." In that case, it will be unnecessary to write "an application as referred to in the first paragraph" in those remaining paragraphs. Further specification is, of course, necessary if the first paragraph pertains to different types of applications, and the details contained in a later paragraph relate to only one of them.

EXAMPLE FOR THE THIRD PARAGRAPH

– It shall be prohibited to place on the market liquid containing nicotine, tobacco products and related products if those products do not meet the requirements imposed pursuant to Section 2(1)(2) and (5). (Section 3(1) of the Tobacco and Related Products Act)

EXAMPLE FOR THE FOURTH PARAGRAPH

– 1. Any person may request the Agency in writing to issue an opinion on the applicability of the grounds for revocation referred to in Section 75(1) to a patent granted pursuant to this Kingdom Act.
  2. The request shall contain a reasoned indication of the objections derived from Section 75(1) against the patent granted in respect of which an opinion is required.
  3. Rules will be set by or pursuant to a general order in council for the Kingdom with regard to the fee payable for the opinion. (Section 84 of the Patents Act 1995)

Instruction 3.28 Differentiation between references

1. Where possible, references to a regulation shall be differentiated from references to sections.
2. If this improves the clarity of the reference, a reference to a section shall be differentiated from a reference to a subparagraph of the section.

Instruction 3.29 Terminology used for references

1. References to a paragraph of a section shall be made in accordance with the following example: *Section 5(2) shall apply*.
2. The preceding section or paragraph of a section shall be referred to by stating the number of that section or paragraph.
3. References to a part of a list shall be made using the terms *"under"* or *"part"*. References to a further subdivision shall be made using a combination of those terms or by means of the term *"subsection"*.
4. If the nature of a reference necessitates such, references to a part of a list shall include a reference to its opening words.

NOTES

Expressions such as "paragraph 2", "under a" or "letter b" are thus avoided. In the case of references to a part of a list, no full stop is placed after the letter or number. Only in lists themselves is a point placed after the letter or number designation: see Instruction 3.59, first paragraph, part a.

EXAMPLES FOR THE THIRD PARAGRAPH

- the persons referred to in Section 5(b).
- Section 8(c) ceases to apply.
- the cases referred to in Section 10(a)(2).
- in Section 2(3)(c), subsections (2) and (5) shall cease to apply and subsections (6) and (7) shall be renumbered (2) and (3).

EXAMPLE FOR THE FOURTH PARAGRAPH

- Section 9(1), opening words and part b.

Instruction 3.30 The Terms "sentence" and "phrase"

1. A full sentence shall be referred to as a *"sentence"*," and a part of a sentence as a *"phrase".*
2. Where a phrase is cited by reference to the full text or the beginning and end thereof, the term *"phrase"* may be omitted.

NOTES

Second paragraph. Long phrases can also be cited using brackets: see the second example. See also Instruction 6.9. See, for another form of references to phrases, Instructions 5.47, fourth paragraph, and 5.52, examples B, D and F.

EXAMPLES FOR THE SECOND PARAGRAPH

- The phrase "if he has consented to this" in the second paragraph shall be deleted.
- The phrase "if (...) terminated" in Section 4 shall be deleted.

Instruction 3.31 The terms "specified," "referred to" and "as referred to"

1. The expression *"specified"* is a reference to persons, matters or subjects designated by name.
2. The term *"referred to"* is a reference to persons, matters or subjects designated in a general or descriptive sense.
3. The term *"as referred to"* is used if the preceding term has an indefinite article or no article.

EXAMPLES

- the bodies specified in Section 5, (including commas)
- the circumstances referred to in Section 8 (including commas)
- a note as referred to in Section 15 (without commas).

Instruction 3.32 Use of the terms "applies or applies by analogy"

1. The expression *"applies"* shall be used if the provision to which reference is made can be applied literally.
2. The expression *"applies by analogy"* shall be used if the provision to which reference is made cannot be applied entirely literally, but any misunderstanding about the text to be applied is excluded.
3. The expression *"applies by analogy, provided that …"* shall be used if the provision to which reference is made must be applied in part or with modification of certain parts.

Instruction 3.33 The term "the present Act"

1. The term *"the present Act"* shall be used only when referring to another part of the Act itself in which the reference is included.
2. The first paragraph shall apply by analogy to an order in council or a ministerial regulation.

Notes

Use of the term "the present Act" when referring to another Act leads to confusion and should therefore be omitted. When referring to another Act, that other Act is referred to as "that Act." The same applies to orders in council and ministerial regulations.

Instruction 3.34 References to the Civil Code (BW)

References to a section from the Civil Code shall be made in accordance with the following example: *Section 162 of Book 6 of the Civil Code*.

Notes

A shorter designation may also be used in explanatory notes, etc.: Section 162, Book 6 BW.

Instruction 3.35 Use of the terminology "without prejudice" and "in derogation from"

The expressions *"notwithstanding Section …"* and *"in derogation from Section …"* shall be used only if this is necessary to clarify the relationship between one provision and another.

Notes

The term "notwithstanding" means that the section specified applies in full in the case described. This may involve both the mutual relationship between provisions within a single Act and that between provisions in various Acts. This also applies to the term "in derogation from," which must be used, inter alia, where a special Act departs from a general law (only in very exceptional cases: see Instruction 2.46), unless the general Act expressly creates the possibility of derogation by means of a phrase such as "unless provided otherwise by law."

Instruction 3.36 Do not mention the source when a regulation is cited

using its short title

When citing a regulation using its short title, the Bulletin of Acts and Decrees or the Government Gazette in which it is published shall not be mentioned.

NOTES

Having a short title means that a regulation is already properly identified.

Instruction 3.37 Citing regulations with no short titles

A regulation without a short title shall be cited in accordance with the following model:

a. in the case of an Act or a Kingdom Act:
Kingdom Act/Act of [date] to/laying down [indication of content] (Stb. (Bulletin of Acts and Decrees) [year, serial number]);
b. in the case of an order in council or a general order in council for the Kingdom:
Decision of [date] to/laying down [indication of content] (Stb. [year, serial number]);
c. in the case of a ministerial regulation:
Order of the [Minister of/for … / State Secretary of …] of [date] to/laying down [indication of content] (Stcrt. (Government Gazette) [year, serial number]);
d. in the case of a policy rule:
Policy rule of the [Minister of/for … / State Secretary of …] of [date] to/laying down [indication of content] (Stcrt. [year, serial number]).

NOTES

Part c. A regulation laid down by a Minister in the context of national legislation is also referred to as "regulation" and not as a "national regulation." See also Instructions 3.18 and 3.25.

Parts c and d. See also Instructions 3.23 and 3.26.

Instruction 3.38 Citing treaties

1. A treaty shall be cited in accordance with the following example:
the Convention on the Recovery of Maintenance Abroad (Treaty Series) enacted in New York on 20 June 1956 (Treaty Series 1957, 121).
2. In the case of treaties with a short title or comparable designation, the date and place of enactment and the Treaty Series number may be omitted.

NOTES

The cited Treaty Series should contain the authentic text of the treaty and not just the translation.

EXAMPLES FOR THE SECOND PARAGRAPH

- Treaty on the Functioning of the European Union
- Treaty establishing the Benelux Economic Union.

Instruction 3.39 Abbreviated citation of treaties

Abbreviated references in the Explanatory Memorandum to Articles of the Treaty on European Union, the Treaty on the Functioning of the European Union, the Treaty establishing the European Atomic Energy Community, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Convention on Civil and Political Rights, respectively, shall be made in accordance with the following examples:

- *Article 6 TEU*
- *Article 18 TFEU*
- *Article 150 EURATOM*
- *Article 6 ECHR*
- *Article 17 ICCPR*

NOTES

To improve readability, once the title of the treaty has been written out in full the first time, it may be expedient to use abbreviated references to articles of the EU treaties. The terms "EU Treaty" and "Functioning Treaty" may be used as abbreviated forms of, respectively, the Treaty on European Union and the Treaty on the Functioning of the European Union in the explanatory memorandum to a regulation.

Instruction 3.40 Citing European institutions, etc.

The institutions, treaties, legislation and the Member States of the European Union or the European Atomic Energy Community, as well as their territories, shall be referred to in regulations as follows:

- *the European Parliament*
- *the European Council:*
- *the Council of the European Union;*
- *the European Commission:*
- *the Court of Justice of the European Union;*
- *the European Central Bank;*
- *the European Court of Auditors;*
- *the Treaty on the Functioning of the European Union;*
- *the Treaty on European Union;*
- *the Treaty establishing the European Atomic Energy Community;*
- *EU Regulations, EU Directives, EU Decisions;*
- *binding EU legal acts, EU legal acts, EU rules;*
- *Euratom Regulations, Euratom Directives, Euratom Decisions;*
- *Member States of the European Union;*
- *areas to which the Treaty on European Union applies.*

NOTES

This terminology ensues from Article 13 of the TEU and Article 288 of the TFEU. The words "of the European Union," "European" or "EU" have been added to a number of terms in relation to European terminology in order to avoid confusion with Dutch equivalents. See also, with regard to European Union legislation, Instruction 1.3.

Unless otherwise provided, a reference to an EU institution, etc. also includes the institution, etc., as it was entitled under previous EU treaties. A general reference to binding EU legal acts relating to a particular subject matter therefore includes binding legal acts that have been entered into in the context of the EEC or the EC.

Instruction 3.41 Citing the EEA and Switzerland

Where binding EU legal acts also apply to the European Economic Area or Switzerland, the States concerned, or their territories, respectively, shall be referred to as:

- *the Member States of the European Union or any other State party to the Agreement on the European Economic Area*;
- *the areas to which the Agreement on the European Economic Area applies*;
- *Switzerland*.

NOTES

See also Instruction 9.3.

Instruction 3.42 Citing binding EU legal acts

1. When citing binding EU legal acts, the title given to them in the Official Journal of the European Union shall be used.
2. Publication references in the Official Journal of the European Union shall be quoted by adding the indication in brackets in accordance with the following example: *OJ 2010, L 180*.

NOTES

First paragraph. This Instruction also pertains to the use of capital letters in the words "Directive" and "Regulation" (see also the example below).

Words in brackets indicating that the Directive or Regulation is a "recast" or "codification" are not adopted when citing a binding EU legal act, nor are the words "Text with EEA relevance". Abbreviated names of the legal act placed in brackets (for example, the "General Data Protection Regulation") will be adopted, though.

Second paragraph. See also Instruction 3.46.

EXAMPLE

– Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015, L 141).

Instruction 3.43 Reference to parliamentary papers

1. References to parliamentary papers shall be made in accordance with the following examples:
   - *Parliamentary Papers II 2009/10, 27858, no. 88, p. 3*;
   - *Parliamentary Papers I 2008/09, 31700 VI, D, p. 4;*
   - *Proceedings II 2007/08, no. 108 , pp. 7909-7943* (until 31 December 2010);
   - *Proceedings II 2010/11, 108, item 5, pp. 25-36* (from 1 January 2011);
   - *Appendix to the Proceedings I, 2014/15, no. 12.*
2. References to a bill shall be made in accordance with the following examples:
   - *the bill to amend to amend the Fertilisers Act (phosphate use standard differentiation) submitted by Royal Message of 8 May 2009 (Parliamentary Papers 31945*);
   - *the bill of the members Siderius and Van Meenen introduced by the accompanying letter of 13 September 2016, to amend the Primary Education Act to promote smaller classes in primary education (Parliamentary Papers 34538).*

NOTES

First paragraph. Documents originating from the Lower House are numbered using the five-digit Parliamentary Paper (the "boldface number"), followed by a subnumber: "Parliamentary Papers II 2009/10, 32217, No. 2") In the case of documents originating from the Upper House, a letter is used instead of a subnumber: "Parliamentary Papers II, 2009-10, 32217, A".

When referring to the Proceedings, the session number is stated separately (in the example provided, no. 108) and not as part of the page number as in the Proceedings themselves. Before 1 January 2011, continuous page numbering was used for the Proceedings during the session year. Since 2011, a separate publication has been prepared for each item dealt with and the page numbering for each session begins with 1. The examples given pertain to the old and new situations.

Second paragraph. If reference is made to a bill, as is the case in Instructions 4.22, 5.68, and 6.34, it may be undesirable to use the wording referred to in the first paragraph, for example because the reference relates to a section included in the bill by amendment or memorandum of amendment. By using only the five-digit Parliamentary Paper number, the reference is rendered dynamic and relates to the most up-to-date version of the bill.

Instruction 3.44 References to case law

References to published case law shall be made by using the European Case Law Identifier (ECLI) in accordance with the following example:
HR (Supreme Court) 7 March 1979, ECLI:NL:HR:1979:AB7440.

NOTES

References to sources in, for example, NJ (Dutch Law Reports) or AB (Administrative Law Cases) are no longer used for older case law either. An ECLI may be found for such judgments via www.rechtspraak.nl. A different method of referral may be used in isolated cases where no ECLI is (yet) available.

Instruction 3.45 Listing sources in the Bulletin of Acts and Decrees, etc.

1. Publication references in the Bulletin of Acts and Decrees, the Government Gazette and the Treaty Series shall be quoted by adding indications in brackets in accordance with the following examples:
   - *Bulletin of Acts and Decrees 2011, 35;*
   - *Government Gazette 2015, 10247;*
   - *Treaty Series 2008, 175*.
2. If the regulation referred to has not yet been published in the Bulletin of Acts and Decrees, the Government Gazette or the Treaty Series, the source shall be indicated in drafts of that regulation by indicating the year and number of the publication with dots, in accordance with the following example: *Bulletin of Acts and Decrees …*, … .
3. The Ministry concerned shall enter the year and number of the relevant publication, no later than upon the publication of the regulation.

NOTES

Third paragraph. The year and number in Acts of Parliament and orders in council may therefore be entered no later than when the proofs are corrected. This shall not require an explicit instruction in the regulation concerned, as is the case for the publication of the full text of a regulation (see Instruction 6.22). The date on which a regulation without a short title was laid down may also be entered no later than when the proofs are corrected. See also Instruction 3.37.

Instruction 3.46 Citing publication references in the OJ

The abbreviation *"OJ"* shall be used for the Official Journal of the European Union. When indicating an Official Journal number, the letters *"L"* (Legislatio) or *"C"* (Communicatio) *shall precede the reference number.*

NOTES

Until 1 February 2003, the Official Journal was referred to as the "Official Journal of the European Communities". If reference is made to numbers from before 1 February 2003, the abbreviation "OJEC" shall be used.

EXAMPLES

- OJ 2008, L 54
- OJ 2010, C 195.

Instruction 3.47 Dynamic and static references

1. Where a regulation refers to standards contained in another Dutch public-law regulation or a binding EU legal act, such reference shall also include any subsequent amendments to that regulation or EU legal act, unless expressly stated otherwise.
2. Where a regulation refers to standards that are not of a public-law nature, the reference shall, as a general rule, be made to those standards as they read at a given point in time. If the reference includes subsequent changes, those changes shall also be notified in the Government Gazette.

NOTES

First paragraph. Reference to another regulation may mean a reference to the text as it reads or will read with any amendments established since its creation (a dynamic reference) or a reference to the text as it read at a certain point in time (static reference). When referring to central government regulations or to binding EU legal acts, the references will normally be dynamic. However, there may be exceptions, for example in transitional law. For references to binding EU legal acts, see also Instruction 9.10.

Second paragraph. Standards that are not of a public-law nature may include standardisation norms and provisions that have been created in the context of self-regulation. When referring to such standards, a level of publication comparable with the standards of the Publication Act is not guaranteed. For this reason, these standards should generally always be referred in the form of static references. In the example below, the static nature of the reference is apparent from the mention of the year "2006" in the name of the standard. This year refers to the year in which the standard was published.

EXAMPLE FOR THE SECOND PARAGRAPH

- Paper complies with NEN 2728:2006. (Section 4 of the Public Records Regulation)

Instruction 3.48 References to standardisation norms

In principle, references in a regulation to standardisation norms to be applied shall be made in a non-mandatory manner.

NOTES

If it is desirable to align with the self-regulatory capacity of society (see Instruction 2.5), this can be done, for example, by referring in a regulation to a standard which is not of a public-law nature.

Such standards of a non-public-law nature include standardisation norms. Standardisation is the system whereby private parties jointly draw up standards for their actions by means of a standardisation institute, such as the Netherlands Standardisation Institute NEN. Standardisation norms are subject to copyright, which means they can only be obtained from the standardisation institute in exchange for payment. For that reason, the mandatory imposition of such standards in legislation is less desirable. The mandatory imposition of standardisation norms is also less in keeping

with the voluntary nature of the system of standardisation. In general, therefore, making the standard applicable on an optional basis is preferable. This may take the form of a rebuttable legal presumption in which compliance with the standard gives rise to a presumption that a statutory requirement has been met. This is the case, for example, in the system of European Directives in accordance with what is known as the New Approach. See, for the wording of a rebuttable legal presumption, Instruction 3.10, second paragraph.

In certain cases, the legislature imposes mandatory compliance with a standardisation norm. For instance, there are EU Directives, treaties and decisions of organisations under international law that oblige the national legislature to do so. Mandatory reference to standardisation norms may also be made, for example, in the case of regulations aimed at public authorities and where an exclusive application is desirable, or in the case of criminal enforcement, where a clear standard needs to be set, for example, with regard to a measurement method to be applied. Such forms of reference must be substantiated. In addition, the reference must state the source of the standard, the standard must be generally available and the standard (except where only the government is the party to which the standard applies) must be made available free of charge. If the latter is not possible because the standard is an international one, the price charged for it may not be unreasonably high.

See, with regard to references in legislation to standardisation norms and the status of standards to which reference has been made, the letter from the Minister of Justice of 9 April 2009 (Parliamentary Papers II 2008/09, 28325, no. 105) and the letter from the Minister of Economic Affairs, Agriculture and Innovation of 30 June 2011 (Parliamentary Papers II 2010/11, 27406, no. 193). See also Instruction 4.29.

Instruction 3.49 References to ICT standards

A reference in a regulation to ICT standards or ICT facilities to be applied shall be made only if mandatory application of the standards or facilities concerned is necessary. In such cases, where possible, an open standard designated by the National Council for Digital Government Board, or facilities based on such standards, shall be chosen, unless there are compelling reasons not to do so.

Notes

A separate regime, detailed in this paragraph, applies to references to ICT standards (even if they have been laid down in a standardisation norm) or an ICT facility in which such a standard has been applied. ICT standards are understood to mean agreements on the form of electronic data exchange. ICT facilities are information systems (hardware) or applications (software) that use ICT standards.

To meet the aim of technology-independent legislation, only specific ICT standards or ICT facilities are referred to in regulations where such is necessary. This may be the case if it is necessary to oblige citizens or businesses to apply the relevant standard or facility because keeping more channels open for the provision of information would entail disproportionate costs for the government. This may also be necessary for the successful progress of the implementation process. An example of this is the prescribing of file formats when applying for an environmental permit (see, for example, Section 1.4(1) of the Environmental Act Regulation). Furthermore, prescribing a standard may also be necessary because mandatory application arises under European or other international legislation (see also Instruction 2.15) or because the non-implementation of open standards by government organisations poses an unacceptable risk to public interests such as information security, interoperability or the government's supplier independence.

Where mandatory application is involved, reference is generally made only to the open standards included on the list of open standards on the basis of a decision of the National Council for Digital Government or to facilities based on those standards. The current list is available at www.forumstandaardisatie.nl.

Example

- The publications are published and kept available in the PDF /A-1 file format (ISO 19005-1:2005). (Section 2(a) of the Publication Regulation)

Instruction 3.50 References to information on the internet

1. Caution shall be exercised in a regulation when referring to information on the internet by means of an internet address as part of the standard-setting.
2. A references to information on the internet shall meet the following conditions:
   a. the reference shall relate to information that has been set out in a clearly defined and independently named information object;
   b. the information object shall be named directly and in the form of full internet address;
   c. the information object shall be available in a timely manner and on a permanent basis at the location indicated by the reference;
   d. the information object shall be readable without any special restrictions arising from the format in which the information is provided;
   e. the authenticity of the information object offered shall be sufficiently safeguarded.

NOTES

First paragraph. This Instruction applies in situations where information provided via the internet is made part of the standard-setting process by referring to it using an internet address. Such references are subject to specific risks from the perspective of legal certainty. Information provided on the internet is often of a more superficial nature than traditional paper sources of information. Furthermore, being directed via an internet address to the intended web page depends on various factors that are not always under the control of the regulatory authority. As a result, there is no automatic guarantee that the information will continue to be available in the future and that the information displayed will remain identical over time to that which the regulatory authority initially indicated. It is also important to bear in mind that when an internet address is used as part of the reference, the inaccuracy or the unavailability of the information at that exact location may have legal consequences for the application of the regulation. There is no objection to a reference to an internet address in an explanatory note unless the information provided via the internet is not made part of the standard-setting process; see also Instruction 4.47.

Second paragraph. By using a reference, the regulatory authority takes responsibility for the information referred to. This paragraph specifies the requirements to be imposed from the perspective of legal certainty for references to sources on the internet. In the case of references to official publications provided via www.officielebekendmakingen.nl, these requirements are met due to the legal frameworks and technical provisions created for this website. For other sources, there must be a corresponding degree of certainty that those requirements are being met, for example by setting explicit rules regarding the management of this information, compliance of which is part of an administrative body's responsibility.

Part a. Information object is understood to mean: an independent set of data with its own identity, such as a list, a register or a database. Such an object is not only identified by means of the internet address at which it is provided, but also has an identifying title, including, where appropriate, a version indication or a date. The name of the object may leave no room for doubt as to what is and what is not part of the information envisaged by the regulatory authority. This means, for example, that references from a designated web page to other pages may not concern non-binding explanations or further information, but may be used only if it is explicitly desired that those other pages themselves also form part of the object.

Moreover, this requirement implies that for the correct understanding of the information contained in an object, it may not be necessary for information to be found somewhere other than in that object itself. For example, when, technically speaking, map material consists of different layers laid on top of each other when displayed to the user, the indication of the object must include each of the layers referred to.

Part b. The reference should lead to a unique location where the intended information object can be found without requiring additional searches by the user, because that would create the risk of the information envisaged by the regulatory authority not being found. The reference is given in clear language by including the web address in full in the text. It is therefore not permissible to encode the reference in the metadata of an electronic file by, for example, adding a hyperlink to a word in the text.

Unless otherwise provided, a reference to a web page will also include the references to sub-pages included on that page under the address provided within the domain in which it is located. By contrast, a redirection from the designated web page to a web page provided under a different domain name requires an independent instruction in the referring legislation, making it clear that the regulatory authority also takes responsibility for the information in the domain to which the user is redirected.

Part c. If an information object is (also) identified by indicating its location in the text of the regulation itself, this location is part of the identifying characteristics of that object. In the event that an object with a title and content that are similar to the designated object is provided at a different location, it therefore cannot be considered as the object referred to by the regulatory authority. Bear in mind that the requirement of availability also applies after the referring regulation has ceased to apply because it may remain fully relevant for the settlement of legal disputes. It should further be pointed out that Section 10a of the Publication Act provides that the texts of the regulations referred to therein shall remain available in consolidated form even after amendment or withdrawal, which obligation would be undermined if the standards that are part of the regulation by reference were not also available. Therefore, where appropriate, this may also be reason to amend the regulation subsequently to incorporate a change in location (for example, because a website is given a different name or address).
Part d. The requirement of accessibility of legislation means that users must be able to read references in the regulation without encountering unusual obstacles, as would be the case, for example, if software that is not freely available is required to read the information.

Part e. There must be sufficient safeguards to ensure that the object provided is in line with the object the regulatory authority intended to indicate at the time of entry into force of the regulation. In the case of information that is provided in digital form only, there are no physical documents to which recourse can be made to determine the authenticity of the text offered. It should therefore be possible by other means to provide sufficient assurance that the information has not been changed without authorisation, for example by setting explicit rules on the management of the information and the recording of changes.

EXAMPLE FOR THE SECOND PARAGRAPH

- GML file for this decision: an electronic geographical database that was created in Geography Markup Language and published via www.ruimtelijkeplannen.nl, with reference:
  a. NL.IMRO.0000.IMam11Barro-3000, or
  b. NL.IMRO.0000.IMam11Barro-3005, or
  c.
  (Section 1.1(1) of the Physical Planning (General Rules) Decree (Besluit algemene regels ruimtelijke ordening))

Instruction 3.51 Translation of non-Dutch standards

1. If a regulation refers to standards that have not been set in the Dutch language and a criminal or punitive administrative penalty has been imposed for infringement of those standards, those standards shall be translated into Dutch.
2. The translation shall be published in the Government Gazette. If the translated standards are relevant only to a small group of persons or if sufficient safeguards are in place to ensure that all interested parties are made aware of the translation in another way, the translation may be published in another official journal or gazette made available by the government or shall be made available for inspection. Notice of

this manner of publication shall be given in the Government Gazette.
3. The second paragraph shall not apply to standards that are translated pursuant to the Treaties (Approval and Publication) Kingdom Act (Rijkswet goedkeuring en bekendmaking verdragen).
4. The first and second paragraphs shall not apply in the event that it is provided by law that an infringement of a rule will be considered a criminal offence or is punished by an administrative penalty, if that rule was written and published in English.

NOTES

First paragraph. In general, when referring in legislation to non-statutory norms, it is preferred that such standards are set in Dutch or translated. In its ruling of 24 June 1997, ECLI:NL:HR:1997:ZD0773, the Supreme Court established that it follows from Article 16 of the Constitution and Section 1(1) of the Criminal Code (Wetboek van Strafrecht) that this is a mandatory requirement in the case of standards to be enforced under criminal law. In view of the analogy between the two types of penalty, setting this requirement also for standards for infringement of which a punitive administrative penalty is imposed is an obvious course of action.

The translation requirement applies to standards that are directly aimed at citizens or businesses. This means that a translation may be omitted where the relevant standards:
- are not directed at citizens or businesses themselves, but only at inspection agencies, for example, so that infringement of the requirements for approval does not in itself constitute an offence;
- are of an optional nature.

The latter is the case if a regulation sets "primary" standards, for the infringement of which the penalty has been imposed (these standards must be in Dutch) and it is also provided that those standards will in any event be complied with if the party concerned acts in a specific way described by another authority.

Third paragraph. Needless to say, the standards to be enforced under criminal law or administrative law in treaties and decisions of organisations under international law must also be available in the Dutch language. The third paragraph takes account of the fact that the publication of translations thereof is governed primarily by the Treaties (Approval and Publication) Kingdom Act (Rijkswet goedkeuring en bekendmaking verdragen). The Kingdom Act contains no obligation to have a translation carried out or to publish translations.

Fourth paragraph. By Act of 16 October 2013 amending any Acts in connection with the enforcement of rules in the English language (Bulletin of Acts and Decrees 2013, 415) a provision is included in a number of Acts in which an exception is made to the rule formulated by the Supreme Court that criminal provisions must be drawn up in the Dutch language. These are (English) rules from treaties and decisions of international organisations of a very technical nature whose infringement is enforced under criminal or administrative law in the Netherlands and that pertain to a target group that is accustomed to applying those rules in the English language. Examples include rules in the field of international aviation and shipping.

§ 3.4 Use of capital letters

Instruction 3.52 Use of capital letters

1. The use of capital letters shall be limited as far as possible.
2. The use of capital letters in the Constitution and in basic regulations shall be adhered to or adopted as a basic principle as far as possible when spelling the expressions used

or designations prescribed in them.
3. As a general rule, an initial upper case letter shall be used for the first instance of the word only.
4. Designations of individual ministers and ministries, used as proper names, shall have initial upper case letters.

NOTES

Fourth paragraph. If "minister" or "state secretary" is followed by the name of the ministry (or - in the case of a minister without a portfolio - by an indication of their field of responsibility), this indication will be considered a proper name and an initial upper case letter will be used. This also applies to the designation "Our Minister", which can be considered an abbreviated designation of a proper name, whether specified or not.

EXAMPLES FOR THE SECOND PARAGRAPH

With initial upper case letters: General Court of Auditors, Upper House or Lower House, Supreme Court (of the Netherlands), King's Office, House (if reference is being made to the Lower House or the Upper House), Member of Parliament, Parliamentary Papers, King, Kingdom (of the Netherlands), Crown, Prime Minister, Minister of Foreign Affairs, Ministry of Foreign Affairs, Our Minister(s), Council of State Advisory Division, the State, State Treasury, States General.

with a lower case letter: order in council, mayor, king's commissioner, committee, provincial executive, municipality, government, chamber or chambers (if used as a generic name), appeal to the Crown appeal, Crown-appointed member, royal decree, member state, explanatory memorandum, cabinet, memorandum of amendment, parliament, presidium, provincial council, council, government, government commissioner, central government, kingdom act, state, bill.

EXAMPLES FOR THE THIRD PARAGRAPH

- Dutch Safety Board
- National Ombudsman

§ 3.5 Layout of regulations

Instruction 3.53 Structure of a regulation

A regulation comprises the following elements:
a. heading;
b. opening words;
c. body;
d. final wording
e. signature;
f. any annexes.

NOTES

The opening words of an Act also include the preamble. See Instruction 4.5.

A table of contents is not part of a regulation. However, it may be included in the announcement of the regulation in the Bulletin of Acts and Decrees or the Government Gazette. See Instruction 4.30.

Instruction 3.54 Sections and numbering

1. The body of a regulation is contained in one or more sections.
2. The sections shall be numbered consecutively with Arabic numerals. In a long regulation, the sections may be numbered per chapter, indicating the chapter number for the section number.
3. If a regulation comprises a single section, the indication *"Sole section"* shall be stated above.

NOTES

Examples of regulations where the numbering described in the second sentence of the second paragraph include the Environmental Management Act and the Aliens Decree 2000. In such cases, the section numbering shall be as follows: 1.1, 1.2, 1.3 (…), 2.1, 2.2, 2.3 (…), etc. No section numbers shall be included without text or with the indication 'reserved'. See instruction 234 for the number of sections of an amending or repeal regulation.

Instruction 3.55 Final sections

Where appropriate, the provisions of a regulation mentioned below shall be included in separate sections and in the given sequence at the close of a regulation:

a. a provision regarding evaluation;
b. a provision regarding transitional law;
c. a provision regarding the withdrawal of a regulation;
d. a provision regarding the publication of the entire text of a regulation;
e. a provision regarding entry into force;
f. a provision regarding the establishment of a short title.

NOTES

Part b. See also Instruction 5.60.

Part d. See Instruction 6.22, second paragraph.

Instruction 3.56 Subdivision into chapters, etc.

1. If this is important for accessibility of a regulation, it shall be systematically divided into parts numbered with Arabic numerals.
2. With a division into one level, the parts shall be called *"chapter"* or *"paragraph"*.
3. With a division into two levels, the parts of the first level shall be called *"chapter"* and the parts of the second level *"paragraph"*.
4. With a division into more than two levels, the parts shall be called *"part", "chapter", "title", "section"* and *"paragraph"*, in order of size with the proviso that in any case the indications *"chapter"* and *"paragraph"* will be used.

NOTES

The name 'book' is used only for part of a code of law.

Instruction 3.57 Headings of chapters, etc.

1. The parts of a regulation referred to in Instruction 3.56 shall be provided with a heading, which gives a brief indication of the contents of a part.
2. Sections may be provided with a heading.

NOTES

Headings shall not be used to specify the content of the subsequent text.

Instruction 3.58 Division of sections in paragraphs

1. Sections may be divided into paragraphs indicated by Arabic numerals.
2. A paragraph shall not be divided into subparagraphs.
3. If the content of a section should lead to a large number of paragraphs, the section shall, if possible, be divided into further sections.

Instruction 3.59 Lists

1. The following method shall be followed if it is desirable for the sake of clarity that each part of a list in a section begins with a new line:
   a. the parts shall be indicated with the letters letters a, b, c, and so on and possible subdivisions with 1°, 2°, 3° and so on with a full stop placed after those letters and numbers;
   b. a new sentence shall be not started within the parts;
   c. with the exception of the last part, the parts shall be finished with a semicolon.
2. After the last part of a list, no text that relates to all parts shall be included, unless this is unavoidable.
3. The use of alphabetical order without numbering or lettering is preferred in a list of definitions.

NOTES

First paragraph, part b. If a further provision contained in a separate sentence is required for a part of a list, it shall be included in a separate subsection.

Second paragraph. When including text that pertains to all parts following the last part of a list, it is often unclear when reading it whether that text relates to all parts or is part of the last part. It is almost always possible to include this text in the opening words of the list or in a separate paragraph.

Third paragraph. Using this method, it is possible to add terms later in alphabetical order without any need for renumbering or re-lettering of the items in the list. This avoids problems in the event that there is more than one amending regulation. With regard to concurrence, see also Instruction 5.69.

Instruction 3.60 Nature of a list

1. If required for the sake of clarity, the word *"or"* or *"and"* at the end of the penultimate part of a list shall be used to express its alternative or cumulative nature. In such cases, contrary to Instruction 3.59, first paragraph, part c, the penultimate part shall be concluded with the word*"; or"* or *"; and".*
2. The wording of the section shall show whether a list is of an exhaustive or enunciative nature.

NOTES

The enunciative nature of a list can be expressed by the words "in any case" or "at least," and the exhaustive nature by the words "just", "solely" or "only". Also see Instruction 3.12.

Instruction 3.61 Annexes

No annexes shall be appended to a regulation unless they concern the adoption of a table, form, model, chart or list of regulations or provisions or this is otherwise unavoidable.

NOTES

The content of an annex is equally as binding as the regulation to which it belongs. Annexes providing purely explanatory information should not be included in a regulation. If necessary, such annexes may be included in the explanatory memorandum to the regulation.

The use of annexes may be appropriate in the case of regulations that, owing to their size, must be capable of being separated into several files. Also see Instruction 4.28.

Instruction 3.62 Annex headings

1. An annex to a regulation shall be accompanied by a heading indicating to which section of the regulation it belongs, unless this is impractical owing to the large number of sections.
2. Where this is important as regards the accessibility of an annex, the heading shall briefly state the content of the appendix.

NOTES

First paragraph. If an annex is added to an existing regulation or an existing annex to a regulation is replaced, the new annex will often be included as an annex to an amending regulation. In that case, that annex to the amending regulation will be given a "double" heading pursuant to this Instruction: first, the section (and part) of the amending regulation to which the annex belongs is indicated, then the full text of the new annex, including the heading indicating which article of the regulation to be amended will be accompanied by the new annex.

For annexes published by being made available for inspection, see also Instruction 4.41.

EXAMPLES FOR THE SECOND PARAGRAPH

– Water Act:
  Annex I. Dyke rings and primary water-control structures as referred to in Section 1.3(1)

– Seagoing Vessel Safety Regulations (Regeling veiligheid zeeschepen):
  Annex 5. Medical equipment
  (annex as referred to in Articles 25 and 49 of the Seagoing Vessel Safety Regulations)

Instruction 3.63 Layout of implementing regulations

An implementing regulation shall, where possible, take into account the layout and sequence of the parts, the headings of those parts, the method used to number the sections and the order of the sections of the higher-ranking regulation.

NOTES

See also Instructions 2.34 and 3.4.

Instruction 3.64 Repetition of provisions from other regulations

Unless this is unavoidable, provisions from another regulation that regulate the same subject shall not be repeated.

NOTES

This concerns, in particular, avoiding the repetition in an implementing regulation of provisions from the delegating regulation and repetition in a special regulation of provisions from general regulations, such as the Dutch Civil Code, the General Administrative Law Act, the Municipalities Act or the Environmental Management Act.

CHAPTER 4 GENERAL COMPONENTS OF REGULATIONS

§ 4.1 Heading

Instruction 4.1 Heading

Regulations shall be provided with a heading.

Instruction 4.2 Model heading

1. One of the following models shall be used for the heading of a regulation:
   a. in the case of an Act of Parliament or a Kingdom Act:
      Kingdom Act/Act of [date] to/, laying down [indication of content];
   b. in the case of an order in council or a general order in council for the Kingdom:
      Decision of [date] to/, laying down [indication of content];
   c. in the case of ministerial regulation:
      Regulation of the [Minister of/for …/State Secretary of …] of [date] to/, laying down [indication of content];
   d. in the case of a policy rule:
      Policy rule of the [Minister of/for … /State Secretary of …] of [date] concerning/to [indication of content].
2. The words *"Kingdom Act/Act of (…) to/, laying down"* shall not be included in a bill.

NOTES

First paragraph. The heading shall not be followed by a full stop.

Second paragraph. The heading of a bill contains only the indication of the content of the bill: 'Rules concerning/relating to …' or, in the case of an amending Act, "Amendment of …". The words "bill" or "Kingdom Act bill" are inserted between the heading and the opening words (see Instruction 4.5) in a separate line. The words "Kingdom Act/Act of … to/, laying down" are added only upon the announcement of the Kingdom Act or Act in the Bulletin of Acts and Decrees. The party requesting the proofs is responsible for ensuring that this is done. The heading of (the draft of) an order in council does include the words "Decision of… to/laying down" from the outset.

EXAMPLES

- [Act of 28 February 2013 laying down] rules regarding the establishment of the Authority for Consumers & Markets (Act establishing the Authority for Consumers & Markets)
- [Act of 12 December 1985] amending a number of provisions in the legislation in connection with the acquisition of the status of country in the Kingdom by Aruba
- Decree of [18 March 2009], laying down further rules for inland navigation (Inland Navigation Decree)
- Regulation of the Minister for Housing and the Central Government Sector of [2 September 2016] amending the Foreign Travel Regulations in connection with the periodic adjustment of the list of rates
- Policy rule of the State Secretary of Infrastructure and the Environment of [26 September 2016] on the application of Section 80 of the Railways Act (Administrative Penalties (Railway Act) Policy Rule 2016).

Instruction 4.3 Contents of headings

1. A heading shall contain, where possible, a descriptive indication of the subject matter of the regulation.
2. The heading shall be kept concise.

NOTES

Headings that merely refer to articles, dates and numbers of treaties, laws or decrees are generally undesirable because they do not provide information on the subject matter of the regulation.

In the case of amending regulations, the descriptive indication of the subject matter of the amending regulation can also be included at the end of the heading in brackets (see the second example). This is only possible if the amending regulation has no short title. In order to prevent a descriptive indication in brackets being mistaken for a short title, no words such as "Act", "Decree" or "Regulation" are used in it.

Which regulation or regulations the amending regulation is amending is stated in its heading. If the regulation is intended to amend a large number of regulations, a reference to the main regulation or regulations, followed by the words "and any other Acts/decisions/regulations" in the heading will suffice.

EXAMPLES

- Act of 28 June 2006 amending the Road Traffic Act 1994 in connection with the introduction of a moped licence
- Act of 5 July 2006 amending the Dutch Criminal Code (extension of period of limitation for contraventions following an interruption)
- Act of 10 February 2017 amending the Act on the Key Registers of Addresses and Buildings and any other Acts relating to the modernisation and simplification of registration and supervision.

Instruction 4.4 Mentioning short titles in headings

Any short title given to a regulation shall be stated in brackets at the end of the heading.

NOTES

A short title is given to a regulation by including a provision to that effect in the regulation itself (see Instructions 4.24 and 4.25). The mention of the short title in the heading is for information purposes only.

EXAMPLE

- Act of 4 June 2014 laying down new rules regarding the division of housing and the composition of housing stock (Housing Act 2014 (Huisvestingwet 2014))

§ 4.2 Opening words

Instruction 4.5 Opening words of an Act

1. The following model shall be used for the opening words of an Act:
   We Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc. greetings to all those who shall see or hear these presents! Be it known:
   Whereas We have considered that [preamble]; We, therefore, having heard the Council of State's Advisory Division, and in consultation with the States General, have

approved and decreed as We hereby approve and decree:

2. In the case of a Kingdom Act, the last subparagraph reads as follows:
   We, therefore, having heard the Council of State's Advisory Division, and in consultation with the States General, taking account of the provisions of the Charter for the Kingdom, have approved and decreed as We hereby approve and decree:

Instruction 4.6 Opening words of an order in council or a royal decree

1. The following model shall be used for the opening words of an order in council or other royal decree of a regulatory nature:
   We Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc.
   On the proposal of [Our Minister of/for …/the State Secretary of …] of [date], no. … [, done in agreement with/also on behalf of Our Minister or Our Ministers of/for …/the State Secretary or State Secretaries of …];
   Having regard to …;
   Having heard the Council of State's Advisory Division (opinion of [date], no. ...); In view of the report to the King of [Our Minister of/for …/the State Secretary of …] of [date], no. … [, submitted in agreement with/also on behalf of Our Minister or Our Ministers of/for … / the State Secretary or State Secretaries of …];
   Have approved and decreed the following:
2. The opening words of a general order in council for the Kingdom shall contain the words *"Advisory Division of the Council of State of the Kingdom"* and the following words shall be inserted as the penultimate sentence:
   Taking into account the provisions of the Statute for the Kingdom;
3. The following model shall used for the opening words of royal decrees which are not of a regulatory nature:
   We Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc.
   On the proposal of [Our Minister of/for …/the State Secretary of …] of [date], no. …;
   Having regard to …;
   Have approved and decreed:
4. The opening words of a royal kingdom decree, not being an order in council, shall not refer to the Charter unless the Council of Ministers of the Kingdom has consulted on the matter. In that case, the following words shall be inserted as the penultimate sentence:
   Taking account of Article 10 of the Statute for the Kingdom;

Notes

Paper bearing the figurative mark "We Willem-Alexander" is used for the draft of an order in council or a general order in council for the Kingdom or other royal decree. The heading is placed between the figurative mark and the rest of the opening words ("On the proposal of …").

See, with regard to "having regard to", Instruction 4.10.

First paragraph. A proposal containing the words "in agreement with" means that the minister or state secretary concerned does not make the proposal themselves, but has explicitly agreed to the adoption of the decision. A proposal made "also on behalf of" means that the minister or state secretary on whose behalf the proposal is made is also one of the nominating government members. See, with regard to how the decision on which of these forms of co-involvement to use is made, Instructions 4.7 and 4.33. The phrases concerning co-involvement are included only where they are applicable.
Third paragraph. This paragraph applies to royal decrees of a non-regulatory nature, such as a decree allowing the entry into force of a regulation. The Advisory Division of the Council of State is not

heard with regard to such decrees, known as royal decrees in an individual case. See also Instruction 4.35.

Instruction 4.7 Proposals where more than one government member is involved

1. If more than one government member is involved in the proposal of a bill, an order in council or another royal decree of a regulatory nature, the proposal shall be made by one of them, in agreement with the other member or members.
2. If there are special reasons to determine that an Act or decree should be countersigned by all the proposing government member, the proposal shall be made by one of them, also on behalf of the other member or members.
3. The following wording shall be used if there are very special reasons to express the equal responsibility of the various government members involved in the proposal as well:
   On the proposal of [Our Minister of/for …/the State Secretary of …] and [Our Minister of/for …/the State Secretary of …].

NOTES

First and second paragraphs. Naturally, a proposal "in agreement with" or "also on behalf of" presupposes that the relevant government members agree.

No documents will be co-signed in the event of a proposal including the words "in agreement with." In the case of a proposal including the words "also on behalf of," all government members will countersign the Act or the decree: see Instruction 4.33. In that case, the signature of the government member having primary responsibility will suffice for the explanatory memorandum: see Instruction 4.53. See also Instruction 4.40.

After a proposal "in agreement with" or "also on behalf of" a government member has been made, the report to the King is also submitted "in agreement with" or "also on behalf of" a government member unless the opinion contains a special reason to sign the report jointly.

The general rule is that one government member should propose and sign. This involves the application of the leading role principle: the government member with primary responsibility for the regulation has the leading role. Only if two or more government members are entirely equally responsible (or there are special political reasons for emphasising the shared responsibility of another government member), will it be decided to have the document co-signed.

Third paragraph. A joint proposal is considered only if it is important that the equal degree of involvement of the various government members is also expressed in the proposal. If the delegating law prescribes that a proposal for an order in council or other royal decree of a regulatory nature should be made by two or more ministers, a proposal by one of them, "also on behalf of" the other minister or ministers, is preferred.

Instruction 4.8 Opening words of a ministerial regulation

The following model shall be used for the opening words of a ministerial regulation:
The Minister of/for …/State Secretary of …,
[Acting by agreement with the Minister(s) of/for… / State Secretary(s) of …/in accordance with the opinion of the cabinet];
Having regard to …;
Decision:

NOTES

The phrase concerning co-involvement ("acting by agreement with") shall be included only where applicable. The phrase "acting in accordance with the opinion of the cabinet" shall be included if - for example in order to comply with a statutory regulation (cf. Section 2.4 of the Senior Executives in the Public and Semi-Public Sector (Standards for Remuneration) Act (Wet normering topinkomens)) - a ministerial regulation has been decided on by the cabinet.

If a ministerial regulation is based on the regulatory power of two or more ministers, the names of all the ministers (or state secretaries in office) laying down the regulation will be stated in the first line of the opening words: The Minister of/for … and the Minister of/for …". In that case, the word "Decision:" will be replaced by the plural form "Decisions:". For joint regulations, see also Instruction 4.33. The wording "also on behalf of" is avoided in the opening words of ministerial regulations given the specific meaning it has in the opening words of Acts and royal decrees (see Instruction 4.33).

See, with regard to "having regard to", Instruction 4.10. See also Instruction 3.18 (designation "ministerial regulation").

Instruction 4.9 Opening words of a policy rule

The following model shall be used for the opening words of a policy rule:
The Minister of/for …/State Secretary of …,
Having regard to …;
Decision:

NOTES

See, with regard to "having regard to", Instruction 4.10.

Instruction 4.10 "Having regard to"

1. The expression *"Having regard to"* refers to the higher-ranking regulation on which the regulatory power is based and, where appropriate, to the international regulation or binding EU legal act the regulation is intended to implement.
2. Reference shall be made to the individual sections of the higher-ranking regulation, unless such will serve no purpose owing to the large number of sections.

NOTES

International regulations or EU legal acts. Where reference is made to both an international regulation or binding EU legal act and a national regulation, the relevant international regulation or binding EU legal act is mentioned first. This Instruction also puts into effect the provision included in EU Directives requiring reference to be made to the implemented Directive in the national implementing provisions or in the official publication of those provisions, in a manner laid down by the Member States.

Ministerial regulations When a provision of an order in council is implemented, the term "having regard to" in a ministerial regulation refers only to that provision and not also to the statutory provision on which the order in council is based.

Policy rules. When the term "having regard to" is used, the legal provision pursuant to which the policy rule was laid down is mentioned. If this has not been explicitly stated, the basis will usually be found in Section 4:81 of the General Administrative Law Act and that section will be named in such cases. In addition, when the term "having regard to" is used, the section of the regulation that deals in substance with the policy rule will be mentioned. If there is no legal basis (an example would be a policy rule regarding the performance of private-law acts), the term "having regard to" is omitted and the reason for this is stated in the explanatory memorandum.

Amending regulations. An amending regulation does not refer to the regulation to be amended in the text following the term "having regard to". If an amending regulation serves, or also serves, to remove provisions in an implementing regulation that have lost their legal basis as a result of the withdrawal or amendment of the delegating regulation, the provision whereby the delegating regulation was withdrawn or amended may be stated following the term "having regard to" (see also the notes to Instruction 6.24, second paragraph).

Amendment of annexes. If an annex to an implementing regulation is amended, reference is made to the provision on which the implementing regulation is based and not, or not also, to the provision in the implementing regulation to which the annex belongs.

Application by analogy of regulatory power. Where a provision conferring regulatory power has been declared applicable by analogy in another provision pertaining to another area, reference is made to the latter provision in the event that rules are set in respect of that area. If this is desirable for the sake of clarity, a reference to the provision declared applicable by analogy may be added to it. Example: Section 35 in conjunction with Section 8.

Separate orders in council. See the notes to Instruction 2.22.

Reference to subsections. In the case of longer sections or sections containing multiple bases, reference is also made to the specific subsection or part, unless this would serve no purpose.

§ 4.3 Preamble

Instruction 4.11 Preamble

1. A preamble is included in the opening words of a law.
2. No preamble is included in any other regulation.

NOTES

First paragraph. Article XIX of the Constitution also requires the inclusion of a preamble in Acts of Parliament. Instead of "preamble (considerans)", the Lower House uses the term "ground (beweegreden)" (see also the Rules of Procedure of the Lower House).

Second paragraph. The reason for adopting an order in council or a ministerial regulation is stated in the explanatory notes or explanatory memorandum. See Instruction 4.42.

Instruction 4.12 Contents of a preamble

1. In the main, a preamble shall summarise the purport of and, if there is cause to do so, the reason for the establishment of the Act.
2. The preamble shall not include any elements that do not appear in the body of the Act itself.

NOTES

First paragraph. It is often sufficient to state that it is desirable to make arrangements with regard to a particular subject, for example "that it is desirable to amend the provisions regarding the listing of candidates on the lists for the election of the members of the representative bodies". However, the inclusion of the words "that it is desirable to make some amendments to the Elections Act" in the preamble will not suffice. The word "necessary" can be used if it is inevitable that legislation will have to be amended, for example because of a binding EU legal act or an international obligation.
Second paragraph. Elements such as the scope of the Act must be regulated in the Act itself. See

also the notes to Instruction 3.57 (headings) and Instruction 4.47 (further rules in explanatory notes).

Instruction 4.13 Mention of a higher-ranking regulation in a preamble

If an Act implements the Constitution, a treaty or a binding EU legal act, or another decision of an organisation under international law, this shall be stated in the preamble.

NOTES

In the case of orders in council or ministerial regulations, the connection with a higher-ranking regulation is expressed by the words "having regard to." See Instruction 4.10.

This Instruction also puts into effect the provision included in EU Directives requiring reference to be made to the implemented Directive in the national implementing provisions or in the official publication of those provisions, in a manner laid down by the Member States.

§ 4.4 Entry into force

Instruction 4.14 Provision on entry into force

A regulation shall provide for its entry into force.

NOTES

A regulation must always contain a provision on entry into force. Section 7 of the Publication Act is intended only as a safety net in the event that a provision on entry into force has been omitted in binding rules of general application originating from the central government: in that case, the regulation will enter into force with effect from the first day of the second calendar month after the date of publication. See, with regard to the wording of provisions on entry into force, Instructions 4.21 to 4.23.

Section 7 of the Publication Act does not apply to Acts regarding which the Advisory Referendum Act (Wrr) allows referendums to be held: see Section 8(3) of the Advisory Referendum Act. See also Instruction 4.18.

National legislation. Section 7 of the Publication Act cannot perform its safety net function for Kingdom Acts and orders in council: pursuant to Article 22(2) of the Charter for the Kingdom, the latter regulations must always regulate their entry into force.

Instruction 4.15 Disclosure of the date of entry into force

1. The date of entry into force of an Act of Parliament or an order in council shall be arranged in such a way that this is shown in the Bulletin of Acts and Decrees in which the regulation is published or can be inferred from another Bulletin of Acts and Decrees.
2. The date of entry into force of a regulation shall not be contingent on the entry into force of a treaty or another event shown in the Bulletin of Acts and Decrees or the Government Gazette.

Instruction 4.16 Entry into force after the date of publication

1. In any event, the date of entry into force of a regulation shall be after the date of its

publication.
2. In any event, the date of publication of a royal decree to determine the time of entry into force of an Act or an order in council is announced prior to the date of entry into force of the relevant Act or order in council.

NOTES

The Constitution prohibits the entry into force of Acts, orders in council and other binding rules of general application issued by the central government before they have been published (Articles 88 and 89, third and fourth paragraphs). These provisions of the Constitution are also taken into account when royal decrees laying down the date of entry into force of an Act or order in council are published. As regards policy rules, it follows from Section 3:40 of the General Administrative Law Act that they may enter into force only after their publication.

The date of publication of a regulation published in the Bulletin of Acts and Decrees or the Government Gazette is the date on which the regulation is published electronically on the website www.officielebekendmakingen.nl. In special cases, for example in view of their urgency, regulations may also be published in a manner other than by publication in Bulletin of Acts and Decrees or Government Gazette: see, for example, Section 5.2 of the Animals Act.

See, with regard to the granting of retroactive effect, Instructions 5.62 and 5.63.

Instruction 4.17 Common commencement dates and minimum period for introduction

1. An Act or an order in council shall enter into force on 1 January or 1 July.
2. A ministerial regulation shall enter into force on 1 January, 1 April, 1 July or 1 October.
3. Contrary to the first and second paragraphs, the following common commencement dates apply to regulations concerning education:
   a. for Acts of Parliament and orders in council concerning primary education, primary and secondary special education, secondary education and vocational education those dates are: 1 January and 1 August;
   b. for ministerial regulations concerning primary education, primary and secondary special education, secondary education and secondary vocational education those dates are: 1 January, 1 April, 1 August and 1 October;
   c. for Acts of Parliament and orders in council concerning higher education those dates are: 1 January and 1 September;
   d. for ministerial regulations concerning higher education those dates are: 1 January, 1 April, 1 September and 1 October.
4. The period between the date of publication of an Act of Parliament, an order in council or a ministerial regulation and the date of entry into force shall be at least two months. If a regulation is directly relevant to sub-national authorities, this period shall be at least three months.
5. Exceptions to the common commencement dates or the minimum period for introduction may be made in so far as:
   a. this, in view of the target group or the academic calendar, would prevent significant undesirable private or public advantages or disadvantages;
   b. urgent or emergency legislation is involved;
   c. remedial legislation is involved; or
   d. the implementation of binding EU legal acts, treaties or other decisions of organisations under international law is involved.
6. Reasons for the application of a ground for exception shall be given in the explanatory memorandum to the regulation or in the explanatory memorandum notes to the implementation decree.

NOTES

The use of common commencement dates and a minimum period for introduction ensures that the targets of the regulation are not faced with regulatory changes at too many different times and are given time to prepare for them.

In certain circumstances, the Advisory Referendum Act may also result in the application of the fifth paragraph, part a.

If a regulation is directly relevant to local authorities, an implementation period of at least three months will be applied on the basis of the Code of Inter-Administrative Relationships (Code Interbestuurlijke Verhoudingen).

When determining the implementation period, national legislation must also take into account the fact that - in addition to the Bulletin of Acts and Decrees or the Government Gazette - the regulation will also have to be published in the Official Bulletin of Aruba, the Official Journal of Curaçao and the Official Bulletin of Sint Maarten.

Third paragraph. Taking account of school-year or academic-year start dates (on 1 August and 1 September), different common commencement dates will apply to regulations in the field of education).

Instruction 4.18 Date of entry into force of Acts of Parliament qualifying for a referendum

1. The date of entry into force of an Act or part of an Act that, under the Advisory Referendum Act, may be put to a referendum shall not be set until eight weeks after the announcement referred to in Section 7 of the Advisory Referendum Act.
2. In application of Section 12(1) of the Advisory Referendum Act, an earlier date of entry into force may be set if the entry into force of the Act that may be put to a referendum cannot be postponed.
3. Reasons for the application of Section 12(1) of the Advisory Referendum Act shall be given in the explanatory memorandum.

NOTES

This Instruction is based on various provisions in the Advisory Referendum Act. This Act requires a period of at least eight weeks to be observed before an Act qualifying for a referendum can enter into force. The period commences after the decree providing that the Act in question qualifies for a referendum has been published in Government Gazette (Section 8(1) of the Advisory Referendum Act). The Advisory Referendum Act contains a safety net provision in the event that the period of eight weeks has not been observed: in that case, the effective date will be suspended by operation of law until the day after the expiry of that period (Section 8(2) of the Advisory Referendum Act). This will be announced by posting a footnote to the provision on entry into force in the Bulletin of Acts and Decrees in which the Act is published.
After a request initiating the holding of a referendum has been authorised irrevocably, the provisions in the Act qualifying for a referendum concerning its entry into force will cease to apply by operation of law (Section 9 of the Advisory Referendum Act). As a result, the entry into force will have to be re-regulated if there is insufficient support to actually hold a referendum or if the referendum is held, but does not lead to the Act being rejected. In that case, the entry into force is regulated by royal decree, on the basis of Section 10 of the Advisory Referendum Act. See, with regard to a situation where a referendum does lead to a rejection of the Act put to a referendum, Section 11 of the Advisory Referendum Act.

See, with regard to Acts of Parliament that may be put to a referendum, Sections 4 and 5 of the Advisory Referendum Act. Kingdom Acts do not qualify for referendums, with the exception of those approving a treaty that applies only to the Netherlands within the Kingdom. See also the notes to

Instruction 4.27, second paragraph.

Second and third paragraphs. Section 12(1) of the Advisory Referendum Act contains a special provision for the event that the entry into force of an Act of Parliament qualifying for a referendum cannot be postponed. Examples include, in particular, situations where postponement of entry into force, in view of the target group or the academic calendar, would lead to significantly undesirable private or public advantages or disadvantages, as well as urgent or emergency legislation. In such cases, it is possible to have the Act, notwithstanding Sections 8 and 9 of the Advisory Referendum Act, enter into force before the eight-week period has expired. See, with regard to the wording of the provision on entry into force, Instruction 4.23.

In the explanatory memorandum (or the explanatory notes to a memorandum of amendment) and, if model A from Instruction 4.23 was used, the explanatory memorandum to the implementation decree, reasons must be given setting out why the entry into force of the Act cannot be postponed and why it is necessary to depart from the general rule of the Advisory Referendum Act. It should be borne in mind in this respect that application of Section 12(1) of the Advisory Referendum Act does not prevent the Act from being put to a referendum. Application of Section 12(1) of the Advisory Referendum Act may therefore lead to an Act that has already come into force and has already created legal consequences being put to a referendum. See also, in this regard, Section 12(4) of the Advisory Referendum Act regarding possible liability for compensation, if an Act that has already entered into force were to be repealed as a result of a referendum. Consideration should be given as to whether the undesirable effects of delayed entry into force could also be eliminated by conferring retroactive effect. See, with regard to retroactive effect, Instructions 5.62 and 5.63.

Instruction 4.19 Entry into force of auxiliary provisions

The entry into force of provisions concerning the entry into force and publication of a regulation, the establishment of a short title, delegation of regulatory power or parliamentary involvement in the establishment of a regulation need not be expressly regulated. Such provisions shall apply from the date of entry into force of the regulation.

Notes

This Instruction means that no separate provision is required for the provisions referred to regarding entry into force arrangements. Nor is it necessary to expressly exclude such provisions when deciding on the wording of the provision on entry into force.

Parliament's involvement. If, on the basis of a bill pending in States General, an implementing regulation that, in application of a provision contained in that bill regarding the entry into force procedure, must be effected, is already being prepared, the preparation may take place in accordance with that provision. The obligations relating to parliament's involvement in the implementing regulation will therefore be met when the implementing regulation is laid down. The implementing regulation can then enter into force at the same time as the Act of Parliament on which it is based. See also Instructions 2.35 to 2.40.

Instruction 4.20 Entry into force of implementation decrees

Royal decrees establishing the date of entry into force of an Act of Parliament or an order in council shall not provide for their own entry into force.

Notes

Such royal decrees shall be applicable as soon as they have been published (cf. Instruction 4.19).

Instruction 4.21 Model for provisions on entry into force

1. The following model shall be used to the extent possible for the provision on entry into force of Acts of Parliament:
   This Act shall enter into force on a date to be determined by royal decree.
2. One of the following models shall be used for the provision on entry into force of orders in council:
   A. This order shall enter into force with effect from 1 January 2012.
   B. This order shall enter into force on a date to be determined by royal decree.
3. The following model shall be used for the provision on entry into force of ministerial regulations:
   This regulation shall enter into force with effect from ...
4. The following model shall be used for the provision on entry into force of policy rules:
   This policy rule shall enter into force with effect from ...

NOTES

Acts of Parliament, orders in council and ministerial regulations will generally enter into force on fixed dates with a prescribed minimum period between publication and entry into force (see Instruction 4.17). bills generally do not include a specific date of entry into force. A specific date of entry into force, if it is close to the date of submission of the bill to the Upper House, may frustrate a proper substantive examination by the Upper House. If the date has already passed, or is about to pass, when the Upper House accepts the bill, an amending Act will be required to adjust the date of entry into force. Moreover, the inclusion of a date may impede compliance with Instruction 4.17, fourth paragraph. See Instruction 4.22 for models for special cases and Instruction 4.23 for the earlier entry into force of an Act of Parliament qualifying for a referendum.

If, in exceptional cases, the inclusion of a specific date of entry into force in an Act is unavoidable (for example, in connection with the implementation of a binding EU legal act or in the event of an inextricable connection between the Act and a financial year or a tax year), a provision similar to that set out in the second paragraph of model A may be used. See, with regard to the possibility of conferring retroactive effect, Instructions 4.22 (model H), 5.62 and 5.63.

There is generally no objection to the inclusion of a specific date for entry into force in an order in council or a ministerial regulation (second paragraph of model A or third paragraph), provided that Instruction 4.17 is observed. This can be assessed when the report to the King or the ministerial regulation procedure is pending. In other cases, the use of Model B referred to in the second paragraph is preferred for orders in council.

For Kingdom regulations or regulations applicable to the European part of the Netherlands and also to Bonaire, Sint Eustatius and Saba, it may be necessary to take into account the time difference between the European and the Caribbean parts of the Kingdom when determining the date for entry into force. This time difference is five hours during winter time in the European part of the Kingdom and six hours during summer time. If it is necessary or desirable to have the regulation enter into force in both parts of the Kingdom at exactly the same time, the provision on entry into force will also explicitly mention the times at which the regulation will enter into force in the European part and the Caribbean parts of the Kingdom. For an example, see the Decree of 23 September 2010 establishing the time of entry into force of Articles I and II of the Kingdom Act amending the Charter in connection with the dissolution of the Netherlands Antilles (Bulletin of Acts and Decrees. 2010, 387).

Instruction 4.22 Special provisions on entry into force

If necessary, one of the following models may also be used for the provision on entry into force of a regulation:

A. This Act/This Decree/This Policy Rule shall enter into force with effect from …, with the exception of Sections …, which shall enter into force with effect from … .
B. This Act/This Decree shall enter into force on a date to be determined by royal decree.

A royal decree may set another date on which Sections … shall enter into force.

C. *This Act/This Decree shall enter into force on a date to be determined by royal decree, which may vary for the different sections or subsections thereof.*
D. *This Act/This Decree/This Regulation/This Policy Rule shall enter into force on the date on which [Section … of] [short title or designation of another regulation] enters into force.*
E. *If the bill [submitted by Royal Message of [date]/introduced by accompanying letter of [date] [as described in Instruction 3.43, second paragraph] is enacted or passed into law and [Section … of] that Act enters into force, that Act/this decree shall enter into force at the same time.*
F. *This Act/This Decree/This Regulation/This Policy Rule shall enter into force with effect from the first day of the … calendar month after the date of issue of the Bulletin of Acts and Decrees/the Government Gazette in which it is published.*
G. *This Act/This Decree/This Regulation/This Policy Rule shall enter into force with effect from the day after the date of issue of the Bulletin of Acts and Decrees/the Government Gazette in which it is published.*
H. *This Act/This Decree/This Regulation/This Policy Rule shall enter into force with effect from [intended date of entry into force]. If the Bulletin of Acts and Decrees/the Government Gazette in which this Act/this Decree/this Policy Rule is published is issued after [the day before the intended date of entry into force], it shall enter into force with effect from the day after the date of issue of the Bulletin of Acts and Decrees/the Government Gazette in which it is published, and it shall have retroactive effect to [intended date of entry into force].*

NOTES

When using the models included in this Instruction, Instructions 4.17 and 4.18 are observed for all parts of the regulation entering into force. Models G and H are used only in the exceptional cases referred to in Instruction 4.17, fifth paragraph. The models in this Instruction may be combined with those in Instruction 4.23 for Acts of Parliament qualifying for a referendum whose entry into force cannot be postponed (see Instruction 4.18, second paragraph).
Wording similar to that used in Instruction 4.21, third paragraph, or in models A, D, F, G or H may be used for the provision on entry into force of a binding rule of a general nature, not being an Act, order in council or ministerial regulation.

Model D. If the "other regulation" referred to in Model D provides for phased entry into force, or the possibility of phased entry into force (see models A, B and C), it may be necessary to refer to one or more specific articles of that other regulation: 'the date on which article X of regulation Y enters into force'. In any event, this is necessary if alignment is intended with articles with regard to which the other regulation provides for earlier or later entry into force than the rest of that regulation. In that case, a reference to "the date on which regulation X enters into force" will not suffice.
Model E. This model can be used to ensure alignment with the entry into force of a bill that has not yet been passed into law. In addition, the wording "the bill submitted by Royal Message" is used for government proposals and the words "the bill introduced by accompanying letter" for private members' bills. See also, with regard to the use of this model, Instruction 2.33, third paragraph.

Model H. This model provides a provision in case it is uncertain whether it will be possible to publish a regulation in time, in other words no later than one day before the intended date of entry into force of the regulation. If was not possible to publish the regulation in time, the second sentence of this provision on entry into force provides that the regulation will enter into force with effect from the first day after its publication and will have retroactive effect to the date of entry into force initially intended for it. Instruction 5.62 is taken into account when this model is used.

Instruction 4.23 Earlier entry into force of Acts qualifying for a

memorandum

One of the following models shall be used if the entry into force of an Act that, under the Advisory Referendum Act, may be put to a referendum cannot be postponed:

A. This Act shall enter into force on a date to be determined by royal decree. Where necessary, application shall be given to Section 12(1) of the Advisory Referendum Act in that decree.

B. This Act shall enter into force, in application of Section 12(1) of the Advisory Referendum Act, with effect from [date].

NOTES

Section 12(1) of the Advisory Referendum Act requires a provision on entry into force which departs from the period prescribed in Section 8(1) of the Advisory Referendum Act to make explicit reference to Section 12 of the Advisory Referendum Act. Without an explicit reference, the general rule in Section 8(2) of the Advisory Referendum Act shall be regarded as having been suspended by operation of law until the day after the expiry of that period (see also Instruction 4.18). The models in this Instruction may be combined with the models in Instruction 4.22 as long as the provision on entry into force makes explicit reference to Section 12(1) of the Advisory Referendum Act.

If the entry into force is regulated by royal decree, the effective date provision will be formulated in accordance with Model B.

§ 4.5 Short title

Instruction 4.24 Need for a short title

1. A regulation shall have a short title, unless there is no need in practice to cite the regulation.
2. An amending regulation shall have a short title only where there is a need for this.
3. If it is anticipated that a frequent need to cite a regulation using an abbreviated title will arise, the explanatory notes to the regulation shall recommend the abbreviated title to be used.

NOTES

Second paragraph. In the case of very comprehensive or important amending regulations or amending regulations which, in addition to amendments, also contain many separate provisions, it may be desirable for those regulations to have short titles. Examples include: the Act amending the General Administrative Law Act III (Aanpassingswet Awb III), the Act amending the General Administrative Law Act (Leemtewet Awb), the KPN IPO Act (Wet beursgang KPN), and Obligations to Request Advice Abolition Act (Wet afschaffing adviesverplichtingen).

It may also be useful to give an amending regulation a short title with a view to its being cited in transitional law or another regulation. In that case, the date of adoption of the regulation and the publication reference in the Bulletin of Acts and Decrees or the Government Gazette, which may not yet be known, need not be stated - as Instruction 3.37 prescribes for regulations without short titles. See also Instruction 3.45, second and third paragraphs.

Third paragraph. A regulation may be referred to using a standard abbreviation only in explanatory memorandums, memorandums, etc. References in legislative texts to another regulation are always made by citing the title or short title of that regulation. See also Instruction 4.50.

Instruction 4.25 Wording of short titles

1. Short titles shall be worded concisely, have sufficient distinctive characters and contain no abbreviations unless this is unavoidable.
2. The following model shall be used to lay down a short title:
   This Act/this Decree/this Regulation/this Policy Rule shall be cited as: …
3. As a general rule, only the first word of a short title shall have an initial upper case letter.
4. A short title shall include a year only if there is a need to distinguish the regulation in question from another one. In that case, the wording *"stating the year of the Bulletin of Acts and Decrees in which it will be published"* may be used in an Act of Parliament or in an order in council.
5. The short title of a Kingdom Act, a general order in council for the Kingdom or a ministerial regulation concerning a Kingdom matter shall indicate that this is national legislation.
6. In the short title of a regulation that applies exclusively to Bonaire, Sint Eustatius and Saba, the addition of the letters "BES" indicates that the regulation is one that applies to those islands. This addition will be omitted if the islands are already mentioned in full in the short title.

Notes

First paragraph. If abbreviations are used, they must be sufficiently generally known.

Second paragraph. Such short titles must be given in brackets at the end of the heading of the regulation. See Instruction 4.4.

Third paragraph. A short title may, of course, also contain words that always have an initial upper case letter, for example: National Ombudsman Act (Wet Nationale Ombudsman)

Fourth paragraph. The ministry concerned will then have until the date of publication (i.e. no later than when the proofs are being corrected) to insert the year, in brackets, into the short title (see also Instruction 3.45). This does not require an explicit instruction in the regulation concerned, as is the case for the publication of the full text of a regulation (see instruction 6.22). It is also possible to include the year of entry into force explicitly in the short title. In that case, the method set out in Instruction 3.45 can be applied. The number of the Bulletin of Acts and Decrees should not be added to the year in the short title.

Fifth paragraph. See also, with regard to ministerial regulations with the character of national legislation, Instruction 3.25.

Example for the second paragraph

– This Act shall be cited as follows: Commercial Register Act (Handelsregisterwet).

Examples for the fifth paragraph

– Dutch Safety Board Kingdom Act (Rijkswet Onderzoeksraad voor Veiligheid)
– Joint Court of Justice (Financing) Kingdom Decree (Rijksbesluit financiering Gemeenschappelijk Hof van Justitie)
– Administrative Assistance in Customs Matters Kingdom Act Implementing Regulation (Uitvoeringsregeling Rijkswet administratieve bijstand douane).

Examples for the sixth paragraph

– Monetary System (BES Islands) Act (Wet geldstelsel BES)
– Bonaire, Sint Eustatius en Saba (Public Bodies) Act (Wet openbare lichamen Bonaire, Sint Eustatius en Saba).

§ 4.6 Publication

Instruction 4.26 Provisions on publication in the Bulletin of Acts and Decrees/Government Gazette

1. A regulation shall not include any provisions concerning publication in the Bulletin of Acts and Decrees or the Government Gazette of the regulation itself or the binding rules of general application based on it.
2. Except in exceptional cases, a regulation shall not prescribe that decisions taken on the basis of the regulation should be published in the Bulletin of Acts and Decrees.

NOTES

The publication of binding rules of general application in the Bulletin of Acts and Decrees and the Government Gazette has already been regulated in the Publication Act. This means that an instruction to publish in the closing formula will suffice. See Instruction 4.31. See, with regard to the publication of policy rules, Section 3:42 of the General Administrative Law Act.

The Bulletin of Acts and Decrees is generally reserved for the publication of Acts of Parliament, orders in council and decrees allowing the entry of those regulations into effect. In addition, royal decrees qualify for inclusion in the Bulletin of Acts and Decrees only as an exception, for example a royal decree to dissolve the Lower House.

Instruction 4.27 Urgent publication

1. Regulations shall be published as soon as possible after their adoption.
2. The first paragraph shall not apply to Kingdom Acts for the approval of a treaty that applies exclusively to the Netherlands within the Kingdom.

NOTES

Second paragraph. Kingdom Acts approving a treaty that applies only to the Netherlands within the Kingdom will not be published in the Bulletin of Acts and Decrees until it has been confirmed irrevocably that no referendum will be held under the Advisory Referendum Act or the outcome of the referendum has been confirmed as irrevocable (Section 13(1) of the Advisory Referendum Act). If the result of the referendum has led to an advisory decision to reject the Act, publication will take place only if a bill providing for publication has been accepted by the legislature (see also, in this regard, Section 13(2) of the Advisory Referendum Act). As a general rule, the express adoption of treaties having application only for the Netherlands within the Kingdom shall not be effected by Kingdom Act but by ordinary law (see Instruction 8.10). The situation outlined here will therefore not occur frequently in practice.

Instruction 4.28 Making annexes available for inspection

An Act of Parliament, order in council or a ministerial regulation may provide that an accompanying annex should be announced by making it available for inspection if:

a. the annex is not suitable for publication in the Bulletin of Acts and Decrees or the Government Gazette; and
b. sufficient safeguards are in place to ensure that those directly involved with the regulation are made aware of the annexes.

NOTES

This Instruction contains criteria for exercising the possibility of exceptions provided for by Section 5 of the Publication Act. According to the legislative history, this exception is intended in particular for documents that cannot be reproduced in an electronic file or only in a file that is so large as to render

it unsuitable for digitised publication in the Bulletin of Acts and Decrees or the Government Gazette (see Parliamentary Papers II 2006/07, 31084, no. 3, p. 23). In the case of electronic files that are unsuitable for digitised publication in the Bulletin of Acts and Decrees or the Government Gazette, files may also be made available for inspection in electronic form.

The closing formula shall be used to stipulate that an annex should be published by being made available for inspection: see Instruction 4.32. See also Instruction 4.41. Notice that an annex is to be published by its being made available for inspection should be given in the Government Gazette (see Section 5(2) of the Publication Act).

Instruction 4.29 Standards of a non-public-law nature

If standards of a non-public-law nature are declared applicable in a regulation, the publication of the standards in the Government Gazette will be prescribed, unless sufficient safeguards are in place to ensure that all parties involved are aware of those standards. Instruction 4.28 applies by analogy.

NOTES

In the event of a mandatory reference to standards of a non-public-law nature, those standards must be made available free of charge (letter from the Minister of Economic Affairs, Agriculture and Innovation of 30 June 2011, Parliamentary Papers II 2010/11, 27406, no. 193). Free provision is not required if the government itself is the only party to which the standard applies. See also, with regard to references to standards of a non-public-law nature, Instruction 3.48.

Instruction 4.30 Table of Contents

If it is desirable to add a table of contents to a regulation, it will be added at the end of the regulation upon its publication.

NOTES

The table of contents is not part of the regulation and shall therefore be added at the end of the regulation (i.e. after the regulation has been signed). A table of contents may be appended separately to the documents when submitting a bill. In the case of other regulations, this can be done when the regulation is published in the Bulletin of Acts and Decrees or the Government Gazette.

A revised table of contents shall also be included when the full text of an amended regulation is published.

§ 4.7 Closing formula

Instruction 4.31 Models for closing formulas

1. The following model shall be used for the closing formulas of an Act of Parliament or a Kingdom Act:
   We hereby order and command that this Act be published [in the Official Bulletin of Aruba, in the Official Journal of Curaçao and in the Official Bulletin of Sint Maarten] and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it.
2. The following model shall be used for the closing formulas of an order in council or an order in council for the Kingdom:

We hereby order and command that this Decree and the accompanying Explanatory Memorandum be published [in the Official Bulletin of Aruba, in the Official Journal of Curaçao and in the Official Bulletin of Sint Maarten].

3. The following model shall be used for the closing formula of a royal decree or a kingdom decree of a regulatory nature, not being an order in council, and of a royal decree or kingdom decree concerning the entry into force of an Act of Parliament or a Kingdom Act, or an order in council or order in council for the Kingdom:
   Our Minister of/for … is charged with the implementation of this decree that [with the accompanying explanatory memorandum] will be published in the Bulletin of Acts and Decrees [in the Official Bulletin of Aruba, in the Official Journal of Curaçao and in the Official Bulletin of Sint Maarten].
4. The following model shall be used for the closing formula of a ministerial regulation:
   This regulation shall be published with the explanatory memorandum in the Government Gazette [in the Official Bulletin of Aruba, in the Official Journal of Curaçao and in the Official Bulletin of Sint Maarten].
5. The following model shall be used for the closing formula of a policy rule:
   This policy rule shall [with the explanatory memorandum] be published in the Government Gazette.

NOTES

Third paragraph. Even if the decree has been proposed or signed by a state secretary, the closing formula will charge the minister with its implementation (cf. Instructions 2.28 and 3.26, second paragraph).

Fourth paragraph. If a regulation laid down in the context of national legislation does not apply to all countries mentioned in the model, the responsibility for publication will be adapted to that situation. See also, with regard to national legislation, Instruction 3.18.

Fifth paragraph. Pursuant to Section 3:42 of the General Administrative Law Act, decisions of an administrative body belonging to the central government that are not addressed to one or more interested parties are announced by notification of the decision or its substantive content in the Government Gazette, unless provided otherwise by law. This closing formula is used for publication in the Government Gazette. If the policy rule is not accompanied by an explanatory memorandum, the phrase "with the explanatory memorandum" will of course be omitted.

Instruction 4.32 Closing formula to be used when annexes are made available for inspection

If an annex belonging to a regulation is published by its being made available for inspection, the following words shall always be inserted after "published" in the models for the closing formula referred to in Instruction 4.31: *, with the exception of the annex or annexes …, which will be made available for inspection at [name of department section].*

NOTES

It is advisable to include in the closing formula only the name of the department section where the annex is to be made available for inspection, and to state the current address for that department section, in the explanatory notes to the regulation. The location must be sufficiently accessible to the public.

Duration of the inspection period It must be possible to consult an annex made available for inspection for as long as the regulation it belongs to remains in force. The inspection period may be terminated only when the regulation has been set out in more detail (and the annex is no longer applicable on the basis of transitional law), after which the annex may be archived with due observance of the Public Records Act 1995 (Archiefwet 1995).

4.8 Signatures

Instruction 4.33 Signatures and co-signatures

1. A regulation will be signed by one government member, unless the proposal for the bill or the order in council has been made "also on behalf of" one or more other government members or there are special reasons to express the equal responsibility of the various government members in the signatures.
2. If a regulation is being implemented in full or to a significant extent by officials who come under a different government member from the signatory or co-signatories under the terms of the first paragraph, consideration shall be given to having the other government co-sign the regulation. The same shall apply if the regulation is to form part of a regulation coming under another government member.

NOTES

The signing of a regulation expresses the responsibility for the preparation and content of that regulation. A regulation is signed only by the government member or government members charged with representing an interest the regulation aims to serve. It is not necessary to have a government member charged with representing an interest that is only of a minor nature sign the regulation. Government members who are responsible for an interest affected by the regulation should not co-sign the regulation. See, with regard to the way in which policy should be coordinated with those government members, Instruction 2.27. If the subject of a regulation affects the portfolios of both the minister and the state secretary of the ministry concerned, joint signing of the regulation by both parties is not necessary, but is possible.

In the event of a proposal including the words "also on behalf of," the Act of Parliament or the royal decree will be co-signed by all the nominating government members. See also Instruction 4.7.

The second paragraph pertains, for example, to a situation where provisions regarding the nationality of seagoing vessels are included in the Commercial Code (Wetboek van Koophandel). In that case, the co-signing of the regulation concerned by the government member in charge of the implementing department indicates their responsibility for the quality of the service performed by the section in question.

Government members who are responsible for effecting a particular regulation are not automatically also responsible for amending each part of that regulation.

Unlike in the case of Acts of Parliament and orders in council, the signing of a ministerial regulation by a government member signifies the adoption of that regulation. Ministerial regulations may therefore be signed only by the minister to whom the relevant regulatory power has been delegated or by the state secretary acting as responsible government member in the field concerned. This also means that regulations based on the regulatory powers of two or more ministers must be signed by each of those ministers or by the state secretary or state secretaries in office.

Instruction 4.34 Signing implementing regulations

1. The signing of an Act of Parliament by a government member shall not mean that this government member must also propose and sign all implementing regulations.
2. The fact that a government member has not signed an Act of Parliament shall not prevent that government member from signing, or co-signing, one or more

implementing regulations where there is reason for them to do so.

NOTES

Which minister or ministers will have to propose or sign an implementing regulation is usually apparent from the signatures on the delegating regulation and the nature of the subject matter or, in the case of ministerial regulations, from the delegation provision (see also Instructions 2.27 and 2.28).

Instruction 4.35 Signing implementation decrees

A single government member's proposal and signature will suffice for royal decrees allowing the entry into force of a regulation.

Instruction 4.36 Order of signatures

1. Signatures shall be placed in the following order:
   a. the prime minister;
   b. the minister or ministers or state secretary or state secretaries with particular involvement in the matter, according to the degree of their involvement.
2. In the case of equal involvement, the order of the chapters of the national budget shall determine the order of signature.
3. The deputy prime minister shall be designated as such only if they sign in the prime minister's place. In that case, they shall be mentioned first.

Instruction 4.37 Signing by the prime minister

The Prime Minister shall sign as "*The Prime Minister, Minister of General Affairs*," unless they are signing exclusively as head of their ministry. In that case, they shall sign as "*The Minister of General Affairs*".

NOTES

The prime minister may be charged with representing the interest a regulation aims to serve in two ways: exclusively as head of the Ministry of General Affairs (in particular where internal regulations are involved) or otherwise (usually where external regulations are involved). In the latter case, too, this must be a regulation for whose preparation and content the prime minister has particular sole or shared responsibility (cf. Instruction 4.33, first paragraph). Examples include amendments of the Constitution, the Intelligence and Security Services Act 2017 (Wet op de inlichtingen- en veiligheidsdiensten 2017) and Instructions for the Civil Service.

Instruction 4.38 Signing by acting ministers

A minister replacing another minister in their temporary absence shall sign as "*The acting Minister of/for …*".

NOTES

The replacement arrangement to cover the temporary absence of one of the ministers, which is usually established by royal decree when each new government takes office, provides that in the event of their temporary absence, a minister will be replaced by the state secretary of the same ministry, to the extent and for as long as the minister is able to give the state secretary instructions in this respect. In that case, too, the state secretary shall sign as state secretary, i.e. not as an acting minister. This Instruction therefore only relates to cases where a minister is not replaced by a state secretary, but by another minister. This is done in the event of the simultaneous absence of a minister and the state secretary or state secretaries of the same ministry, in the event that there is no state

secretary for the same ministry and if a minister is unable to perform their duties and give instructions to the state secretary due to illness or for any other reason.

The designation "acting" is not mentioned in the opening words of a royal decree that was proposed by an acting minister or in the opening words of a ministerial regulation signed by an acting minister. However, the designation "acting" will be used in the signature of the proposal.

In the absence of a state secretary, the minister will sign. In such cases, in addition to the designation of the signature, the designation of the government member in the opening words will also be amended in the case of ministerial regulations. For royal decrees, the designation of the government member in the opening words will be amended only if the state secretary's absence has led to the minister signing the report to the King, i.e. not in the event that the minister has merely countersigned the decree in place of the state secretary.

Instruction 4.39 Changes in portfolio allocation, etc.

1. In the event of a change in portfolio allocation, a change in the name of a ministry or if a government position ceases to exist, the designation of the signatory government member shall be amended accordingly in the documents to be submitted during the parliamentary debate on a bill and in the Act of Parliament adopted.
2. The first paragraph shall apply by analogy to an order in council.

Notes

The designation of the signatory government members is not a permanent element of the text of the aforementioned documents. The actual signature may therefore differ from the one previously indicated. Where bills are concerned, this does not require a memorandum of amendment to the proposal. The designation of the signatory may also be amended for orders in council, for example, when a report to the King is submitted. If the report to the King is signed by a different government member from the one signing the proposal, this will be expressed in the opening words of the decree (see also Instruction 4.38).

A government position may cease to exist, for example, if no state secretary is appointed at a particular minister after a change of government. In that case, the minister will then take over responsibility for signing.

Instruction 4.40 Signing Parliamentary Papers

1. The documents to be submitted during parliamentary debates on a bill shall preferably be signed only by the government member with primary responsibility.
2. The co-involvement of one or more other government members shall be expressed in the text.

Notes

Second paragraph. The co-involvement may be expressed in the introduction of the document (see the first example) or as a final sentence, before the signature (see the second example). See also Instruction 4.53.

Examples for the second paragraph

- In this memorandum, I will discuss the questions and comments in the report, also on behalf of the Prime Minister, Minister of General Affairs and the Minister of Security and Justice. Parliamentary Papers II 2016/17, 34517, no. 6)
- This explanatory memorandum is signed also on behalf of the Minister of Education, Culture and Science. Parliamentary Papers II 2015/16, 34363, no. 3)

Instruction 4.41 Signing annexes made available for inspection

1. Annexes accompanying a regulation that are published by being made available for inspection shall be certified using the following wording:
   "This annex belongs to … [name of the regulation]".
2. Annexes shall bear the signature of the adopting body or, in the case of an Act of Parliament or an order in council, the signature of the government member with primary responsibility.

NOTES

An annex published together with the regulation does not need to be signed.

When annexes are made available for inspection in electronic form, if it is not possible to certify the file made available for inspection in accordance with this Instruction, the authenticity of the electronic file should be guaranteed in some other way.

§ 4.9 Explanatory notes

Instruction 4.42 Need for explanatory notes

1. Bills, orders in council or other royal decrees of a regulatory nature and ministerial regulations shall be accompanied by explanatory notes.
2. The explanatory notes to a bill are referred to as an *"explanatory memorandum" (memorie van toelichting)*, and the explanatory notes to an order in council or another royal decree of a regulatory nature as *an "explanatory memorandum" (nota van toelichting)*"
3. Royal decrees allowing the entry into force of a regulation shall be accompanied by an explanatory memorandum only where this is necessary in view of their contents.

NOTES

Policy rules and ministerial decrees other than ministerial regulations may be accompanied by explanatory memorandums if required. See, with regard to explanatory notes to a memorandum of amendment, Instruction 6.28.

Third paragraph. Explanatory notes to implementation decree may be necessary, in particular, if a ground for exception is applied for the common commencement dates or the minimum period for introduction as referred to in Instruction 4.17, fifth paragraph, if the implementation decree provides for a phased entry into force or if Section 12(1) of the Advisory Referendum Act is applied (see Instruction 4.18).

Instruction 4.43 Contents of explanatory notes

Explanatory notes shall contain a justification for the regulation. In so far as applicable, the following points shall in any event be covered:

a. the objectives pursued with the regulation or, in the case of an implementation regulation, the reason for and background of the international regulation or binding EU legal act to be implemented;
b. the need for government intervention, partly in relation to the self-regulatory capacity in the sector or sectors concerned, as well as the variants under consideration and the expected side effects of the regulation;

c. the implementation and enforcement aspects of the regulation, such as the choice of the enforcement system and the extent to which the application of the regulation is likely to give rise to conflicts;
d. the consequences for the provision of information by the central government and the processing of personal data;
e. the costs to citizens, businesses and institutions and the costs to the government, including those associated with legal protection;
f. compatibility with higher-ranking law and the relationship with other regulations;
g. the manner in which account is taken of the primacy of the legislature, as well as the reasons for choosing the layer of government to which powers are allocated;
h. the position of Bonaire, Sint Eustatius and Saba and the way in which any factors causing those islands to differ significantly from the European part of the Netherlands have been taken into account;
i. transitional law and the entry into force of the regulation;
j. the contribution of external parties to the drafting of the regulation, as well as the special procedures prescribed for the drafting stage of the regulation;
k. the planned evaluation of the regulation;
l. other aspects of the regulation to which government policy regarding legislation applies.

NOTES

Parts a and b. After a brief introduction describing the content of and reason for the regulation, explanatory notes to regulations implementing national policies address the objectives pursued with the regulation and the need to create new legislation or to amend existing legislation. See also, in this regard, Instructions 2.2 (need for legislation), 2.3 (prior examination), 2.5 (self-regulation) and 2.9 (side effects).

After a brief introduction, explanatory notes to implementation regulations outline the reason for and background to the international or European regulation to be implemented. See, with regard to the introduction of explanatory notes for EU implementation regulations, Instruction 9.11. The explanatory notes to an EU implementation regulation must also include a table of concordance: see Instruction 9.12. Unless a more detailed explanation is required, the table of concordance may also indicate which provisions of a binding EU legal act by their nature need not be implemented (see Instruction 9.6) or have already been implemented by means of existing law (see Instruction 9.13).

See, with regard to explanatory memorandums for a bill adopting a treaty, Instruction 8.13.

Parts c and d. As far as the implementation and enforcement aspects of a regulation are concerned, consideration should be given to, inter alia, which administrative body or government ministry to charge with responsibility for implementation or enforcement. See also, with regard to the practicability and enforceability of the regulation, Instructions 2.7 and 2.8. Also see paragraph 5.4 and more specifically Instructions 5.8 to 5.11 if tasks are assigned to a non-departmental public body in the regulation.

Explanatory notes should also, where appropriate, address the impact a regulation will have on the provision of information by the central government or on the processing of personal data: see Instructions 5.32 and 5.33. Instruction 5.32 provides that the impact on the provision of information by the central government should be explained in a separate information paragraph. In view of the importance of the personal data protection, it follows that this subject should also be dealt with in a separate paragraph.

In addition, the explanatory notes should address the possible establishment of an advisory body (Instruction 5.6) or the inclusion of a hardship clause in the regulation (Instruction 5.25).

Part e. This part is related to Instruction 2.10, which states that efforts must be made to limit costs to society and the government as far as possible. See also, in this regard, Instructions 7.5 (business

impact assessment) and 7.6 (assessment of the impact on local authorities). See also, with regard to EU implementation regulations, Instruction 9.5 (burdensome implementation).

It should also be indicated whether and to what extent the burden on the bodies responsible for the administration of justice will be impacted in connection with the enforcement of the regulation and legal protection associated with its application.

See, with regard to the financial consequences of the regulation for central government or local authorities, Instructions 4.45 and 4.46. In the case of bills, if there are no financial consequences, this must also be explicitly stated in the explanatory memorandum (Instruction 4.45, fifth paragraph).

Part f. See, with regard to compatibility with higher-ranking law in a general sense, Instruction 2.15. See, with regard to constitutional delegation prohibitions, Instruction 2.20. Also see Instructions 5.28 (reasons for not including mutual recognition clause) and 5.29 (reasons for applying the rule on conflicts of laws provided for in the Services Directive).

Examples of the relationship with other regulations include the relationship with general laws. See Instruction 2.46. When creating a new regulation or amending or withdrawing an existing one, consideration should also be given to the impact on other regulations. See also, in this regard, Instructions 6.8 and 6.24 concerning the impact on subordinate regulations.

As regards compatibility with higher-ranking law and the relationship with other regulations, account should be taken not only of existing law but also of any regulations under preparation. A particular point to consider in this respect is the possible concurrence of bills: see paragraph 5.15.

Part g. See, with regard to the primacy of the legislature and the delegation of regulatory powers, Instructions 2.19, 2.21, 2.22, 2.24 and - with regard to EU implementation regulations - 9.8.

See, with regard to deciding on the layer of government to which powers should be assigned, Instruction 2.13. See also Instructions 5.23 (assignment of powers to local authorities) and 5.24 (inter-administrative supervision).

Part h. See also Instruction 2.16.

Part i. See, with regard to transitional law in a general sense, paragraph 5.14 and, with regard to entry into force, paragraph 4.4. With regard to entry into force, attention will in any event be placed on the selection of a particular date of entry into force relative to the common commencement dates and the minimum period for introduction (Instruction 4.17). Departures from the common commencement dates or minimum periods for introduction must always be justified. The same applies to the use of a special provision on entry into force (Instruction 4.22), application of Section 12(1) of the Advisory Referendum Act (Instructions 4.18 and 4.23) and the granting of retroactive effect (Instruction 5.63).

Part j. The explanatory notes must also cover the contribution of external parties to the drafting stage of the regulation. The same applies to special procedures followed during the drafting stage of the regulation. See, with regard to both aspects, Instruction 4.44.

The part of the explanatory notes covering special procedures followed should also include notification procedures, in so far as they have not already been covered in the context of compatibility with higher-ranking law. See also paragraph 7.2.

Part k. If the regulation contains an evaluation provision, the explanatory memorandum shall also address its proposed evaluation. In any event, the explanatory notes to an experimental regulation must indicate how that regulation will be evaluated. See Instruction 2.42.

Part l. This part corresponds with Instruction 2.12 regarding other quality requirements and pertains to situations where the regulation contains an element to which specific government policy applies (such as the provision of subsidies, the performance of market activities and privatisation). In such

cases, the explanatory memorandum should cover the relationship between the regulation and the relevant policy, in particular if that policy were to be departed from.

See also, with regard to other aspects that may be discussed in an explanatory memorandum, Instructions 2.27 (agreements on the proposal and signature of an order in council), 3.24 (notes to "Our Minister whom it also concerns"), 4.24 (suggestion for abbreviation of short title), 4.32 (stating the address where annexes to the regulation have been made available for inspection), 5.59 (transitional law included in an Implementing Act) and 6.21 (comparative list of old and new provisions for a complex amending regulation).

Instruction 4.44 Stating contributions made by external parties

1. In so far as possible and relevant to the contents of the regulation, the explanatory notes shall state which external parties made contributions during the drafting stage of the regulation, how they were made, the nature of the contribution and the use to which the contribution was put.
2. If a special procedure is prescribed by law for the drafting stage of a regulation, the following of that procedure shall be addressed in the explanatory notes.
3. In the event of a departure from an opinion given on the main points pursuant to a statutory provision in a regulation, the reasons for this will be stated in the explanatory notes.

Notes

External parties are usually involved during the drafting stage of a regulation. Examples of parties involved in this context include citizens, businesses, institutions and other organisations. They may have become involved because they have requested the drafting of the regulation, have made a contribution, requested or unsolicited, prior to or during the drafting stage of the regulation, or have given their views on a draft regulation that was put out for consultation. Opinions, whether or not issued pursuant to a statutory provision, may also be covered by the term "contribution". Information on contributions made will not be included in so far as this is not possible, such as in cases where legislation on public access to government information precludes such, or it is not relevant to the contents of the regulation, as in cases where the contribution had no bearing on the regulation itself. When stating which external parties have contributed, a designation based on categories rather than individual designation will suffice for groups of citizens or businesses that have made similar contributions; the term "state" also allows a succinct description.

Second paragraph. Examples include advice from advisory bodies or other bodies, such as the Dutch Data Protection Authority (Section 51(2) of the Dutch Personal Data Protection Act) and the Council for the Judiciary (Section 95 of the Judiciary (Organisation) Act (Wet op de rechterlijke organisatie)).

Other examples of special procedures include rules regarding Parliament's involvement in the drafting stage of delegated legislation (see also paragraph 2.5) and rules on the involvement of local authorities in the drafting stage of regulations requiring regulation or administration on the part of those authorities (see, for example, Section 114 of the Municipalities Act, Section 112 of the Provinces Act and Section 209 of the Bonaire, Sint Eustatius en Saba (Public Bodies) Act).

See, with regard to the notification of draft regulations for compliance with European or other international notification obligations, paragraph 7.2.

The second and third paragraphs do not apply to advice provided by the Advisory Division of the Council of State. See, in this regard, Instructions 4.5 and 4.6.

Instruction 4.45 Stating the financial implications

1. If a bill has financial implications, a separate part of the explanatory memorandum or

an annex to the explanatory memorandum shall indicate the extent to which it will be accompanied by higher or lower expenditure or receipts.
2. The overview referred to in the first paragraph shall distinguish between implications for central government and for other sections of society.
3. The explanatory memorandum shall also indicate whether and, if so, to what extent the financial implications were included in the most recently submitted budget or in the estimates for the four years subsequent to the fiscal year.
4. If, on balance, a budgetary effect is unlikely based on compensatory measures, the explanatory memorandum shall also state the gross financial implications of a bill.
5. If a bill has no financial implications, this shall be expressly apparent from the explanatory memorandum.
6. If an order in council or a ministerial regulation results in financial implications for central government, this shall, if necessary, be taken into account in the explanatory notes or explanatory memorandum.

NOTES

This Instruction pertains to the obligation laid down in Section 3.1 of the Government Accounts Act 2016 (Comptabiliteitswet 2016) regarding the provision of financial information in explanatory notes for proposed legislation. The implications for the national budget must also be shown in the submission form for the cabinet, the Council of Ministers of the Kingdom of the Netherlands or the sub-council.

First paragraph. In the case of extensive lists, it may be decided to include the financial implications of a bill not in a separate part of the explanatory memorandum, but in an annex.

Second paragraph. The financial implications for central government are revealed using the national budget. For example, by indicating to which budget or policy item in the budget the financial implications will be charged.

Examples of "other sections of society" include citizens, the business community and local authorities. The financial implications for those sections will usually be expressed by means of administrative burdens, implementation costs, compliance costs and enforcement costs. See also parts 7.1 (Implications for citizens) and 7.2 (Implications for businesses) of the IAK.

Third paragraph. This corresponds to the fiscal year from which the financial implications will occur. This is also stated on the submission form for the cabinet, the Council of Ministers of the Kingdom of the Netherlands or the sub-council.

Sixth paragraph. It is not necessary to indicate the financial implications of an order in council or a ministerial regulation if these have already been dealt with in full during the drafting stage of the delegating Act or order in council.

Instruction 4.46 Financial implications for local authorities

1. If a legislative proposal has financial implications for local authorities, this shall be indicated in a separate part of the explanatory memorandum. The information included shall cover the implementation of Section 105(1) of the Provinces Act, Section 108(3) of the Municipalities Act or Section 136(3) of the Bonaire, Sint Eustatius and Saba (Public Bodies) Act or Section 2 of the Grants to Municipal Authorities Act (Financiëleverhoudingswet) or section 87 of Public Bodies of Bonaire, Sint Eustatius and Saba (Finances) Act (Wet financiën openbare lichamen Bonaire, Sint Eustatius en Saba).
2. The funding method used to cover the financial implications referred to in the first paragraph shall also be indicated.
3. If an order in council or a ministerial regulation has financial implications for local

authorities, this shall, where necessary, be taken into account in the explanatory notes or explanatory memorandum.

NOTES

Pursuant to the aforementioned sections of the Municipalities Act and the Provinces Act, the central government will reimburse the costs of co-administration tasks in so far as these remain chargeable to the municipal authorities or provincial authorities. In the case of proposals that result in a change in the performance of duties by provincial authorities and municipal authorities, Section 2 of the Grants to Municipal Authorities Act requires the provision of a quantified insight into the financial implications and how they can be accommodated. In accordance with Sections 2 and 18 of the Grants to Municipal Authorities Act, the Ministries of the Interior and Kingdom Relations and of Finance must be consulted in good time with regard to how to cover the financial implications for local authorities of new or amended tasks. See, with regard to the public bodies of Bonaire, Sint Eustatius and Saba, Chapter V (The financial relationship) of the Public Bodies Bonaire, Sint Eustatius and Saba (Finances) Act.
See also, with regard to the assessment of the implications of a regulation for local authorities, Instruction 7.6.

Third paragraph. See the notes to the sixth paragraph of Instruction 4.45.

Instruction 4.47 No further rules in explanatory notes

Explanatory notes shall not be used to set further rules.

NOTES

Explanatory notes provide the reasons for and an explanation of a regulation, but may not contain any additional standards. The standards to be set are laid down in the regulation itself. Nor may explanatory notes be used to define in more detail the terms contained in a regulation. This does not mean that it may be desirable in certain cases to provide a more detailed explanation of the terms in a regulation.

Instruction 4.48 Structure of explanatory notes

1. Explanatory notes shall be divided into a general part and a section-by-section part if this improves accessibility.
2. The parts of explanatory notes shall be numbered if this is desirable with a view to making references.

NOTES

In the case of extensive regulations, it may be practical to include an Outline part. This paragraph could contain a brief outline of the object of the regulation, the problem, the objective, political or otherwise, the chosen solution and the methodology of the regulation. Unless essential, no comprehensive historical considerations are included. Section-by-section explanatory notes are particularly useful in the case of comprehensive or (technically) complex regulations. In the case of simple regulations, references may be made to the sections in the general part of the explanatory notes will suffice. It is unnecessary to paraphrase sections in the explanatory notes or to mention that a section does not require an explanation.

See also, with regard to implementing regulations, Instructions 9.11 and 9.12.

Instruction 4.49 Wording and layout

1. Clear and concise language shall be used and a logical layout followed in explanatory notes.

2. When wording an explanatory memorandum to an order in council or another royal decree of a regulatory nature, or explanatory notes to a ministerial regulation or a policy rule, it shall be assumed that the regulation concerned has already been laid down.
3. Paragraphs 3.1, 3.3 and 3.4 of these Instructions shall apply by analogy to the wording of explanatory memorandums, in so far as they are compatible with the nature of an explanatory memorandum.

NOTES

First paragraph. In addition to that which is noted in this regard in paragraphs 3.1, 3.3 and 3.4, the following points should be noted to ensure clear and concise language is used:
- avoid unnecessary words in a sentence;
- use the active voice as far as possible when wording sentences;
- avoid use of the subjunctive;
- ensure consistency in choice of word and spelling;
- avoid jargon and very technical terms;
- word the document in short sentences, avoiding long subordinate clauses.

Second paragraph. The explanatory notes to a royal decree, a ministerial regulation or a policy rule do not refer to "proposed provisions". The explanatory notes are written as though those provisions have already been adopted. In view of the nature of a bill, this does not apply to an explanatory memorandum and explanatory notes to memorandums of amendment. However, the explanatory notes to a memorandum of amendment must distinguish between the amendment of the bill as an act in the legislative process and the amended contents of the bill concerned resulting from the memorandum of amendment. Following the submission of the memorandum of amendment, the amendment of the bill is a fact; a memorandum of amendment is not a "proposal" to amend the bill.

Instruction 4.50 Abbreviated designations of regulations

1. References to sections or parts of regulations cited in explanatory notes using an abbreviation or other abbreviated designation shall be made in accordance with the following examples:
   - *Section 10(2) Wob (Government Information (Public Access) Act);*
   - *Section 7(1) Sr (Criminal Code);*
   - *Title 5.2 of the General Administrative Law Act;*
   - *Section 21 Arbowet (Working Conditions Act).*
2. If explanatory notes use an abbreviation or abbreviated indication to cite a regulation, use of an initial upper case letter in the short title of the regulation cited is the preferred option.

NOTES

First paragraph. If other regulations are cited in abbreviated form in explanatory notes (for example, "Awb" to refer to the General Administrative Law Act), it is not necessary to use the words "of the" when referring to specific sections from those regulations. Instead of "Section 10 of the Wob", "Section 10 Wob" will suffice. This does not apply to regulations cited using their full titles. In that case, the title, even if it contains only one word, is always preceded by "of the" ("Section 5 of the Publication Act").

Abbreviations and abbreviated designations that are generally known (such as Awb and BW (Civil Code) need not be explained in the explanatory notes. Other abbreviations and designations should be explained the first time they are used in explanatory notes.

See also Instructions 3.34 (references to the Civil Code) and 3.39 (abbreviated citing of treaties).

Second paragraph. As a general rule, upper case letters are used in an abbreviation or other

abbreviated designation of a regulation only if those upper case letters are also included in the short title of the regulation. In special cases, this principle may be departed from, for example in the case of abbreviated designations in which the word "Act" is followed by an abbreviation (cf. "Wet IB 2001" for "Wet inkomstenbelasting 2001") (Income Tax Act 2001).

EXAMPLES FOR THE SECOND PARAGRAPH

- Wet Nationale Ombudsman (National Ombudsman Act): WNo
- Arbeidsomstandighedenwet (Working Conditions Act): Arbowet
- Wet op het financieel toezicht (Financial Supervision Act): Wft.

Instruction 4.51 Stating sources

References in explanatory notes to other documents shall be made by a precise indication of the source.

NOTES

See also Instructions 3.37 to 3.46 and 3.50.

Instruction 4.52 Signing explanatory notes

1. Explanatory memorandums (memorie van toelichting), explanatory notes to memorandums of amendment, explanatory memorandums (nota van toelichting), explanatory notes to a ministerial regulation and explanatory notes to policy rules shall be signed.
2. Explanatory memorandums (memorie van toelichting), explanatory notes to memorandums of amendment that have been submitted to the Advisory Division of the Council of State and explanatory memorandums (nota van toelichting) shall be signed after the bill concerned has been discussed in cabinet and before it is sent to the King's Office for advice from the Advisory Division of the Council of State.

Instruction 4.53 Signing proposals made "also on behalf of" other government members

1. For proposals for a bill or an order in council made "also on behalf of" other government members, only the government member having primary responsibility shall sign the explanatory memorandum.
2. In that case, the explanatory notes shall state the co-involvement of one or more other government members.

NOTES

See also Instructions 4.6, 4.7 and 4.33. See also, with regard to indicating co-involvement, Instruction 4.40, second paragraph.

This Instruction also applies to the signing of explanatory notes to memorandums of amendment and to the signing of explanatory notes to bills approving a treaty and of explanatory memorandums in the event of tacit approval of a treaty (see Instruction 8.13).

CHAPTER 5 SPECIAL COMPONENTS OF REGULATIONS

5.1 Definitions

Instruction 5.1 Definitions

1. Terms with too vague a meaning or a meaning that differs from that understood in everyday language shall be defined.
2. Terms shall not be given a meaning that differs substantially from that understood in everyday language in definitions.

NOTES

First paragraph. There will be instances where a term whose meaning, in itself, is clear, will require a more detailed definition from a legal point of view, for example "ambtenaar" [public servant] and "bouwen" [build].

Second paragraph. Stating in a definition of terms that "landbouw" [agriculture] is also understood to mean "tuinbouw" [horticulture] is acceptable. Stating that "landbouw" is also understood to mean "visserij" [fishing], by contrast, is incorrect. The second paragraph should be considered a specification of Instruction 3.10 with regard to definitions. See also Instruction 3.3.

Instruction 5.2 Abbreviated indications

Repetition in a regulation of length descriptions shall be avoided by including an abbreviated indication in the definitions.

NOTES

Terms that appear only once in a regulation are not defined in the definitions.

Instruction 5.3 Wording of definitions

1. The following wording shall be used for definitions:
   In [this Act/this decree/this regulation/this policy rule] [and the provisions based thereon], [, unless otherwise provided,] the following terms have the following meanings:
2. The term *"understood to mean"* shall be used if a term is defined in a general sense.
3. The term *"also understood to mean"* shall be used if the meaning of a term, whether or not defined, is expanded upon.
4. No quotation marks shall be used in a definition.

NOTES

See Instruction 3.59, third paragraph, for the method of listing definitions.

By adding the phrase "and the provisions based on it," the definitions of a regulation also apply in the implementing rules based on that regulation. This ensures that the terminology of the implementing regulation is in line with that of the delegating regulation (see also Instruction 3.4). However, it will sometimes be necessary to use a different definition in an implementing regulation, for example because a certain term in the implementing regulation requires more limited scope than in the

delegating regulation. In such cases, the phrase "unless otherwise provided" can offer a solution.

Definitions may also refer to the definition of a term in another regulation. For example: "In this Act, auditor shall be understood to mean an auditor as referred to in Section 393(1) of Book 2 of the Civil Code.

Second and third paragraphs. See also the notes to Instruction 5.1, second paragraph.

§ 5.2 Caribbean Netherlands

Instruction 5.4 Applicability in Bonaire, Sint Eustatius and Saba

1. If a regulation applies or also applies in Bonaire, Sint Eustatius and Saba, this shall be provided for expressly in the regulation.
2. The provision governing the applicability of a regulation in Bonaire, Sint Eustatius and Saba shall preferably be included in the introductory provisions of the regulation.
3. The first paragraph shall not apply where regulations of the Kingdom are concerned or if the applicability of a regulation in Bonaire, Sint Eustatius and Saba clearly follows from another statutory provision.
4. A regulation that only applies in the European part of the Netherlands need not include a provision that expressly limits the scope of the regulation to that part of the Netherlands.

NOTES

Pursuant to Section 2 of the Public Bodies of Bonaire, Sint Eustatius and Saba (Implementation) Act, a regulation is applicable in Bonaire, Sint Eustatius and Saba only if this is provided by law or clearly follows from a statutory provision in some other way. If there are no such provisions in a regulation for the Netherlands and its applicability in Bonaire, Sint Eustatius and Saba also does not follow from any other statutory provision, that regulation applies exclusively to the European part of the Netherlands. For that reason, no provision to that effect need be included in a regulation intended exclusively for the European part of the Netherlands.

If the regulation concerned applies exclusively in Bonaire, Sint Eustatius and Saba, this is also indicated in the short title: see Instruction 4.25, sixth paragraph.

Second paragraph. For the sake of clarity, it is preferred that the scope of the regulation is already evident from the introductory provisions. In existing regulations, the scope of which will be extended to include Bonaire, Sint Eustatius and Saba only after the regulation has come into being, it is not always possible to insert the provision regulating applicability in the Caribbean Netherlands in a logical place at the beginning of the regulation. In such cases, it may be decided to include the provision to that effect at the end of the regulation, before the transitional and final sections. See also Instruction 5.5.

EXAMPLE FOR THE FIRST PARAGRAPH

– This Act shall also apply to the public bodies Bonaire, Sint Eustatius and Saba. (Section 5a of the General Extension of Time Limits Act (Algemene termijnenwet))

Instruction 5.5 Chapter on the Caribbean Netherlands in mixed regulations

1. A regulation that applies in both the European part of the Netherlands and in Bonaire, Sint Eustatius and Saba shall include provisions that specifically relate to the

application of the regulation in Bonaire, Sint Eustatius and Saba in a separate chapter or a separate paragraph, if this improves the accessibility of the regulation.
2. A separate chapter or separate paragraph for Bonaire, Sint Eustatius and Saba shall be included at the end of the regulation, before the final sections.

NOTES

Regulations applicable in both the European and the Caribbean parts of the Netherlands ("mixed regulation") will often require special provisions to render them applicable in the Caribbean part of the Netherlands. Particularly in existing regulations, whose scope is extended to include Bonaire, Sint Eustatius and Sabaonly after the regulation has come into being, the accessibility of the regulation may benefit from the inclusion of special provisions in a separate chapter or separate paragraph. Such chapters or paragraphs are included at the end of the regulation so as to avoid breaking the structure of the existing regulation.

Second paragraph. See, with regard to final sections, Instruction 3.55.

§ 5.3 Advisory bodies

Instruction 5.6 Giving reasons for the establishment of advisory bodies

1. The explanatory notes to a regulation whereby an advisory body is established or an advisory task is assigned shall state why independent advice in the field concerned is considered necessary.
2. The explanatory notes to a regulation whereby an advisory body is established shall state why the advisory task will not be assigned to an existing advisory body.

NOTES

This Instruction pertains to all advisory bodies regardless of whether they are permanent or temporary bodies or a body for giving one-off advice on a particular question and regardless of whether the matter concerns legislation or policy to be pursued or implementation issues.

See also Chapter 2 of the Advisory Bodies Framework Act (Kaderwet adviescolleges) and Instruction 5.10, second paragraph.

Instruction 5.7 Obligations to provide advice

A regulation shall not provide for the obligation to seek advice on binding rules of general application or policy to be pursued by central government.

§ 5.4 Non-departmental public bodies

Instruction 5.8 Giving reasons for the establishment of non-departmental public bodies

The explanatory notes to a regulation whereby a non-departmental public body is established or a task is assigned to a non-departmental public body shall state the need for

this.

NOTES

Section 3 of the Non-Departmental Public Bodies Framework Act includes the (interpreted in a restrictive way) instances where a non-departmental public body can be established, or may subsequently be charged with another task, entailing the exercise of public authority. Compliance with one or more of the grounds set out in Section 3 of the Non-Departmental Public Bodies Framework Act does not alter the fact that restraint must be observed with regard to the establishment of a non-departmental public body or the assignment of tasks to an existing non-departmental public body.

The following questions may be used as a guideline when preparing the reasons:
- why should the government handle or continue to handle the task?
- why is not appropriate to assign the task to provincial and municipal authorities or to the administrative authorities of the public bodies Bonaire, Sint Eustatius and Saba?
- why is the task not performed under full ministerial responsibility?
- what assessment has been made regarding the costs, administrative burdens and efficiency compared with the assignment or continued assignment of the task to a minister?
- how is the performance of tasks tailored to the tasks of other administrative bodies at national, provincial or municipal level or at the level of the public bodies Bonaire, Sint Eustatius and Saba?

Instruction 5.9 Establishment by or pursuant to the law

1. A non-departmental public body shall be established by or in special cases pursuant to the law.
2. Public authority shall be granted by or in special cases pursuant to the law.
3. With due observance of Section 4:23 of the General Administrative Law Act, the second paragraph may be departed from for the grant of subsidies.

NOTES

First paragraph. Establishment by law is recommended owing to the limited ministerial responsibility for a non-departmental public body. Since the possibilities of parliamentary control of the performance of the task in question are not exhaustive, it is necessary for the States General to be able to pronounce on the establishment of a non-departmental public body. In special cases, one may be established pursuant to the law, for example if the regulation concerns an entire category of similar non-departmental public bodies (for example bodies with a particular area of responsibility established throughout the country). In such cases, the general characteristics of these bodies are regulated by law, but the individual bodies may then be established pursuant to the law.

Second paragraph. The basic principle is that public authority is granted to a non-departmental public body by Act of Parliament. However, not every granting of public authority is so weighty that parliament need be directly involved. Depending on the nature of the task, inclusion in a subordinate regulation may suffice. For that matter, a legal basis is also desirable or required for important administrative tasks not linked to the exercise of public authority (such as those involving the performance of actual implementing acts, for example providing public education). Reasons are given for the assignment of various tasks.

Instruction 5.10 Regulatory power

1. Regulatory powers are granted to non-departmental public bodies only:
   a. in so far as this concerns organisational or technical subjects; or
   b. in exceptional cases, provided that the minister has the power to approve the regulation.
2. Non-departmental public bodies shall not be assigned an advisory task regarding binding rules of general application or policy to be pursued by central government.

NOTES

As a general rule, binding rules of general application are not established other than by the government (and States General), ministers, provinces, municipalities or water boards. In addition, under Article 134 of the Constitution, this power may be granted to public bodies for the professions and trades and other public bodies. In this light, granting regulatory power to a non-departmental public body is acceptable to a limited extent. The possibility of rules being set in exceptional cases concerning topics other than organisational or technical matters cannot be ruled out, but only if ministerial approval is provided for. Owing to its exceptional character, stringent requirements for the justification are laid down in the explanatory notes.

If an Act allows regulatory powers to be granted to a non-departmental public body involved in the implementation of that Act, the wording "by or pursuant to an order in council" (see Instruction 2.26) also provides for the possibility of sub-delegation to that non-departmental public body.

EXAMPLE FOR THE FIRST PARAGRAPH, PART A

– The Netherlands Authority for the Financial Markets may set rules regarding the manner in which the information referred to in the first paragraph is included in the annual accounts. (Section 124(2) of the Market Conduct Supervision (Financial Institutions) Decree (Besluit Gedragstoezicht financiële ondernemingen Wft))

EXAMPLE FOR THE FIRST PARAGRAPH, PART B

– The UWV may set further rules with regard to the premium. The rules set by the UWV (…) shall require the approval of Our Minister. (Section 73(2) and (3) of the Social Insurance Funding Act (Wet financiering sociale verzekeringen))

Instruction 5.11 Legal personality

1. If granting legal personality is considered desirable, the following model shall be used in the Act establishing a non-departmental public body:
   1. [Name of legal entity of which the non-departmental public body forms part].
   2. [Name of legal entity] has its registered office in … .
   3. [Name of legal entity] has legal personality.
2. In that case, the Act establishing the body shall, where possible, make a clear distinction between the non-departmental public body and the legal entity of which the non-departmental public body forms part. The following model shall be used:
   1. The head of [name of legal entity of which the non-departmental public body forms part] is [designation of non-departmental public body].
   2. [Designation of non-departmental public body] has the task of …/the following tasks: ...
3. In that case, the Act establishing the body shall provide for the manner of funding of the legal entity.

NOTES

First paragraph. In certain cases, it may be important for the proper performance of tasks that the organisation of which a non-departmental public body forms part can participate in civil-law legal transactions on its own behalf - i.e. separately from the legal entity State of the Netherlands. The non-departmental public body will therefore have the opportunity to conclude contracts independently or to hire personnel, which may be important for the independent performance of its public task. Without legal personality, those powers can be exercised only if the Minister has granted a power of attorney or mandate to that end. In such cases, legal personality may be granted by law. The explanatory memorandum must include explicit reasons. It should be noted that the ensuing powers under property law may be exercised only in order to fulfil the administrative duties of the non-departmental public body: see Section 14 of Book 3 of the Civil Code.

The assessment concerning the granting of legal personality must always include consideration as to whether the staff would prefer an appointment with a separate organisation over an appointment in general government services and whether the board/management can bear responsibility for the staff, the organisation, the financial management and so forth.

Second paragraph. Non-departmental public bodies have public-law duties and powers (public authority). The legal entity is the body of which the non-departmental public body forms part and which participates in legal transactions. In many cases, legal personality will be assigned to an organisation and the public-law tasks and powers will be assigned to the management of that organisation. The management will then be the non-departmental public body. In order to prevent the two concepts from being confused because, for example, private-law powers are assigned to the management (non-departmental public body) or public-law powers to the legal entity, a clear distinction must be made between the two in the establishing Act.

The legal entity may also share the name of the administrative body. An example of this is the Dutch Safety Board (Onderzoeksraad voor veiligheid). In that case, no distinction can be made and the first paragraph in the model provision will cease to apply.

Instruction 54.12 Establishing non-departmental public bodies

1. The structure of a non-departmental public body, as well as the term for which its members are appointed, shall be regulated in the establishing Act.
2. If the non-departmental public body is established because the participation of civil society organisations must be considered to be particularly appropriate given the nature of the administrative duties concerned (Section 3(1)(c) of the Non-Departmental Public Bodies Framework Act), the establishing Act shall provide that persons from civil society organisations are appointed to the non-departmental public body. If possible, it shall also include a provision under which a deputy member is appointed for each member.

NOTES

All that is required in an establishing Act is a more detailed specification of appointments (term of office, personal qualifications of members): Sections 9 and 12 of the Non-Departmental Public Bodies Framework Act provide for the general rules.

First paragraph. The phrase "organisation of the non-departmental public body" refers to the size of the non-departmental public body, as well as the qualifications that the members to be appointed must possess. See, for example, Section 3 of the Act establishing the Netherlands Authority for Consumers & Markets.

Second paragraph. Here, Section 3(1)(c) of the Non-Departmental Public Bodies Framework Act is further elaborated for the composition of a non-departmental public body. Appointments are made from among, or on the recommendation of, the social organisations involved, but are not made by those organisations. The appointment of deputy members as well will ensure that all participating social groups will actually be represented in all decisions made by the non-departmental public body.

Instruction 5.13 Relationship with other bodies

1. If other bodies or ancillary bodies are established within an organisation or legal entity in addition to the non-departmental public body, the mutual relations and powers of those bodies shall be laid down in the establishing Act.
2. Instruction 5.12, first paragraph, applies by analogy to these other bodies and ancillary bodies.

NOTES

First paragraph. Administrative powers are frequently granted undivided to a non-departmental public body. However, in the case of complex tasks and larger organisations in particular, it may be advisable to divide the powers among more bodies. One way would be to set up an executive board with a supervisory board, a board in addition to a managing director or director of operations or a consumer or client council. If a divided structure is chosen, it must be clear which powers are granted to which body and what the mutual relationship is between the bodies. Pursuant to Section 7 of the Non-Departmental Public Bodies Framework Act, in such situations a non-departmental public body may also fulfil the obligations under this Act for the other non-departmental public bodies. The regulation of the mutual relationships referred to in this Instruction indicates which body this is, so that it is clear with which body the minister communicates.

Instruction 5.14 A minister's powers

A minister shall not be granted the power to give special instructions.

NOTES

If the minister is authorised to give special instructions or instructions for a specific case, the non-departmental public body can no longer be regarded as "independent" and all that will remain is a body subordinate to the minister with powers attributed by the law.

Instruction 5.15 Transfer of staff, rights, assets and obligations

1. The establishing Act shall provide, where required, how the transfer of the staff, rights, assets and obligations of the legal entity the State of the Netherlands to another legal entity of which the non-departmental public body forms part is regulated.
2. The following models shall be used here:

   (Article ...)
   1. As of the date on which this Act enters into force, the staff members of [name of the department section] whose names and positions are stated on a list compiled by Our Minister, dismissed and appointed by operation of law as civil servants in the service of [name of legal entity of which the non-departmental public body forms part].
   2. The transfer of the staff members referred to in the first paragraph shall take place with a legal status that as a whole is at least equal to that which applied to each of them at [name of the department section].
   3. The persons who on the date on which this Act enters into force are among the staff [name of the department section] pursuant to an employment contract under civil law and whose names and positions are stated on a list compiled by Our Minister, are dismissed by operation of law from that point on and appointed in the service of [name of legal entity of which the non-departmental public body forms part] with a legal status that in its totality is at least equal to that which applied to each of them at [name of the department section].

   (Article ...)
   1. In agreement with Our Minister of Finance, Our Minister shall determine which assets of the State that are allocated to [name of the department section] shall be allocated to [name of legal entity of which the non-departmental public body forms part].
   2. The assets referred to in the first paragraph shall pass by universal title to [name of department] as of the date on which this Act enters into force at a value to be determined by Our Minister in agreement with Our Minister of Finance.
   3. In the event that property subject to registration passes pursuant to the first and

second paragraphs, Our Minister of Finance shall register the passing of that property subject to registration in the public registers referred to in Section 2 of Title 1 of Book 3 of the Civil Code without delay. Section 24(1) of Book 3 of the Civil Code does not apply.

NOTES

First model provision. The second paragraph is necessary only if, in derogation of Section 15(1) of the Non-Departmental Public Bodies Framework Act, the legal status rules applicable to civil servants with the new employer do not apply or do not apply by analogy to the incoming staff.

See, with regard to transitional law relating to archive records, Instruction 5.66.

Instruction 5.16 Dealing with current proceedings upon transition

1. If important, the means by which current legal proceedings and legal actions, or investigations by the National Ombudsman at the time of establishing a non-governmental public body that is not part of the legal entity of the State of the Netherlands, shall be stipulated by law.
2. The following model shall be used for this:
   1. In legal proceedings and actions where [name of the department section] is involved the place of the State or Our Minister shall be taken by [name of the legal entity of which the non-departmental public body forms part, or the non-departmental public body] on which this Act enters into force.
   2. In cases where the National Ombudsman was asked to carry out an investigation before the date on which this Act entered into force or the National Ombudsman has instituted an investigation into behaviour that can be attributed to [name of the department section], [name of the non-departmental public body] shall take the place of Our Minister at that time as administrative body within the meaning of the National Ombudsman Act.

§ 5.5 Assigning administrative authority and the terminology used

Instruction 5.17 Exemption, dispensation, authorisation and acknowledgement

1. The term *"exemption"* shall be used for a decision whereby an exception is made to a legal prohibition or an order for a category of cases.
2. The term *"dispensation"* shall be used for an individual decision where in an individual case an exception to a legal prohibition or order is made.
3. The term *"authorisation"* shall be used for an individual decision whereby a certain action is permitted.
4. The term *"acknowledgement"* shall be used for an individual decision whereby it is established that a person or institution meets certain requirements.

NOTES

The use of other terms for these concepts such as consent, agreement or permission is avoided. See, with regard to authorisations within the meaning of Section 2(1) of the Services Act (Dienstenwet), Instruction 5.29.

Instruction 5.18 Approval and declaration of no objection

1. The term *"approval"* shall be used for the consent of another administrative body required for the entry into force of a decision of an administrative body.
2. The term *"declaration of no objection"* shall *be used for the consent of another administrative body required for a decision to be taken by an administrative body.*

NOTES

There is prior supervision of administrative bodies both in the case of approval and a declaration of no objection. The difference is that a decision on approval is taken with regard to an existing but not yet effective decision, whereas a declaration of no objection removes an impediment to the supervisory body to take a particular decision.

Instruction 5.19 Use of the term "limit"

The term *"limit"* shall be used if the power is granted to set a limit regarding time or place or another limit in the granting of an exemption, dispensation or authorisation.

NOTES

As well as those regarding time or place, limits may also be set on the number or nature of acts to be performed.

Instruction 5.20 Enforcement of individual decision rules

1. If the aim is to enforce the obligations imposed on an interested party when issuing an individual decision by means of penalties, a provision making those obligations subject to a penalty shall be included.
2. The term *"rules"* shall be used for these and other obligations to be imposed when issuing an individual decision.

NOTES

It is incorrect to conflate acting contrary to the rules for an authorisation with acting without an authorisation and thus regard the former as punishable. Section 6 in conjunction with Section 54 of the Weapons and Ammunition Act (Wet wapens en munitie) provide an example of the correct means of penalisation. The term "conditions" is not used for obligations as referred to in this Instruction.
Second paragraph. The umbrella term "obligations" is also used in Title 4.2 of the General Administrative Law Act (Subsidies) for the rules to be attached to a grant decision.

Instruction 5.21 Revocation or amendment of an individual decision

1. If it is necessary to be able to revoke or amend an individual decision based on a regulation, the authority to do so shall be expressly regulated.
2. The grounds for the revocation or amendment of a decision shall be specified in the regulation.

NOTES

First paragraph. In general, it is preferable to grant the power of revocation or amendment as a discretionary power. This gives the administrative body the opportunity to assess whether revocation or amendment in a particular case, also in view of the principle of proportionality, is the correct measure.

Second paragraph. Some examples of grounds for revoking or amending an individual decision are set out below:

- the information provided appears to be incorrect or incomplete to such an extent that a different decision would have been taken regarding the application if the correct information had been available for the assessment thereof;
- the individual decision was given contrary to statutory provisions;
- no use was made of the individual decision for a particular uninterrupted period;
- in connection with changes in legislation, altered circumstances or altered insights, the protection of the interests with a view to which the requirements of the individual decision were set outweigh the interest of the person concerned in an unchanged individual decision.

Instruction 5.22 Delegation to subordinates

An Act shall not provide for the possibility of delegating administrative powers to subordinate authorities.

NOTES

This Instruction pertains only to delegation of administrative powers by means of an Act of Parliament. Section 10:14 of the General Administrative Law Act applies to Acts of Parliament and subordinate legislation (of a general nature).

Instruction 5.23 Granting powers to local authorities

1. Where powers are granted to municipalities, provinces or the public bodies Bonaire, Sint Eustatius and Saba:
   a. the power to adopt binding rules of general application, the adoption of policy frameworks and the adoption of a decision that requires strong democratic legitimacy shall, as a general rule, be conferred on the municipal council, provincial council or the island council;
   b. the power to adopt or implement policy and to adopt resolutions, not being binding rules of general application, is generally granted to the municipal executive, the provincial executive or the executive council.
2. The terms *"municipal authorities" [gemeentebestuur]*, *"provincial authorities" [provinciebestuur]* and *"island authorities" [eilandsbestuur]* are avoided. The terms *"municipality" [gemeente]* or *"province" [provincie]* shall be used solely as a designation of the legal entity municipality or province or the territory of the municipality or province.
3. The term *"public bodies"* as a designation of the public body of Bonaire, the public body of Sint Eustatius or the public body Saba legal entities or as a designation of the territory of those public bodies shall be used only if it follows from the regulation that reference is being made to the public bodies of Bonaire, Sint Eustatius and Saba.

NOTES

Since the separation of powers of the municipal and provincial authorities, the positions and powers of municipal councils and the municipal executive, or provincial councils and the provincial executive, have been unbundled in the Municipalities Act and the Provinces Act. When allocating powers to the administrative bodies of municipalities and provinces, the decisions made are in line with the principles of the separation of powers governance model. In general, the municipal executive and the provincial executive perform administrative tasks; with municipal councils and provincial councils the emphasis is on monitoring, setting frameworks and representation. See Sections 147 and 160(1)(a) and (b) of the Municipalities Act and Section 158(1)(a) and (b) of the Provinces Act, as well as the assessment framework included in Parliamentary Papers II 2002/03, 28995, no. 3, pp. 2-3. When Bonaire, Sint Eustatius and Saba were included in the Dutch polity, the same unbundling of the positions and powers of the island councils and executive councils was based on the Bonaire, Sint Eustatius en Saba (Public Bodies) Act.

Instruction 5.24 Inter-administrative supervision

If the implementation of an Act is assigned to bodies of municipalities or provinces, that Act shall not provide for supervision of the implementation.

Notes

In 2007, the Commissie Doorlichting Interbestuurlijke Toezichtarrangementen [Analysis of Inter-administrative Supervision Arrangements Committee] published the report "Van specifiek naar generiek" [From specific to generic] (Parliamentary Papers II 2007/08, 31200 VII, no. 8 and annex). The government response (Parliamentary Papers II 2007/08, 31200 VII, no. 61) was implemented with the Generic Supervision (Revitalisation) Act (Wet revitalisering generiek toezicht), the Provision of Systematic Supervision information Decree (Besluit verstrekking systematische toezichtinformatie), the Suspension and Revocation Policy Framework (Beleidskader schorsing en vernieting) (Parliamentary Documents II 2009/10, 32389, no. 5 and annex) and the General Substitution in the event of neglect of duties Policy Framework (Parliamentary Papers II 2010/11, 32500 VII, no. 85 and annex).

The essence of the policy is that Acts in which provincial or municipal bodies are given tasks in co-administration do not include specific instruments for inter-administrative supervision, but that, if intervention is necessary, the generic instruments provided for in the Provinces Act and the Municipalities Act, namely: substitution (if a statutory duty is not performed or not performed in good time) or revocation by the Crown (in the event of decisions contrary to the law or the public interest) will suffice. See Sections 121 et seq. and 261 et seq. of the Provinces Act and Sections 124 et seq. and 268 et seq. of the Municipalities Act. The basic principle is that the inter-administrative supervision of municipalities rests with the provincial government and the supervision of provinces with the line minister or ministers. If the provincial government has no tasks or expertise in a policy area, the inter-administrative supervision may be assigned to the line minister or ministers (Section 124b of the Municipalities Act and annex).

This policy does not relate to water boards, nor to the public bodies Bonaire, Sint Eustatius and Saba.

Supervision information. With the statutory basis included in the Provinces Act (Article 121f) and the Municipalities Act (Article 124h) by the Revitalisation of Generic Supervision Act, it is no longer necessary to include a separate legal basis in special laws. The protection of local authorities, based on the need to create a formal legal basis for each matter, is balanced in the Provision of Systematic Supervision Information Decree by setting general rules on the provision of supervisory information so that, on the one hand, adequate supervision is possible, but on the other, local authorities are not faced with information obligations that require disproportionate efforts or are used for a purpose other than supervision.

Water boards. There are no comparable generic rules for the supervision of water boards. In some cases, it is desirable to harmonise the inter-administrative supervision of water boards with the supervision of municipalities or provinces. Section 38 of the Public Records Act 1995 provides an example of harmonising the supervision of water boards with the supervision of municipalities for both substitution by the provincial government and revocation by the Crown. Section 17.15(2) final sentence of the Environmental Management Act provides an example of harmonising the supervision of water boards with the supervision of provinces for substitution alone. In such cases, annexes 1 and 2 to the General Administrative Law Act will also be supplemented (see Instructions 5.49 and 5.52), so that legal protection as applied to water boards is equal to the legal protection provided for under the Municipalities Act and the Provinces Act.

The Caribbean Netherlands. See, with regard to inter-administrative supervision in the Caribbean Netherlands, Chapter V of the Bonaire, Sint Eustatius en Saba (Public Bodies) Act.

Obligations under European law. Where compliance with obligations under European law is at issue and it is not possible or appropriate to apply the generic supervisory instruments, recourse may be made to the supervisory instruments provided for in the Public Entities (Compliance with European

Legislation) Act.

Instruction 5.25 Hardship clauses

1. Regulations shall not include a hardship clause unless there is reason to expect that, in view of the object and purport of the regulation, the latter's application may lead to extreme unfairness in an unquantifiable number of cases or categories of cases.
2. No hardship clauses are included in regulations for situations where not applying or departing from the regulation will adversely affect, or may generally adversely affect interested third parties.
3. If the application of a hardship clause has been implemented a sufficient number of times for certain cases and is therefore now consistently used, this consistent policy shall be laid down in a binding rule of general application.

NOTES

First paragraph. The inclusion of a hardship clause in a regulation allows an administrative body, in cases where application of the regulation - given its object and purport - would result in extreme unfairness, not to apply part of that regulation or to depart from it. If this involves a departure from the Act, this will constitute a breach of the primacy of the legislature. In addition to this possible fundamental objection, there are also practical objections to including hardship clauses in legislation. It is not uncommon for such clauses to provoke conflict. In practice, the inclusion of a hardship clause may lead to large numbers of requests to apply the hardship clause, while granting such requests is appropriate in only a very limited number of cases. It should be borne in mind that a rejection of a request to apply a hardship clause is open to appeal before the administrative court. Partly in view of Instruction 2.8, these factors lead to the need to exercise great restraint in including hardship clauses. If a hardship clause is nevertheless included, adequate reasons must be included in the explanatory memorandum.

A hardship clause is distinct from from dispensation and exemption provisions in that it is impossible to foresee, or to foresee precisely, whether a departure from the provisions will be necessary and, if so, to which cases or categories of cases it will apply. In addition, the application of a hardship clause is limited to cases, or possible cases, of extreme unfairness. In the case of dispensations, the express intention from the outset is to make an exception to the statutory rule in certain individual and foreseeable cases. Only when a dispensation or exemption system contains very circumscribed powers can there still be scope for the inclusion of a hardship clause.

The primacy of the legislature means that, as a general rule, a hardship clause is included in the Act itself. See also Instruction 2.19. However, it is going too far to exclude the possibility of including a hardship clause in an order in council or a ministerial regulation in certain circumstances. In certain cases, delegation of regulatory power may include the possibility of including a hardship clause. This means that the possibility of departing from the regulation established by delegation is available in certain cases. Of course, any departure must remain within the scope of the Act.
In general, the application of a hardship clause will be limited to individual cases. In certain circumstances, however, a hardship clause can also be applied to a specific category of cases. This will soon produce a consistent policy that will ultimately have to be laid down in a binding rule of general application (see the third paragraph).

Second paragraph. Efforts must be made to ensure that not applying or departing from a regulation in certain circumstances does not adversely affect, or generally have the capacity to adversely affect interested third parties whose interests are protected by the binding rules of general application concerned. In practice, the need for a hardship clause sometimes arises with the application of circumscribed or more circumscribed administrative powers. This further restricts the use of hardship clauses. In practice, this means that hardship clauses are included in tax, social security, legal status and certain subsidy regulations in exceptional circumstances.

Third paragraph. In order to ensure the primacy of the legislature and from the perspective of clarity

and legal certainty, it is preferable to ultimately lay down a consistent policy that will initially be laid down in a policy rule in legislation. It is therefore important to evaluate the application of hardship clauses periodically.

Instruction 5.26 Hardship clause model

1. If a hardship clause is included in a regulation, the latter shall state the parts of the regulation to which the clause applies as specifically and accurately as possible.
2. The following model shall be used as a starting point for a hardship clause:
   [name of the administrative body] may not apply or depart from Section … in so far as application will lead to extreme unfairness given the interest of [indication of object or purport of the regulation].

NOTES

First paragraph. In view of the possible objections to the inclusion of hardship clauses in regulations mentioned in Instruction 5.25, it is stated in this Instruction that the regulation must state the parts of the regulation to which the hardship clause applies as specifically and accurately as possible. This does not preclude the inclusion of a general hardship clause in a general law that applies to a number of special laws, as is the case in tax legislation.

Second paragraph. The object or purport of the regulation must be described as specifically as possible in the sentence including the words "given the interest of …". If this is not possible, the following wording can be used: "given the interest that this section/this regulation aims to protect". A hardship clause does not imply a delegation of regulatory power: it confers only a power of disposal.

§ 5.6 Transfer of rights under public law

Instruction 5.27 Transfer of Rights

If a public-law regulation provides for the creation of any right that, by its nature, lends itself to transfer to others, that transfer shall either be excluded or provided for.

NOTES

If a right may be granted only to a specific legal or natural person because it is strictly person-related (for example, rights arising from registration at a school, the issue of a driving licence or registration of a company in a mandatory register), transfer is obviously not possible. An explicit regulation in this respect is not necessary in such cases. In other cases, it is desirable for the regulation to clarify whether the rights arising from the regulation or from decisions based on it can pass to others and, if so, how that is done (for example, Section 5.37 of the Environmental and Planning Act (Omgevingswet) and Section of the Nuclear Energy Act (Kernenergiewet). If transfer is not excluded and a regulation also creates or aims to create scarcity, in addition to the transfer itself, attention must also be paid to the desirability of trading in the rights, the enforcement of the system and method of acquisition, distribution, extinction and registration of those rights when preparing the regulation. See, as an example, Chapter V of the Fertilisers Act (Meststoffenwet) and Section 83(3) of Book 3 of the Dutch Civil Code. See also the government position on the first report of the MDW Working Group on Marketable Rights (Parliamentary Papers II 1999/2000, 24036, no. 149) and the government position on the second report "Ingrijpen en compensatie?" [Intervene and Compensate?] Parliamentary Papers II 2000/01, 24036, no. 182).

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- Authorisations and dispensations granted pursuant to this Act are person-related and non-transferable. (Section 2:1 of the Financial Supervision Act)
- An integrated environmental permit applies to anyone who performs the activity or activities to

which it relates. (…) If an integrated environmental permit applied for or granted will apply to a party other than the applicant or the permit holder, the applicant or the permit holder shall notify the competent authority at least one month in advance. (Section 5.37(1) and (3) of the Environment and Planning Act)

§ 5.7 Rules regarding goods, inspections and services

Instruction 5.28 Mutual recognition clauses

1. To the extent that a regulation that does not implement binding EU legal acts imposes requirements on goods, inspections or services, a mutual recognition clause shall also be included.
2. The first paragraph shall not apply to regulations that apply exclusively in Bonaire, Sint Eustatius and Saba.
3. The following models shall be used as a starting point for a mutual recognition clause:

   (Goods)
   [Goods concerned] that have been lawfully manufactured or marketed in another Member State of the European Union or in a State other than a Member State of the European Union that is party to a Treaty on customs union, or have been lawfully manufactured in a State that is party to a free trade zone Treaty that is binding on the Netherlands and which meet requirements that provide a level of protection that is at least equivalent to the level pursued by national requirements shall be equated with [Indication of the relevant goods] as referred to in [this Act/this Decree/this Regulation].

   (Inspections)
   A certificate of approval issued by an independent inspection institution in another Member State of the European Union or in a State other than a Member State of the European Union that is party to a Treaty to that effect or also to that effect that is binding on the Netherlands, which certificate was issued on the basis of investigations that provide a level of protection that is at least equivalent to the level pursued with the national investigations, shall be equated with [indication of the document concerned] as referred to in [this Act/this Decree/this Regulation].

   (Services)
   Professional requirements set in another Member State of the European Union or a State, not being a Member State of the European Union, that is a party to a Treaty to that effect or also that effect that is binding on the Netherlands, and which guarantee a level of professional practice that is at least equivalent to the level pursued with the national requirements, shall be equated with the professional requirements in respect of [indicate the service concerned] as referred to in [this Act/this Decree/this Regulation].

NOTES

The free movement of goods and services in the EU means that Member States may not refuse goods, services or inspections lawfully placed on the market or carried out in another Member State because they do not comply with their own national rules. This is called the principle of mutual recognition. The principle entails that goods and services that are not identical to their own national goods and services, but which do satisfy foreign requirements that provide at least an equivalent level of protection, must be admitted. When the admission is preceded by an inspection, inspections carried

out on the basis of equivalent foreign investigations must be recognised. Where the provision of services requires a certain level of professional qualification, equivalent foreign professional requirements must be recognised. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJEU 2005, L 255) as transposed into the Recognition of EU vocational qualifications Act is relevant to the recognition of vocational qualifications, If this Directive applies, a clause of mutual recognition shall not be included, but in a regulation requiring a professional qualification the latter shall be equated with an approved recognition as referred to in Section 5 of the Recognition of EU vocational qualifications Act. Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures for the application of certain national technical rules to goods lawfully placed on the market in another Member State and repealing Decision No 3052/95/EC (OJEU 2008, L 218) contains specific procedures for the implementation of the principle of mutual recognition in the field of goods.

For the purposes of protecting legitimate interests such as public health, the interests of the consumer, public policy or public security, a Member State may impose requirements on goods, inspections or services (Articles 36 and 52 TFEU; ECJ case 120/78, Cassis de Dijon, ECLI:EU:C:1979:42). In order to promote the admission of equivalent foreign goods, services and inspections on national territory, a regulation that sets requirements for goods, inspections or services must also include a mutual recognition clause (ECJ cases C-184/96, Foie gras, ECLI:EU:C:1998:495, and C-355/98, Commission/Belgium, ECLI:EU:C:2000:113). By its nature, this obligation applies only in so far as it concerns autonomous national legislation and not to implementing legislation prompted by binding EU legal acts. In so far as harmonisation has taken place, products and services (both domestic and foreign) are assessed on the basis of uniform EU requirements. See Instruction 9.1 for what the implementation of binding EU legal acts should be understood to mean.

Only where it is undesirable from the point of view of protecting legitimate interests, such as public policy or public security, to allow equivalent foreign goods, services or inspections in national territory, may a mutual recognition clause be omitted. The same applies if, by their nature (in the case of a total ban), there are no equivalent foreign requirements.

The consequence of omitting a mutual recognition clause is that foreign goods, services or inspections must comply with the (additional) national requirements, resulting in a potential impediment to trade. It is therefore advisable to treat this exception with restraint. It is also advisable to address the considerations that led to this in the explanatory notes to a regulation that does not contain a mutual recognition clause. If the Services Directive applies, the options for setting rules are further limited (see Instructions 5.29 and 5.30). See also paragraph 7.2 on the notification of requirements for goods and services.

In a number of treaties with non-Member States, the regime described above is extended to other states. The most important example of this is the Agreement on the European Economic Area. As regards goods, a distinction should be made between non-Member States with which the EU is in a customs union and non-Member States with which the EU forms a free trade area. In the case of a customs union, mutual recognition applies both to goods lawfully manufactured in the non-Member State and to goods lawfully placed on the market in the non-Member State concerned. In the case of a free trade zone, mutual recognition is limited to goods lawfully manufactured in the non-Member State concerned. In the latter case, the passage "or placed on the market" must be omitted. It is advisable to list the countries in question in the explanatory memorandum. The European Union also concludes treaties in this area that bind the Netherlands, without the Kingdom being a party as such. In that case, the Netherlands is bound by the relevant treaty on the basis of European law. The model also aims to include those treaties. Instruction 8.1, third paragraph, does not apply to this situation.

Second paragraph. No mutual recognition clause need be included in regulations that only apply in Bonaire, Sint Eustatius and Saba. This is due to the fact that these islands are not part of the European Union but are covered by the association of overseas countries and territories (OCTs).

Instruction 5.29 Authorisation scheme within the meaning of the

Services Act

1. An authorisation scheme within the meaning of Section 2(1) of the Services Act:
   a. shall be included only if it has no discriminatory effect vis-à-vis the service provider concerned, this is necessary for an overriding reason relating to the public interest, and the objective pursued cannot be achieved by a less restrictive measure, in particular because an ex post control would be too late to be effective;
   b. shall be exclusively excluded from the effect of Section 4.1.3.3 of the General Administrative Law Act for overriding reasons relating to the public interest, including the interests of third parties.
2. If the conflict rule of Article 3 of the Services Directive and Section 2(3)(a)(3) of the Services Act apply to an authorisation scheme as referred to in the first paragraph, this will be explained.
3. Where an authorisation scheme as referred to in the first paragraph limits the number of available authorisations, a selection procedure shall be established to provide all safeguards for transparency and impartiality for candidates, including, in particular, adequate disclosure of the opening, execution and conclusion of the procedure.

NOTES

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006, L 376), the Services Directive, defines the term "authorisation scheme" in Article 4(6) as "any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof". The applicability of the Services Directive entails a number of obligations and restrictions. Sections 28 et seq. of the Services Act also contain specific provisions for authorisation schemes that fall within the scope of the Services Directive. See also the notes to Instruction 5.56.

First paragraph, part a This obligation ensues from Article 9 of the Services Directive. Overriding reason relating to the public interest shall in any case be deemed to be the reasons recognised by the Court of Justice of the European Union.

First paragraph, part b Pursuant to Section 28 of the Services Act, Section 4.1.3.3 of the General Administrative Law Act applies to applications for an authorisation falling within the scope of the Services Directive, unless provided otherwise by law. Section 4.1.3.3 contains a rule whereby an applicant will receive a positive decision on an application where the authority applied to has failed to respond within the time period set. This rule is usually referred to as lex silencio positivo. The Services Directive requires the introduction of lex silencio positivo, but allows the possibility of making an exception if this is justified for overriding reasons relating to the public interest, including a legitimate interest of third parties. In addition, by its nature, lex silencio positivo cannot be applicable to an authorisation within the meaning of the Services Directive, because the relevant administrative body does not take decisions on applications within the meaning of the General Administrative Law Act, or because the intended consequences of the granting of the authorisation cannot be tacitly created, but require actual action by the administrative body. Examples include reporting and registration obligations.

Second paragraph. The conflict rule, also known as a priority rule, was established to regulate the relationship between obligations under the Services Directive and obligations under other binding EU legal acts. If application of the Services Directive to an authorisation scheme conflicts with obligations arising from other binding EU legal acts, the relevant other obligations shall prevail. In order to avoid uncertainty regarding the question of whether the Services Directive applies in full or in part, it is recommended that application of conflict rules be mentioned in the explanatory notes.
Third paragraph. This obligation follows from Article 12 of the Services Directive and pertains to situations where the number of authorisations available for a given activity is limited because of the scarcity of available natural resources or technical capacity.

Instruction 5.30 Requirements for the provision of services

1. A regulation falling within the scope of Article 16 of the Services Directive shall not impose requirements for the provision of services by service providers established in another Member State of the European Union who do not comply with the principles of non-discrimination, necessity for reasons of public policy, public security, public health or the protection of the environment and proportionality.
2. A regulation falling within the scope of Article 15(2) of the Services Directive shall not include requirements that do not comply with the principles of non-discrimination, necessity due to an overriding reason relating to the public interest and proportionality.

NOTES

The Services Directive limits the possibilities of setting requirements regarding services. See Section 1 of the Services Act for the definition of the term "requirement" within the meaning of the Services Directive.

First paragraph. Under Article 16 of the Services Directive, requirements for the provision of services by service providers not established in the European part of the Netherlands may be imposed only on the basis of one or more of the four grounds stated. In addition, they should not distinguish, directly or indirectly, by nationality or, for legal persons, by Member State of establishment, and are proportionate to the interest to be protected. If requirements are set, they will be notified to the European Commission (see Instruction 7.7).

Second paragraph. Under Article 15(2) and (3) of the Services Directive, certain requirements for service providers established in the European part of the Netherlands may be set only subject to certain conditions. They are:

a. quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers;
b. an obligation on a provider to take a specific legal form;
c. requirements that relate to the shareholding of a company;
d. requirements, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, that reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;
e. a ban on having more than one establishment in the territory of the same State;
f. requirements fixing a minimum number of employees;
g. fixed minimum and/or maximum tariffs with which the provider must comply;
h. an obligation on the provider to supply other specific services jointly with their service.

Those requirements may be imposed only if they are non-discriminatory, proportionate and necessary due to an overriding reason relating to the public interest. Such requirements are notified to the European Commission (see Instruction 7.7).

§ 5.8 Provision of Information and data processing

Instruction 5.31 Alignment with definitions of key registers

If data belonging to citizens, businesses or institutions are required for the implementation of a regulation, the description of the underlying terms shall as far as possible refer to or align with the definitions in Acts concerning key registers.

NOTES

An important basic principle to apply when setting up a government service or an e-government

service is that of "one-off supply, multiple use" of data. The government does not require citizens, businesses and institutions to provide information it already possesses. This is reflected in the fact that when, for example, filing tax returns or applying for licences, citizens, businesses and institutions do not have to provide information that is already known to the government.

A system of key registers has been set up, which includes basic data that are necessary for the implementation of various processes, including decision-making processes, of government organisations, in order to put this basic principle into practice. Some of the data in those key registers have been designated as "authentic", meaning that a government organisation may, as a general rule, assume that the data are accurate and is generally obliged to use them in the performance of its tasks.

The aforementioned obligation of government organisations and the rights of citizens, businesses and institutions are explicitly laid down with regard to this authentic data in the various key register laws. See, for example, the Personal Records Database Act (Wet basisregistratie personen) and the Key Registers of Addresses and Buildings Act (Wet basisregistraties adressen en gebouwen). There are 11 key registers in total. For more information, visit www.digitaleoverheid.nl.

In order to establish the widest possible use of the one-off supply, multiple use principle, legislation dealing with the exchange of data with government organisations shall, where possible refer to or align with definitions used in the key registers.

An overview of the key registers and the terms and authentic data contained therein is included in the System Catalogue. See www.stelselcatalogus.nl.

Instruction 5.32 Information paragraph in explanatory notes

If the availability or exchange of information between government organisations is relevant to the implementation of a regulation, a separate information paragraph in the explanatory notes shall address the manner in which the provision of information is arranged in organisational and technical terms.

NOTES

Provision of information structure. For government organisations to be able to perform their tasks properly, it is important that the information provision systems set up or to be set up for that purpose are not only practical and effective, but also meet legal and organisational preconditions. Legal preconditions include alignment with legislation relating to information or the provision of information, such as the Personal Data Protection Act and the key register laws. Organisational preconditions include the responsibility for the provision of information and the necessary powers and systems and the cooperation and alignment between the organisations involved and their information systems.

Contents of information paragraphs. The contents of an information paragraph will vary according to the manner in which the information is provided. In some cases a full description of the proposed system, which deals with the various information relationships, the powers that exist or are created, the manner in which alignment with existing information systems is achieved, etc., will be given, and others will suffice with a description of how an existing information system will be used. See also, with regard to information paragraphs, Instruction 4.43, part d.

Consultation on information paragraphs. Pursuant to Section 5 of the Civil Service Information Systems Decree 1990 (Besluit IVR 1990), the Minister of the Interior and Kingdom Relations has a coordinating power in the field of information provision in the public sector. The IVR 1990 Decree also designates ministers responsible for various sub-areas involved in the provision of information. The relevant ministries will be consulted on the information paragraph.

Instruction 5.33 Processing Personal Data

Regulations that include provisions on the processing of personal data shall contain a specific and explicit description of the purposes of the data processing operations and the explanatory notes shall contain an explicit assessment of the interests of controllers and data subjects in relation to those purposes.

NOTES

A regulation in which personal data processing features prominently will contain a specific and explicit description of the purposes of the data processing operations in implementation of Sections 7 and 8 of the Personal Data Protection Act. Those purposes must also be justified. Therefore, the drafting process of any such regulation should always include an assessment balancing the interests involved in the processing of personal data and the interest of protecting those data. See also, in this regard, Instruction 4.43, part d. The framework of international law and European law and the Constitution are taken into account in the balancing of interests. In addition, the alignment of special statutory regulations with the Personal Data Protection Act requires separate attention, including in view of the principle of legality. The processing of special data is, in principle, prohibited under Section 16 of the Personal Data Protection Act. If the Personal Data Protection Act does not provide for an explicit arrangement for the processing of those data, an arrangement will have to be made at the level of Act of Parliament.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJEU 2016, L 119) has been applicable since 25 May 2018. The provisions of this Regulation on, among other things, the principles for the processing of personal data, the legal bases for processing and further processing, and the processing of special personal data will replace the Personal Data Protection Act and apply directly. The general principles of lawful processing then follow from Article 5 of the Regulation. The requirements contained therein are comparable with the requirements imposed by the Personal Data Protection Act. When drafting new regulations, it is important not to include provisions that may jeopardise the proper application and implementation of the Regulation and, where applicable, Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJEU 2016, L 119).

Instruction 5.34 Structural basis for the provision of personal data

If it is necessary to provide for the mutual provision of personal data between administrative bodies or supervisory bodies on a structural basis and the applicable confidentiality provisions preclude this, an explicit regulation for the provision of data, including the determination of the object of the provision of data, shall be provided for at the level of Act of Parliament.

NOTES

The report of the Supervisory Rules Review Working Group, The Hague, August 2008, describes the background to the purpose limitation of data processing, the meaning of the term further processing of data and the function of confidentiality provisions specifically for the supervision of compliance. See the annex to the letter from the Minister of Justice of 29 October 2008 to the President of the Lower House of the States General (Parliamentary Papers II 2008/09, 31700 VI, no. 70). If the police or the Public Prosecution Service are one of the parties involved, recourse will usually have to be made to the Police Data Act (Wet politiegegevens) and the Judicial and Criminal Records Act (Wet justitiële en strafvorderlijke gegevens).

§ 5.9 Compliance and investigation monitoring

Instruction 5.35 Use of the terms "supervision" and "investigation"

1. The activities performed by or on behalf of an administrative body in order to determine whether rules are being complied with are referred to as *"monitoring compliance"* with those regulations.
2. The activities to determine in specific cases whether an offence has been committed on the basis of a reasonable suspicion that this is the case are referred to as an *"investigation"* of the facts.

NOTES

It is important to make a distinction between compliance monitoring within the meaning of Title 5.2 of the General Administrative Law Act and investigation. Although regulatory authorities sometimes also have investigative powers, with a view to both the rights of the interested party or the suspect, as well as the relationship with the Public Prosecution Service, it must be as clear as possible when their activities involve compliance supervision and when they involve an investigation. See, with regard to the relationship between compliance monitoring and investigation, the parliamentary documents regarding the third tranche of the General Administrative Law Act (in particular Parliamentary Papers II 1994/95, 23700, no. 5, pp. 47-50, Parliamentary Papers 1995/96, 23700, no. 185b).

In cases where either compliance monitoring or detection is the intended purpose, terms such as "checks", "inspection" or "enforcement" are avoided for these activities. These terms do not show sufficiently clearly whether the activities involve monitoring or investigation. However, the term "enforcement" may be used in explanatory documents for all enforcement mechanisms.

Instruction 5.36 Appointment of supervisory authorities

The following models shall be used for regulations involving the appointment of supervisory authorities:

a. where supervisory authorities are appointed by the law:
   The [officials or other persons] are charged with monitoring compliance with [designation of the rules concerned].
b. where supervisory authorities are appointed pursuant to the law:
   1. The [officials/persons] appointed by a decision of [name of administrative body] are charged with monitoring compliance with [designation of the rules concerned].
   2. A decision as referred to in the first paragraph shall be notified via publication in the Government Gazette.

NOTES

The powers possessed by supervisory authorities for the performance of their duties are generally regulated in Title 5.2 of the General Administrative Law Act. Pursuant to Section 5:14 of that Act, the powers may be restricted, inter alia, by statutory regulation. See, in this regard, the model in Instruction 5.37.

Title 5.2 of the General Administrative Law Act does not apply in Bonaire, Sint Eustatius and Saba. The granting of powers to supervisory authorities will have to be explicitly regulated in a regulation (also) applicable to those islands (see, for example, Sections 7:4 et seq. of the Financial Markets (BES) Act (Wet financiële markten BES)). It should be taken into account that Title 5.2 of the General Administrative Law Act contains references to Dutch legislation that does not apply in Bonaire, Sint Eustatius and Saba. Such references must be replaced by references to the relevant BES legislation.

Instruction 5.37 Exclusion of supervisory powers

The following model shall be used for the exclusion of supervisory powers:
The supervisory authority does not have the [jurisdiction/powers], referred to in [section/sections …] of the General Administrative Law Act.

NOTES

As a rule, in view of the connection between the two powers, the powers with regard to the investigation of cases (Section 5:18 of the General Administrative Law Act) and the powers with regard to the investigation of means of transport (Section 5:19 of the General Administrative Law Act) are always jointly excluded. In view of the basic nature of these powers, the powers to demand information (Section 5:16 of the General Administrative Law Act) and to demand inspection of an identity document (Section 5:16a of the General Administrative Law Act) are never excluded. See also part 2, paragraph 5.7, of the Explanatory Memorandum to the Act implementing the General Administrative Law Act (Third Tranche) I (Aanpassingswet derde tranche Awb I) (Parliamentary Papers II 1996/97, 25280, no. 3).

Instruction 5.38 Special investigation officers

1. The following model shall be used if it is deemed desirable in special cases also to charge persons other than the general investigation officers appointed by or pursuant to Section 141 of the Code of Criminal Procedure (Wetboek van Strafvordering) with the detection of certain offences that are not economic offences:
   1. Notwithstanding [Section 141 of the Code of Criminal Procedure/Section 184 of the Code of Criminal Procedure (BES)], [name of officers] shall be charged with the investigation of offences punishable under [section/sections …]. These officers shall also be charged with the investigation of acts punishable under [Sections 179 to 182 and 184 of the Criminal Code (Wetboek van Strafrecht)/Sections 185 to 188 and 190 of the Criminal Code (BES) (Wetboek van Strafrecht (BES))], in so far as those acts relate to an order, request or action they have made or undertaken.
   2. A decision as referred to in the first paragraph shall be notified via publication in the Government Gazette.
2. As a general rule, special investigation officers shall not be granted any special investigative powers in addition to the powers conferred on them pursuant to the Code of Criminal Procedure and the Economic Offences Act (Wet op de economische delicten).

NOTES

Section 17 of the Economic Offences Act (Wed) already contains a provision for the appointment of investigation officers for economic offences. The present model is intended for cases where it is desirable to task other officers with the investigation of general criminal offences in special laws in addition to Section 141 of the Code of Criminal Procedure (Sv). The actual power to appoint may be exercised or delegated in the special law itself.

If the special law itself appoints investigation officers (for example, officers of a particular department), the first paragraph of the model provision shall include the following words after the word "charged": the officers of ... (followed by the name of the department).

If the special law delegates the appointment of investigation officers, this shall preferably take place by delegation to the Minister of Justice and Security; delegation to the Minister of the relevant specialist department is formally possible, but is deemed less desirable. In the event of delegation of the power to appoint, the first paragraph of the model provision shall include the following words after the word "charged": the officers appointed by decision of Our Minister of Justice and Security.

Investigation officers appointed by or pursuant to a special law are special investigation officers within

the meaning of Section 142(1)(c) of the Code of Criminal Procedure. In addition, before being able actually to perform their duties, special investigation officers must meet and certain professional and reliability requirements and be sworn in. Rules have been set for this in the Special Investigation Officer Decree (Besluit buitengewoon opsporingsambtenaar). This decree also contains rules on how special investigation officers should identify themselves. The Dutch Code of Criminal Procedure and the Economic Offences Act do not apply in Bonaire, Sint Eustatius and Saba. Provisions in a regulation that applies also to those islands will have to be brought into line with the corresponding provisions of the Code of Criminal Procedure (BES). There is no counterpart of the Economic Offences Act for Bonaire, Sint Eustatius and Saba.

Instruction 5.39 Police assistance

1. The following model shall be used for regulations providing for the ability to call on the police for assistance when exercising powers:
   The [description of authorised persons] shall, where necessary, exercise their [description of power] with the assistance of the police.
2. If the intention is to assign tasks or powers only to police officers who carry out enforcement activities, the officers to be charged with those activities shall be referred to as: *the officers appointed for the performance of police duties.*
3. If the intention is to assign tasks or powers to other police staff as well, the officers to be tasked shall be referred to as: *police officers.*

NOTES

First paragraph. Section 5:15(2) of the General Administrative Law Act already provides for the power of supervisory authorities to call on the police for assistance when entering properties (with the exception of homes).

Second paragraph. These are police officers as referred to in Section 2(a), (c) and (d) of the Police Act 2012, who have been appointed for the performance of police duties. The other officers referred to in Section 2 of that Act are thus excluded. The wording "appointed for the performance of police duties" also includes the military personnel of the Royal Netherlands Military Constabulary (Koninklijke Marechaussee) who perform police duties.

Third paragraph. This is an extension to include the other officers referred to in Section 2 of the Police Act 2012, in particular technical, administrative and support staff. See, for example, Section 94 of the Intelligence and Security Services Act 2017.

EXAMPLE FOR THE FIRST PARAGRAPH

– The officials referred to in the first paragraph will, if necessary, exercise the powers assigned to them in Section 5:17 of the General Administrative Law Act with the assistance of the police. (Section 12b(2) of the Act establishing the Netherlands Authority for Consumers & Markets)

§ 5.10 Sanctions

Instruction 5.40 Administrative sanctions

The following options, in particular, are considered as administrative sanctions: revoking or suspending a decision, imposing an administrative enforcement order, imposing an order subject to a penalty for non-compliance or imposing an administrative fine.

NOTES

There are four administrative sanctions that, because of their general nature, qualify as a means of enforcement in a large number of cases and for various kinds of legislation. A model is included in Instruction 5.42 for granting the power to apply an administrative enforcement order and an order subject to a penalty for non-compliance (both remedial sanctions). Title 5.3 of the General Administrative Law Act (remedial sanctions) contains general rules on the imposition of an administrative enforcement order (Section 5.3.1) and the imposition of an order subject to a penalty for non-compliance (Section 5.3.2). The power to apply an administrative enforcement order automatically implies the power to impose an order subject to a penalty for non-compliance (see Section 5:32(1) of the General Administrative Law Act). The imposition of an administrative fine (punitive sanction) is regulated in Title 5.4 of the General Administrative Law Act.
Titles 5.3 and 5.4 of the General Administrative Law Act do not apply in Bonaire, Sint Eustatius and Saba. A regulation that applies (also) to those islands must provide for a further regulation of the power to apply administrative enforcement or to impose an order subject to a penalty for non-compliance.

When granting the power to impose an administrative fine, Articles 6 and 7 of the ECHR and Articles 14 and 15 of the ICCPR are observed (see in particular the Explanatory Memorandum to the General Administrative Law Act (Fourth Tranche), Parliamentary Papers II 2003/04, 29702, no. 3, pp. 117 et seq.).

Instruction 5.41 Revocation or suspension of a decision

1. If the revocation or suspension of a decision by means of the imposition of a sanction must be possible, the relevant powers shall be expressly provided for.
2. The grounds that could or must lead to the revocation or suspension of a decision by means of the imposition of a sanction shall be specified in the regulation.

NOTES

In certain circumstances, it may also be appropriate to make it possible to amend a decision by means of the imposition of a sanction. See, for example, Section 10 of the Audit Firms (Supervision) Act (Wet toezicht accountantsorganisaties).
See also Instruction 5.21, second paragraph.

Instruction 5.42 Administrative enforcement and penalties

The following model shall be used for the granting of the power to impose an administrative enforcement order or an order subject to a penalty for non-compliance:
[Name of administrative body] is authorised to impose [an administrative enforcement order/order subject to a penalty for non-compliance] in enforcement of [designation of the obligations concerned].

NOTES

Making use of this model - if the regulation is one applicable in the European part of the Netherlands - indicates that Sections 5.3.1 or 5.3.2 of the General Administrative Law Act are applicable. These parts of the General Administrative Law Act do not apply in Bonaire, Sint Eustatius and Saba (see also the notes to Instruction 5.40). The model is of particular importance for the granting of the power to impose an administrative enforcement order (or only the power to impose an order subject to a penalty for non-compliance) on the administrative bodies of the central government. The Municipalities Act, the Bonaire, Sint Eustatius en Saba (Public Bodies) Act, the Provinces Act and the Water Boards Act already contain a general power to impose an administrative enforcement order on municipal authorities, authorities of the public bodies Bonaire, Sint Eustatius and Saba, provincial authorities and

water authority boards.

It follows from Section 5:32 of the General Administrative Law Act that an administrative body authorised to impose an administrative enforcement order may instead also impose an order subject to a penalty for non-compliance. This means that only the power to impose an administrative enforcement order need be provided for in order to allow the use of both an administrative enforcement order and an order subject to a penalty subject to non-compliance. If - for example because the administrative body does not have the necessary staff or resources to do so - it is undesirable also to grant an administrative body the power to impose an administrative enforcement order, it may be decided to grant the administrative body only the power to impose an order subject to a penalty for non-compliance.

Instruction 5.43 Maximum amount of an administrative fine

1. When determining the maximum amount of an administrative fine, reference shall be made to one of the penalty categories provided for in the Criminal Code, unless it is necessary to align with different amounts in an existing system.
2. The following model shall be used to determine the maximum amount of an administrative fine:
   The administrative fine to be imposed under [section …/sections …] shall not exceed the amount fixed for the […] category referred to in [Section 23(4) of the Criminal Code/Section 27(4) of the Criminal Code (BES).
3. The following model shall be used if, owing to the deterrent effect or major financial interests, it is necessary to impose a very substantial administrative fine on companies that is in line with the highest penalty category in the Criminal Code or that, if that is greater, is related to the turnover of the company in question:
   The administrative fine to be imposed under [section … /sections …] shall not exceed the amount determined for the sixth category referred to in [Section 23(4) of the Criminal Code/Section 27(4) of the Criminal Code (BES) or, if that is greater, 10% of the company's turnover, or, if the infringement was committed by an association of undertakings, 10% of the joint turnover of the undertakings belonging to the association, in the financial year preceding the decision in which the administrative fine is imposed.

Notes

First paragraph. Administrative law sets the maximum amount of administrative fines at an amount that is comparable with one of the fine categories provided for in Section 23(4) of the Criminal Code (Section 27(4) of the Criminal Code (BES)). Owing to the dynamic reference, the amounts are indexed regularly.

Third paragraph. In a number of laws, the maximum amount is not fixed, but rather related to turnover (see, for example, Section 57 of the Competition Act (Mededingingswet), Section 85 of the Health Care (Market Regulation) Act and Section 1:82 of the Financial Supervision Act). An open maximum amount of a fine such as this is acceptable, provided that sound arguments can be put forward, such as the varying size of companies.

Instruction 5.44 Describing acts liable to sanctions

Provisions to be enforced by sanctions shall be worded as accurately as possible.

Notes

Legal certainty is particularly important for provisions enforced by criminal or administrative sanctions. citizens must be able to infer from provisions precisely in which cases an act can lead to the application of a sanction. If a lack of clarity can arise because of reference to other provisions, no such

references should be made (see Instruction 3.27). See also Section 5:4(2) of the General Administrative Law Act.

Instruction 5.45 Criminal sanctions

1. If the definition of a criminal offence is left to a subordinate regulation, the available penalties shall be provided for in the Act of Parliament.
2. The maximum fine that can be imposed shall be indicated by mentioning one of the fine categories referred to in Section 23(4) of the Criminal Code, or Section 27(4) Criminal Code (BES).
3. The following model shall be used to establish an offence that is liable not only to a fine but also to a prison sentence as a criminal offence:
   The contravention of Section … shall be punished by [imprisonment/pre-trial detention] not exceeding [number of months or years] or a fine of the … category.

Notes

First paragraph. Pursuant to Article 89(2) and (4) of the Constitution, criminal sanctions for the contravention of a provision in an order in council (or a ministerial regulation) may not be regulated in that order (or ministerial regulation. The types of penalty and the maximum penalties to be imposed must be determined by Act of Parliament.

Third paragraph. Pursuant to Section 9(3) of the Dutch Criminal Code, courts may, if the law so provides, impose a fine in addition to imprisonment or detention. This wording indicates that possibility. See, with regard to Bonaire, Sint Eustatius and Saba: Section 17a(2) of the Criminal Code (BES). In the European part of the Netherlands, for serious offences liable to a prison sentence or a fine and for minor offences liable to a prison sentence, courts may also impose community punishment orders instead of a prison sentence or a fine (Section 9(2) of the Criminal Code). The Criminal Code (BES) does not have the option of imposing community punishment orders.
Prison sentences and detention are always alternatives, so one of the two will have to be chosen. That choice is related to the choice to be made on the basis of Instruction 5.46: serious offences are liable to a prison sentence and minor offences (if it is desirable to be able to also impose a term of imprisonment for the minor offence) to detention.

Example for the second paragraph

– Contravention of the first paragraph shall be punished by a fine of the first category. (Section 45(2) of the Licensing and Catering Act (Drank- en Horecawet)

Instruction 5.46 Serious offences and minor offences

With regard to every offence established by an Act of Parliament or that could be established pursuant to an Act by subordinate regulation, the Act of Parliament shall indicate whether the offence is a serious offence or a minor offence. The following models shall be used here:

A. The acts punishable under Section ... are serious offences.
B. The acts punishable [under/pursuant to] Section ... are minor offences.

Notes

Offences categorised as serious offences can be established only by Act of Parliament. The definition of the offence is therefore included in the Act itself. In the case of minor offences, if the Act leaves the definition of the offence to a subordinate regulation, the definition of the offence may also be included in that subordinate regulation.

In the case of economic offences, it is necessary to indicate whether an offence is a serious offence or a minor one only if they are mentioned in Section 1(3) of the Economic Offences Act. Otherwise,

Section 2 of the Economic Offences Act itself provides for whether the offence is a serious offence or a minor one (see also Instruction 5.47). The Economic Offence Act does not apply in Bonaire, Sint Eustatius and Saba.

Instruction 5.47 Economic offences

1. An act shall be made punishable as an economic offence by including the provision concerned in Sections 1 or 1a of the Economic Offences Act.
2. When designating economic offences, the sections of the relevant regulation whose contravention constitutes an economic offence shall be listed. If necessary, the individual paragraphs shall be mentioned as well.
3. Designations of economic offences shall be worded in accordance with the following example:
   The following shall be included in Section 1(4) of the Economic Offences Act in alphabetical order:
   the Private Security Organisations and Detective Agencies Act [Wet particuliere beveiligingsorganisaties en onderzoekcherchebureaus], Sections 2 and 5(2) and (4);
4. If the Economic Offences Act is amended in connection with the amendment of a regulation that already contains economic offences, the amendment shall be worded in accordance with the following examples:
   A. In Section 1a (1)° of the Economic Offences Act, "Sections 7, 14(1) 19, 20(1) 21, 22(3) and 26(6);" in the sentence relating to the Fertilisers Act shall be replaced by "(...)".
   B. In Section 1a(3) of the Economic Offences Act, the phrase relating to the Soil Protection Act (Wet bodemscherming) is repealed. The phrase concerned shall be included in alphabetical order in Section 1a(1) of the Economic Offences Act.

NOTES

Environmental offences come under Section 1a of the Economic Offences Act. When deciding whether they should come under Section 1 or Section 1a, the determining factor is whether the Act concerned provides or in part provides for the protection of environmental interests (see Parliamentary Papers II 1992/93, 23196, no. 3, pp. 7-9. Section 1a(1) includes offences that directly harm the environment or pose a serious and immediate threat. As a rule, subsection (1) does not include less serious environmental offences, which primarily involve non-compliance with administrative obligations and offences in the area of resisting a public servant. These offences are included under subsection (3).

As regards other economic offences, they are included in subsection (4) of Section 1, unless there are special reasons for choosing inclusion in one of the other subsections of Article 1.

The Economic Offences Act does not apply in Bonaire, Sint Eustatius and Saba.

§ 5.11 Legal protection under administrative law

Instruction 5.48 Legal Protection

1. As a general rule, a special Act shall not contain any provisions concerning legal protection under administrative law.
2. In addition to the existing courts, no new bodies shall be charged with the administration of justice in administrative matters.

NOTES

First paragraph. The systems of legal protection laid down in the General Administrative Law Act and the Administrative Justice (BES Islands) Act (WarBES) will generally suffice (see also Instruction 2.46). It follows from the General Administrative Law Act that, if a special law confers on an administrative body the power to take decisions, such decisions are, as a general rule, open to objections and appeals. The Administrative Justice (BES Islands) Act contains a similar provision, although it uses the term "beschikking" instead of "besluit" for "decision". Another difference as compared with the General Administrative Law Act is that the Administrative Justice (BES Islands) Act has an optional objection procedure: interested parties may, if they wish, miss out the objection phase and institute a direct action.

It also follows from the first paragraph that, in principle, the same appeal options must be open to all interested parties, and that acts not intended to have legal effect are generally not appealable before an administrative court.
A number of exceptions to the general administrative procedural law provided by the General Administrative Law Act are included in three annexes to that Act; see Instruction 5.49. The Administrative Justice (BES Islands) Act has no annexes containing exceptions. If it is necessary to make an exception to the Administrative Justice (BES Islands) Act, this is provided for in the special Act.
Kingdom Acts. In the case of national legislation, legal protection generally reflects the legal rules of the country where an administrative body has its registered office. For instance, decisions by a Dutch administrative body charged with the implementation of national legislation are generally subject to the General Administrative Law Act (or the Administrative Justice (BES Islands) Act), and decisions of, for example, an Aruban administrative body, to the National Ordinance on Administrative Justice.

Instruction 5.49 Different legal protection in the annexes to the General Administrative Law Act

If there is cause for one of the following departures from a main rule of administrative procedural law included in the General Administrative Law Act, that departure shall be provided for in the annexes to that Act:

a. direct action;
b. no appeal;
c. appeal in a single instance;
d. appeal to a court other than in accordance with the rules on territorial jurisdiction;
e. an appeal lodged with an administrative court other than the Administrative Jurisdiction Division of the Council of State;
f. reduced court registry fee.

NOTES

There must be a good reason for departures from the general administrative procedural law provided for by the General Administrative Law Act. For a few situations, the General Administrative Law Act itself provides for the possibility of such a departure by including a special Act or part thereof in an annex to the General Administrative Law Act;

- direct action: see Section 7:1(1)(g), and annex 1;
- no appeal: see Section 8:5(1), and Section 1 of annex 2;
- appeal in one instance: see Section 8:6 and chapter 2 of annex 2;
- appeal to a court other than in accordance with the rules on territorial jurisdiction: see Section 8:7(3), and chapter 3 of annex 2;
- an appeal lodged with an administrative court other than the Administrative Jurisdiction Division of the Council of State: see Sections 8:105 and 8:106(1)(a), and chapter 4 of annex 2;
- reduced court registry fee: see Sections 8:41(2)(a), and 8:109(1)(a), and annex 3.

When an appeal to the Central Appeals Tribunal (for the public service and social security matters) (CRvB), is available as an option, a decision as to whether to grant suspensive effect must be made;

see Section 8:106(1)(a) of the General Administrative Law Act and Sections 9 and 10 of annex 2 to that Act.

If a regulation or provision listed in an annex to the General Administrative Law Act is repealed or cancelled, it is advisable to delete reference to it with effect from the same date, even if the regulation or provision continues to apply to "old" cases under transitional law. If desired, that transitional law may provide for a supplement to or departure from the permanent transitional law provided for in Section 11:3 of the General Administrative Law Act.

Instruction 5.50 Jurisdiction

The conferral of jurisdiction on an administrative court shall be consistent with existing division of jurisdiction arrangements.

NOTES

In most cases, there is no explicit appeal provision. It follows from the General Administrative Law Act that, if there is no more detailed regulation, an appeal may be lodged with the district court (in accordance with the rules territorial jurisdiction provided for in Section 8:7(1) and (2) of the General Administrative Law Act) and with the Administrative Jurisdiction Division of the Council of State. For Bonaire, Sint Eustatius and Saba, it follows from the Administrative Justice (BES Islands) Act that an appeal may be lodged with the Court of First Instance and with the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba.

If there is a specialist court in the European part of the Netherlands for the relevant field of legislation, new regulations will allow appeals to be brought before that court. Annex 2 to the General Administrative Law Act will have to be supplemented to that end.
There is reason to confer jurisdiction on the Central Appeals Tribunal in the areas of public service law, pension legislation, social security, study financing and legislation for war victims. In some cases, the Central Appeals Tribunal acts as administrative court in the first and only instance (Section 3 of annex 2 to the General Administrative Law Act), but in most cases as an appeal court (Sections 9 and 10 of annex 2 to the General Administrative Law Act).

There is reason to confer jurisdiction on the Trade and Industry Appeals Tribunal (CBb) for regulations of a socio-economic nature, i.e. regulations that entail economic classification or guidance or quality standards for products. A regulation can generally be said to be of a socio-economic nature if it concerns statutory provisions that primarily concern the conducting of professions or businesses. This does not apply to rules relating to the establishment and operation of establishments for the benefit of businesses or professions, such as those featuring in environmental legislation.

The Trade and Industry Appeals Tribunal usually acts as administrative court in first and only instance (Section 4 of annex 2 to the General Administrative Law Act). In some laws, however, the Trade and Industry Appeals Tribunal serves as an appeal court (Section 11 of annex 2 to the General Administrative Law Act), whilst an appeal in first instance may be brought before the district court of Rotterdam (Section 7 of annex 2 to the General Administrative Law Act). The ability to lodge an appeal in two instances in these laws is usually related to the possibility of enforcing those laws by the imposition of an administrative fine (having regard to Article 14(5) of the International Covenant on Civil and Political Rights).

Instruction 5.51 Uniformity in legal procedure

As far as possible, a single legal procedure shall be selected for a single Act.

NOTES

Uniformity of legal procedure within an Act ensures the accessibility of the procedure for all parties involved and prevents complications in simultaneous proceedings on related decisions. One reason for

differentiation may be that a single legal procedure does not sufficiently align with the existing division of jurisdiction. See, for example, the reference to Section 125 of the Municipalities Act in Section 4 of annex 2 to the General Administrative Law Act (an appeal may be lodged in a single instance, Trade and Industry Appeals Tribunal) in so far as enforcement of the Trading Hours Act (Winkeltijdenwet) is involved.

A decision imposing an administrative fine should be open to appeal in two instances, having regard to Article 14(5) of the International Convention on Civil and Political Rights. It may be desirable for other decisions that can be taken on the basis of the relevant Act to be open to appeal in a single instance. If, in that case, a differentiation of the legal procedure within the Act is chosen, it is advisable to make arrangements for the event that a single decision imposes both an administrative fine and another sanction, such as an order subject to a penalty for non-compliance.

This Instruction does not relate to the omission of the objection phase (direct action as referred to in annex 1 to the General Administrative Law Act).

Instruction 5.52 Model provisions for amendments of annexes to the General Administrative Law Act

The following examples are used as the starting point for amending an annex to the General Administrative Law Act:

A. *The following text shall be included in alphabetical order in annex 1 to the General Administrative Law Act:*
Temporary Domestic Exclusion Order Act (Wet tijdelijk huisverbod)

B. *The sentence relating to the Telecommunications Act in Section 1 of annex 2 to the General Administrative Law Act shall read as follows:*
Telecommunications Act: Sections 3.5, 3.22 and 18.9(1) and (2)

C. *The following text shall be included in alphabetical order in Section 4 of annex 2 to the General Administrative Law Act:*
Sea Act (Zeewet), with the exception of:
a. Section 5, in so far as a designation is involved
b. Section 6, in so far as the following decisions are involved:
1. a decision refusing, amending or revoking the exemption
2. a decision granting authorisation to the extent that rules are attached to it

D. *The sentence relating to the Animal Health and Welfare Act in Sections 4 and 11 of annex 2 to the General Administrative Law Act shall be deleted.*

E. *The word "Tobacco Act" (Tabakswet) in Sections 7 and 11 of annex 2 to the General Administrative Law Act shall be deleted and the following text included in alphabetical order:*
Tobacco and Tobacco Products Act (Tabaks- en rookwarenwet)

F. *The sentence relating to the Work and Social Assistance Act (Wet werk en bijstand) in Section 9 of annex 2 and Section 2 of annex 3 to the General Administrative Law Act shall be deleted and the following text included in alphabetical order:*
Participation Act (Participatiewet): Sections …

NOTES

In most cases, it is sufficient to mention the special regulation or part concerned, without further specifying the decisions concerned. See each time the first sentence of the annex or its sections, for

example the first sentence of annex 1: "No objection may be made against a decision taken on the basis of a rule referred to in this regulation or otherwise described in this regulation."

Term from the special regulation may be used to specify further the decisions concerned without those times requiring any further definition by means of a reference or otherwise.
For the sake of consistency within the General Administrative Law Act, the parts of the lists in its annexes are not concluded with punctuation marks (cf. Instruction 3.59).

Instruction 5.53 Concentration of legal protection

Where decisions are broken up in a series of successive decisions, consideration shall be given to making administrative legal protection available for one decision only.

Notes

Two aspects - limiting the burden on the judicial system on the one hand and not prejudicing the legal protection of citizens on the other - must be balanced. An example where administrative legal protection is available for only the last decision in the series is an instruction of the provincial executive to the municipal council to adopt a zoning plan (Section 4.2(1) of the Spatial Planning Act (Wet ruimtelijke ordening); see the reference to that provision in Section 1 of annex 2 to the General Administrative Law Act). Concentration of legal protection can sometimes also be achieved by providing that no grounds relating to the decision to be implemented may be adduced in an appeal against an implementing decision (see, for example, Section 27 of the Transport Infrastructure (Planning Procedures) Act (Tracéwet).

Instruction 5.54 Administrative Appeal

1. Administrative appeals shall be made available only where:
   a. the decision is not mainly non-discretionary,
   b. the interest of uniformity of policy or control by a higher administrative body in a policy area for which that body bears co-responsibility cannot be sufficiently guaranteed by other administrative instruments.
2. Unless there is a special reason for doing so, no appeals may be lodged against decisions of administrative bodies with another body of the same public body.

Notes

It follows from the systems provided for in the General Administrative Law Act and the Administrative Justice (BES Islands) Act that objection procedures are the rule and administrative appeals the exception.

Second paragraph. It is not desirable, for example, to allow a municipal executive to lodge an appeal with a municipal council. It is less objectionable to allow appeals to be lodged with a minister against decisions of a civil servant subordinate to them to whom authority to take decisions has been attributed. In such cases, however, consideration should be given as to whether an administrative appeal could be avoided by attributing the authority to take decisions to the minister, with a mandate to the civil servant.

Instruction 5.55 Suspensive effect

The following model shall be used if it is desirable for the effect of a decision to be suspended while it is still possible for the decision to be set aside by the administrative court:
The effect of the decision shall be suspended until the time limit for appeal has expired or, if an appeal has been lodged, a decision has been taken on the appeal.

NOTES

Section 6:16 of the General Administrative Law Act provides that the objection or appeal shall not suspend the effect of the decision against which it is brought unless provided otherwise by or pursuant to statutory regulation. In the interest of legal protection, in particular of interested third parties, it may sometimes be desirable to provide that the effect of a decision be suspended for a certain period after its announcement. It is important that particular attention be paid to this aspect if the implementation of the decision will result in irreversible consequences. When considering whether it is necessary to include a regulation regarding the suspension of the effect of a decision, it must be borne in mind that, as a general rule, the interested parties have the option of requesting preliminary relief from the administrative court, entailing full or partial suspension of a decision.

If an objection must first be lodged against a decision before an appeal can be lodged, it follows from the model provision, taking into consideration the system provided for by the General Administrative Law Act, that lodging an objection will also suspend the effect of the decision.

As a general rule, the suspensive effect applies to the period within which an objection or appeal may be lodged with an administrative court. A stipulation that the decision will remain ineffective until a decision has been given on an appeal lodged is a further possibility. As part of its authority to grant preliminary relief, the administrative court may decide to lift the suspension on the basis of an application submitted to that end.

The Administrative Justice (BES Islands) Act does not contain a provision comparable with Section 6:16 of the General Administrative Law Act. However, the Administrative Justice (BES Islands) Act also provides that an objection or appeal shall not suspend the effect of the decision against which it is brought.

§ 5.12 Passing on authorisation and enforcement costs

Instruction 5.56 Admissibility of passing on costs

When including provisions on the passing on of costs for admission, compliance monitoring or for the repressive enforcement of laws and regulations, the assessment framework for the passing on of authorisation and enforcement costs *"Maat houden 2014" [Guided by moderation 2014]* (Parliamentary Papers II 2013/14, 24036, no. 407) shall be complied with.

NOTES

Authorisation is understood to mean the process whereby the authorities assess whether companies or citizens meet set requirements and grant permission - where applicable, by imposing additional requirements - for the performance of certain acts. Examples include processing an application for a permit. See Section 6(2), first sentence, of the Betting and Gaming Act (Wet op de kansspelen) and Section 19(1) and (3) of the Medicines Act (Geneesmiddelenwet) for examples of situations where authorisation costs are passed on. It is stated in Article 13(2) of the Services Directive that any charges that the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures. See also Instruction 5.29.
Compliance supervision means all control activities, conducted systematically or randomly, announced or not announced, aimed at compliance with laws and regulations. Checks in respect of permit holders who in "Maat houden 1996" (Government Gazette 2000, 90) were still included in the "post-allowance" category also come under this definition.

Repressive enforcement means enforcement activities based on a reasonable suspicion of a criminal

offence or an infringement under administrative law. This definition also includes follow-up activities such as drawing up an official report or a penalty report followed by the imposition of an administrative sanction.

See, for examples of the passing on of costs related to compliance supervision and repressive enforcement, Section 6(2), second sentence, of the Betting and Gaming Act and Section 19(2) and (3) of the Medicines Act.

Instruction 5.57 Model provisions for the passing on of costs

1. The following model shall be used as a starting point if it is desirable to pass on costs for processing an application:
   1. [Name of administrative body] shall charge the costs related to the processing of the application and the issue of [the authorisation/the exemption/the diploma/the concession, etc.] and the other documents issued by or pursuant to this Act [, as well as copies and authenticated copies of these documents], at the expense of the applicant submitting the document.
   2. The amounts to be reimbursed for the costs shall be determined by ministerial regulation.
2. The following model shall be used as a starting point if it is desirable to pass on costs for the performance of work and services:
   1. [Name of administrative body] shall charge the costs associated with the performance of activities as referred to in section … to the person on whose behalf those activities are performed.
   2. The amounts to be reimbursed for the costs shall be determined by ministerial regulation.
3. The following model shall be used as a starting point if it is desirable to include amounts in the Act and later adjust them by means of indexation instead of a second paragraph that provides for the determination of the amounts by ministerial regulation:
   2. The amounts to be reimbursed for the costs are as follows: …
   3. The amounts may be changed by ministerial regulation in so far as the [name of index, for example the consumer price index] gives cause to do so.

§ 5.13 Evaluation provision

Instruction 5.58 Evaluation provision

The following model shall be used a starting point if it is desirable to provide that an Act shall be evaluated or that a report shall be made on its implementation:
Our Minister of/for … shall send to the States General [in agreement with Our Minister of/for …] within five years of the entry into force of this Act a report on the effectiveness and effects of this Act in practice [or further clarification of aspects or parts of the Act].

NOTES

The extent to which objectives have been achieved and their side effects, as well as proportionality, subsidiarity, feasibility, enforceability, alignment with other rules, simplicity, clarity and accessibility are among the aspects to be included in an evaluation. The form of evaluation to be chosen will depend on, among other things, the importance of the regulation concerned, its social significance and the burden associated with evaluation. There is a wide range of possibilities, from in-depth scientific research to reporting by the implementing bodies. If the evaluation requires the cooperation of a body

that does not fall under ministerial responsibility, a statutory provision must be included for that purpose.
In general, an evaluation period of five years is reasonable. In certain circumstances a different term may be preferred. However, it should be borne in mind that a period of less than five years may be too short for an evaluation because limited experience with the Act in practice will have been acquired. The model provision is based on a one-off evaluation. In special cases, there may be a need for a regular evaluation of an Act. The evaluation provision can then provide that the evaluation will take place "within five years of the entry into force of this Act, and thereafter at intervals of (…) years."

For more information on the cases in which and the manner in which evaluations should take place, see part 7.6 (Evaluation and monitoring of policy) of the IAK.

§ 5.14 Transitional law

Instruction 5.59 Need for transitional law

The need for transitional provisions shall be considered when new regulations are drafted or existing ones amended.

NOTES

It is important to identify in good time which elements of a regulation may prompt the need for one or more transitional provisions. See, for example, with regard to starting points for transitional law and the decisions to be made in that respect, the Transitional Law Assessment Framework (Parliamentary Papers I 1999/2000, 25900, Upper House 87, no. 87b, pp. 5-7). It is also important to keep in mind the limits set by Article 1 (the concept of ownership) of the First Protocol to the ECHR and Article 17 of the Charter of Fundamental Rights of the European Union for transitional law and, more specifically, transitional law when there are amendments to entitlements in social security legislation and pension legislation in light of established case-law. See, inter alia, the information provided by the Advisory Division of the Council of State with a brief decision model for Article 1 of the First Protocol to the ECHR (Parliamentary Papers II 2012/13, 33400 XV, no. 7).

If an Act is followed by an implementing act, consideration could be given to including transitional law provisions in the latter. Where possible, it is advisable to address the proposed transitional law provisions in the explanatory memorandum to the first Act.

Instruction 5.60 Location of transitional law provisions

If transitional provisions are necessary in the event of an amendment to a regulation, they shall be included in the regulation to be amended, unless this is undesirable in view of the target group, the term of validity or accessibility.

NOTES

Including the transitional law provisions in the regulation to be amended will prevent different amending regulations from remaining relevant on account of the transitional law provisions they contain. This approach will also ensure awareness of the transitional law provisions because they will be included in the same regulation as the law to which the transitional provisions pertain. An exception may be made to this main rule if the transitional law provisions have such a limited target group or term of validity that they would "contaminate" the regulation to be amended. In such cases, the arguments for including transitional law provisions in the regulation to be amended also play a less significant role. If an implementing or transitional Act is customary in the field to be regulated, the accessibility of the transitional law provisions calls for their inclusion in the implementing or

transitional Act concerned. See also Instruction 6.3.

Instruction 5.61 Immediate effect

1. A new regulation shall apply not only to that which occurs after its entry into force, but also to what exists upon its entry into force, such as existing legal statuses and relationships (immediate effect).
2. If the intention is to depart from the first paragraph, this shall be expressly stated.

NOTES

If no transitional law provisions are included in a regulation, it will have immediate (and also exclusive) effect. There may be objections to this. In that case, retroactive effect (Instructions 5.62 and 5.63) or non-retroactive or delayed effect (Instruction 5.64) may be decided upon. As a general rule, departures from the main rule must be laid down in the regulation itself. However, this is not always necessary. General provisions of transitional law do exist, including Section 1(2) of the Criminal Code, Article 16 of the Constitution, Article 15 of the ICCPR and Article 7 of the ECHR. Under these provisions, acts taking place before entry into force cannot be made criminal offences. Nor may a heavier penalty than the one applicable before entry into force be imposed.

It has also sometimes been accepted in case-law that a departure from the main rule will have to be inferred from a rule (Supreme Court 7 March 1979, ECLI:NL:HR:1979:AB7440). However, it is not desirable to use this option as a starting point when drafting a new regulation.

In order to assess the extent to which departure from the main rule is necessary, the drafter of a regulation must imagine its social impact. Points to consider include the principle of legitimate expectations, reasonableness and fairness, legal certainty and the surprise effect (see also Instruction 5.62).

It is not always necessary to draft transitional provisions applicable to the entire regulation; different transitional arrangements may apply to each part of a regulation.

Instruction 5.62 Retroactive effect

1. A regulation shall be given retroactive effect only if there is a special reason for doing so.
2. By giving retroactive effect to a regulation, the legal effects foreseen in that regulation are considered to have occurred from a specified time prior to its entry into force.
3. Apart from in exceptional cases, burdensome regulations shall not be given retroactive effect.
4. An act that took place before a regulation entered into force may not be considered a criminal offence or be made subject to a more serious penalty.

NOTES

Granting retroactive effect does not in itself alter the acts, but rather their legal consequences. The possibility of giving retroactive effect is limited by international and national statutory provisions (see the notes to Instruction 5.61).
In the case of burdensome regulations, retroactive effect generally means reduced legal certainty for citizens. One reason for giving a regulation retroactive effect may be the need to allow the sudden validity of a new regulation in order to prevent citizens from taking steps that deprive it of its intended effect or even cause an opposite effect. In such cases, the cut-off date of the retroactive effect may coincide with the date on which the parties concerned can reasonably be required to have the changes in legislation into account before they entered into force. Other examples include cases where legislation is out of step with developments that have proved necessary in practice and require subsequent legalisation. Legalisation should then take place in as short a time as possible in order to

limit the period in which the regulation has retroactive effect. See, with regard to a more detailed assessment of the exceptional cases where burdensome regulations can be given retroactive effect: the policy for giving retroactive effect to burdensome tax measures, as defined in Parliamentary Papers II 1996/97, 25212, no. 2, and I 2009/10, 25212, A. This policy line may also be applied outside the scope of tax legislation.
See, with regard to giving retroactive effect to delegated regulations, Central Appeals Tribunal (for the public service and for social security matters) (CRvB) 20 October 1983, ECLI:NL:CRVB:1983:AK2292.

The use of specific arrangements such as confirmation and conversion instead of retroactive effect is preferred for the subsequent legalisation of practical developments; see, for example, Sections 39 and 79 or 50 and 86 of the Transitional Act for the New Civil Code.

Instruction 5.63 Model provision for retroactive effect

1. A regulation shall not be given retroactive effect by backdating its entry into force.
2. The following models shall be used to give a regulation retroactive effect:
   A. *This Act/This Decree/This Policy Rule shall enter into force with effect from … and shall have retroactive effect [with regard to section … /sections …] to …*
   B. *This Act/This Decree shall enter into force on a date to be determined by royal decree. That Decree may provide that this Act/this Decree shall have retroactive effect to a date to be determined in that Decree [, which may be determined differently for the various sections or parts thereof].*
3. If necessary to clarify the envisaged legal consequences of retroactive effect, more specified provisions shall be included.

Notes

See also Instruction 4.16, first paragraph.

The following example could be used if it is desirable to indicate explicitly the extent to which an Act is applicable to acts that have taken place in the past. Section 10 applies for the first time with regard to acts that took place in the year 2015.

The use of the wording "This law is deemed to have entered into force with effect from …" (see also Articles 88 and 89 of the Constitution) is not permitted.
If necessary, the models from this Instruction may be combined with those from Instruction 4.22 and, in the case of Acts qualifying for a referendum, those from Instruction 4.23.

Instruction 5.64 Non-retroactive effect and delayed effect

1. A new regulation may allow an applicable rule to have lasting (non-retroactive effect) application or have it apply for a particular period (delayed effect) to acts or relationships specified in more detail, or assigning lasting applicability or applicability for a particular period to rights or obligations created by an applicable rule.
2. When granting non-retroactive or delayed effect or assigning applicability to rights or obligations created by an earlier regulation, the regulation shall clearly show the intended legal consequences.

Notes

Assigning non-retroactive effect or delayed effect may be desirable, inter alia, if the legal regime preceding the new regulation has led to expectations regarding the continuation of situations or the possible legal consequences or other effects associated with certain acts, which expectations will compromise the new regulation. The extent to which these expectations should be honoured depends primarily on the question of whether the considerations that led to the creation of the new regulation allow scope for that. In addition, all manner of practical matters come into play when creating a new

regulation: authorisations granted or decisions taken under the old regulation, which - in order to avoid unnecessary implementation burdens for citizens and businesses, as well as for the authorities and administrative bodies involved - it is desirable to allow to continue, whether or not temporarily, under the new regulation.

The wording of the transitional arrangement should be sufficiently specific for the situation by law to be apparent. If the use of non-retroactive effect or delayed effect leads to a very complicated regulation, consideration should be given to re-establishing the rule to be enforced as part of and an exception to the new regulation.

EXAMPLES

- Section 104, as it read prior to the entry into force of section I(D) of the Pension Fund Governance (Further Measures) Act [Wet versterking bestuur pensioenfondsen], shall continue to apply to the members, former members, employees who are or have been on a list of candidates for, and the additional secretary of, a members' council. (Section 220a(2) of the Pensions Act)
- Section 20.3 of the Environmental Management Act, as it read immediately prior to the date on which this Act enters into force, shall remain in force for a period of six weeks after that date with regard to decisions: (…). (Section 13.Ia of the Act of 26 April 1995 in amendment of the General Administrative Law Act and further amendment of a number of laws to the General Administrative Law Act (Act amending the General Administrative Law Act))
- Licences for the conduct of insurance business granted pursuant to Section 9 of the Insurance Industry (Supervision) (BES) Act (Wet toezicht verzekeringsbedrijf BES) shall be based on Section 2:1(1)(b) after this Act enters into force. (Section 10:1(1) of the Financial Markets (BES) Act)
- Decisions of the Executive Board of the Netherlands Competition Authority, the Postal and Telecommunications Market Board or the Consumer Authority shall be considered as decisions of the Netherlands Authority for Consumers & Markets after the entry into force of Section 2 of this Act. (Section 42(1) of the Act establishing the Netherlands Authority for Consumers & Markets)
- If, prior to the entry into force of Section 12n of the Act establishing the Netherlands Authority for Consumers & Markets, a minor offence has been committed and terminated, the law as it read immediately before the date of entry into force of said Section 12n with regard to the maximum amount of the fine that can be imposed [...] shall continue to apply. (Section 44e of the Act establishing the Netherlands Authority for Consumers & Markets)
- The adoption by the Netherlands Authority for Consumers & Markets of a budget as referred to in Section 25 of the Non-Departmental Public Bodies Framework Act (Kaderwet zelfstandige bestuursorganen] shall take place for the first time with regard to the calendar year following that in which this Act is published in the Bulletin of Acts and Decrees. (Section 43(1) of the Act establishing the Netherlands Authority for Consumers & Markets)
- This section shall not apply to agreements on premium pension claims concluded before 1 January 2016, provided that the inapplicability for those agreements ends on 31 December 2020. (Section 86c(5) of the Market Conduct Supervision (Financial Institutions) Decree (Besluit Gedragstoezicht financiële ondernemingen Wft)
- This section shall apply to non-life insurance agreements entered into on or after 1 January 2012. (Section 86d(3) of the Market Conduct Supervision (Financial Institutions) Decree

Instruction 5.65 Transitional law in the case of new dispute rules

In the case of new rules for the procedures and powers of bodies with regard to disputes, the application of the old or new law shall be expressly regulated in relation to cases brought before the entry into force of these rules.

NOTES

This Instruction also applies in the area of criminal procedural law. In the area of criminal proceedings,

there is no rule such as that provided for in Section 1(2) of the Criminal Code. In the event of a change in the competent authority or of the procedure, it must be determined in that context, and also elsewhere in the sphere of procedural law, whether the old or the new regulation should also apply to cases pending at the time of the entry into force of the new regulation.

Section 11:3 of the General Administrative Law Act contains "permanent transitional law" for amendments to the annexes to the General Administrative Law Act. See also the notes to Instruction 5.49.

EXAMPLES

- The handling of emergency regulations or a declaration of bankruptcy of a credit institution or insurer that was pronounced before this Act takes effect shall continue to be subject to the law applicable at the time of pronouncement of the emergency regulations or the declaration of bankruptcy. (Section 10:9 of the Financial Markets (BES) Act)
- 1. Appeals brought pursuant to Section 18 of the Ships Act in which no ruling has been given before the entry into force of Section I, part C, shall be dealt with by the chairman of the Council for the Shipping Industry or, if the appeal concerns a decision by an official in the Netherlands Antilles or Aruba, by the chairman of the Committee of Inquiry.
  2. With regard to appeals as referred to in the first paragraph, the rules set by or pursuant to Sections 18 to 22 of the Ships Act, as they read before the entry into force of Section I, part C, shall remain in force. (Section II of the Kingdom Act of 20 January 2005 amending the Ships Act in connection with the drafting of the Dutch Safety Board Kingdom Act and the introduction of a new regulation containing disciplinary rules for sea shipping (Bulletin of Acts and Decrees 2005, 51))

Instruction 5.66 Transitional law provisions with regard to archive records

Transitional law provisions shall include a provision relating to the archive records related to a task of a government body that has been terminated or a task that has been transferred to another government body. The following models shall be used as the starting point:

A. *Archive records of [government body A] relating to matters not yet settled at the time of entry into force of this Act shall be transferred to [government body B], in so far as they have not been transferred to an archive depositary in accordance with the Public Records Act 1995.*
B. *Archive records of [pre-authorised government body] relating to tasks or activities that have been terminated at the time of entry into force of this Act shall be transferred to Our Minister [of/for …]. If they qualify for permanent safe-keeping pursuant to the Public Records Act 1995, they shall be transferred to an archive depositary, if necessary through the intervention of Our Minister [of/for …], in accordance with the Public Records Act 1995.*
C. *With effect from the date when this Act enters into force, Our Minister [of/for …] shall be responsible for the archive records made available by [previously authorised government body] to legal entities governed by private law.*

NOTES

This Instruction is related to Section 4 of the Public Records Act 1995, which provides that a regulation whereby government bodies are dissolved, merged or split, or whereby one or more tasks of a government body are transferred to another government body, must contain a provision regarding their archive records.
Within the meaning of the Public Records Act 1995, government body means bodies of legal entities established pursuant to public law, as well as other persons or boards with any public authority. The Public Records Act 1995 contains provisions identifying who is responsible for archive records for the various government bodies. The tasks of the party responsible for the records include preparing

selection lists for the transfer to an archive depositary or the destruction of archive records. In the case of central government, each minister is responsible for the archive records belonging to their department. This Instruction therefore also applies in the event of a redistribution of duties within the national government, if that redistribution results in another minister being regarded as the person responsible for the records from now on.

Model A. This model pertains to the transfer of archive records concerning current matters if - for example as a result of the establishment or discontinuation of a non-departmental public body - a redistribution of duties and powers takes place. This will involve archive records that are still held by the government body that ceases to exist or whose tasks are transferred, i.e. not records that have already been destroyed or transferred to an archive depositary on the basis of a selection list.

The aim of the model is to ensure that digital and other archives pertaining to matters that have not yet been settled or have not yet been put on a selection list are transferred to the government body competent to deal with the matters concerned from now on. From that point onward, that government body will be responsible for ensuring compliance with the provisions of the Public Records Act 1995 and will need those archive records to deal with ongoing cases. That government body may also need archive records concerning matters that had already been settled when the government body was established for the purposes of historical research. The person responsible for such records within the meaning of the Public Records Act 1995 may make them temporarily available to the government body concerned. After the period in which they have been made available ends, the records will return to the archives from which they came. This will ensure that no records are missing from the original archive of a department section as a result of the transfer of records and prevent it from becoming unable to perform in full its role as a source of information and aid to historical research.

Model B. This model pertains to archive records relating to the tasks and activities of a government body that has already been discontinued. Archive records relating to tasks that have been terminated will, in so far as they have not been destroyed on the basis of a valid selection list, be transferred to the minister concerned. These are archive records that must be stored temporarily because they have been designated for destruction on the basis of a valid selection list but whose deadline for destruction has not yet passed. They include archive records that do not yet qualify for transfer to an archive depositary. Records that do qualify for permanent storage on the basis of a valid selection list will be transferred to an archive depositary.

Model C. This provision is necessary in situations where tasks are transferred from a public-law legal entity to a private-law legal entity. Archive records for ongoing cases need to be transferred to the private-law legal entity to enable the tasks to be performed. At the same time, it is important that it is clear that archive records will remain within the public domain and that the identity of the person with responsibility for them is known. This provision prevents any ambiguity in this regard.

It is also important when drafting a transitional provision to make clear the possibility of a partial transfer of tasks and powers in the provision regarding archive records. If necessary, multiple models may be used together. For example, models A and C will be necessary in the case of a transfer of tasks from a public-law government body to a private-law legal entity whereby the body of the public-law legal entity is discontinued.

§ 5.15 Concurrence of bills

Instruction 5.67 Concurrence

When drafting a bill, consideration shall be given as to whether it is necessary to provide for concurrence with another bill.

NOTES

Concurrence is understood to mean a situation where there is a textual dependence between two (or

more) bills (or with regard to an Act which has not yet entered into force) whereas the procedures involved in their drafting take place independently of each other in terms of time. In other words, these are not situations involving a new Act and the accompanying implementing Act, where the content and progress as regards procedures of one bill directly determine those of the other. In general, a concurrence problem will occur only in the case of bills, since it is still possible to make amendments to orders in council, other royal decrees and ministerial regulations shortly before publication and the text can be determined depending on the situation that exists at that time.

It is preferable to avoid concurrence problems. This can be achieved by:
- not starting a second legislative process until the first has been incorporated into an Act or an amendment of an Act or is otherwise already further along in the process to ensure that the order of entry into force can be clearly estimated in advance;
- wording bills in a way such that there is no textual dependence, for example by using the option included in Instruction 5.69;
- combining bills.

Concurrence problems can also be avoided in some cases by determining the order of entry into force in the royal decree governing the entry into force: see Instruction 5.70, second paragraph.

It is advisable to include a concurrence provision as referred to in Instruction 5.68 in a bill only when it has been established that a concurrence problem will in fact occur and that problem can be resolved only by means of a concurrence provision.

Instruction 5.68 Concurrence provision model

1. A concurrence provision will be included in accordance with the following model if the wording of a bill amending an Act is dependent on an amendment that another bill aims to effect in the same Act.
   If the bill [heading and Parliamentary Paper number] submitted by the Royal Message of [date] has passed or will pass into law and [section … of] that Act entered into force or will enters into force before [section … of] the present Act, [section … of] the present Act shall be amended as follows: ….
2. If a bill amending an Act will affect the wording of another bill amending that same Act, a concurrence provision will be included in accordance with the following model:
   If the bill [heading and Parliamentary Paper number] submitted by Royal Message of [date] has passed or will pass into law and [section … of] that Act enters into force later than [section … of] the present Act, [section … of] that Act shall be amended as follows: ….
3. If there is a mutual textual dependence between two bills amending the same Act, a concurrence provision shall be included in accordance with the following model:
   If the bill of [heading and Parliamentary Paper] submitted by Royal Message of [date] has passed or will pass into law and [section … of] that Act:
   a. enters into force or has entered into force before [section … of] the presents Act, [section … of] the present Act shall be amended as follows: ……..;
   B. enters into force after [section … of] the present Act, [section … of] that Act shall be amended as follows: … .
4. A concurrence provision will be included in accordance with the following model if a bill will affect the wording of a bill aiming to bring about a new Act.
   If the bill [heading and Parliamentary Paper number] submitted by Royal Message of [date] has passed or will pass into law, [section … of] that Act shall be amended as follows: ….
5. A concurrence provision will be included in accordance with the following model if the wording of a bill aiming to bring about a new Act depends on another bill:

If the bill [heading and Parliamentary Paper number] submitted by Royal Message of [date] has passed or will pass into law and [section … of] that Act enters into force, [section … of] that Act shall be amended as follows: ….

NOTES

See, with regard to citing bills, Instruction 3.43, second paragraph.

The models may also be used if the concurrence relates to an Act that has not yet come into force. In such cases, the phrase "If the bill [heading and Parliamentary Paper number] submitted by Royal Message of [date] has passed or will pass into law and [section … of] that Act" shall be replaced by the following: If [section … of] the [short title or name of the Act].

The first and second paragraphs pertain to unilateral concurrence: bill A depends on or has consequences for bill B, but that is not the case the other way round. This will be the case, for example, if bill A amends an existing subsection that bill B has renumbered because of the insertion of a new paragraph. In such situations, the concurrence will need to be provided for only if bill B enters into force before bill A. If bill A enters into force first, the amendment will already have been made before bill B results in the renumbering of the subsection.

The third paragraph pertains to mutual concurrence. This occurs if the wording of bill A is not only dependent on but also affects the wording of bill B. The order of entry into force of both bills will then determine the final wording. If that order is not yet known, it may be necessary to prepare alternative wordings for amendments: one to cover the event that bill A enters into force first, and in case bill B enters into force first.
If desired, "or at the same time" may be added to the models. See for example Bulletin of Acts and Decrees 2013, 485, Article IVb.

See also, with regard to concurrence regarding the numbering or lettering of parts of a regulation, Instruction 5.69.

Instruction 5.69 As yet unknown numbering in the event of concurrence

1. If, owing to the concurrence of two or more bills, the final designation of a section, paragraph or part remains unclear, the symbol "#", accompanied by a description of how the name should be included in the existing numbering or lettering in square brackets, may be used for that name in the bill concerned.
2. The symbol "#" will be replaced by the final name in the proofing phase. The text between square brackets will also be deleted.

NOTES

In some cases, several different amendments of the same Act will be worked on even though it is not yet clear which will enter into force first. This means the final name of a section, paragraph or part will sometimes be unknown. A hash sign, which will be ultimately be replaced with text during the proofing phase for publication in the Bulletin of Acts and Decrees, can sometimes be used during the preparation phase for legislation to avoid sections, subsections or parts thereof having the same designation after several amendments have taken effect. If further sections, paragraphs or parts are required, they may be named using two or more hash signs, or they can be referred to as #1, #2, #3, etc. The explanatory memorandum will then adhere to those names and briefly explain why the symbol was used. It will also state that the hash sign will be replaced by text during the proofing phase and the part of the wording of the amendment in square brackets deleted.

Alphabetical order and no bullet points is preferred for lists in definitions of terms sections in new regulations as it means the aforementioned problem will not occur: see Instruction 3.59, third paragraph.

See, with regard to renumbering an entire regulation, Instruction 6.22.

EXAMPLES

- A part [the lettering of which is consistent with the alphabetical order of the last part] reading: #. minimum wage: the minimum wage referred to in (…) shall be added to section 1(1), with the full stop at the end of that paragraph being replaced by a semicolon.
- Two sections [the numbering of which is consistent with the last section of that chapter] reading:

  Article #
  (text of the section)

  Article ##
  (text of the section) shall be added to chapter II of part 5.

(Examples taken from Parliamentary Papers II 2011/12, 33241, no. 2).

Instruction 5.70 Order of entry into force

1. If nothing has been provided for in this regard and the intentions of the legislature cannot be inferred from the regulation or the explanatory memorandum, the order of entry into force of two or more provisions entering into effect at the same time shall be determined by:
   a. the date of adoption of the regulation;
   b. if the date of adoption of both regulations is the same: the date of issue of the Bulletin of Acts and Decrees or the Government Gazette;
   c. if the date of adoption and the date of issue of both regulations are the same: the serial number of the Bulletin of Acts and Decrees or the Government Gazette.
2. The following model shall be used to provide for the order of entry into force of two or more Acts or orders in council by means of an implementation decree:
   With effect from [date], the following [Acts/orders] shall enter into force, in the order set out below:
   a. (…)'
   b. (…).

NOTES

The order of entry into force may be important, for example, if two amending Acts amend the same sections of the law and the change orders under from those Acts can be executed only in the manner envisaged by the legislature, when both laws enter into force in the correct order.

First paragraph, part a. For Acts and orders in council, the date of adoption is the date on which the law or decree was signed by the King.

§ 5.16 Interim regulations

Instruction 5.71 Period of operation of interim regulations

One of the following models shall be used to regulate the period of operation of interim regulations

A. This Act/This Decree/This Regulation/This Policy Rule shall enter into force [on/with effect from…: see Instruction 4.21] and be repealed [with effect from … / … years after the date of entry into force].

B. This Act/This Decree/This Regulation/This Policy Rule shall enter into force [on/with effect from…: see instruction 4.21] and shall be repealed at a time to be determined by [Royal Decree/by Our Minister of/for …]/by the Minister of/for …].

NOTES

Instructions 4.17 and 4.18 should be complied with when using the models. If necessary, the models used in this Instruction may be combined with those from Instruction 4.22 and, in the case of Acts qualifying for a referendum, those from Instruction 4.23.
The wording referred to in Model B will be chosen only if it is established that the regulation is an interim one, but the time at which it will cease to apply cannot be determined in advance.

Instruction 5.72 Headings and short titles of interim regulations

The interim nature of the regulation shall be expressed in the heading and the short title.

EXAMPLES

- Act of 4 December 2013 on the introduction of a temporary levy for the banking sector (Resolution Levy (Interim Measures) Act 2014)
- Decree of 16 February 2001 regulating the special-purpose disaster and major accident response grant for the period between 1 January 2001 and 31 December 2002 (Special-purpose Disaster and Major Accident Response grant Interim Decree on combating disaster relief and major accidents).

Instruction 5.73 Temporary departures from existing regulations

1. If it is desirable to depart temporarily from an existing regulation, this will take place in the form of:
   a. a separate derogating regulation having temporary effect; or
   b. an amending regulation that introduces successive amendments to the regulation to be temporarily amended.
2. In cases as referred to in the first paragraph, part b, where possible, the subsequent amendment shall be included in the regulation to be temporarily amended itself, which shall also state when the subsequent change will be effective.

NOTES

First paragraph. This means that a provision such as one reading: "Section 10 shall read as follows for a period of three years" is not permissible. Nor is an arrangement where the deletion of the amending regulation aims to revive the original text (see also, in this regard, Instruction 6.26) permitted.

With the approach referred to in part b, also referred to as "double amendment" the first change order will determine how the regulation reads during the temporary derogation period, and the second how it reads after the end of that period.

Second paragraph. In the case of temporary changes, it is preferable, in the interests of clarity and legal certainty, to include the upcoming amendment in the text of the temporarily amended regulation itself, and also to indicate when that second amendment will take effect. This avoids having to consult the amendment regulation in order to determine how and when the temporarily amended regulation will be amended again.

EXAMPLE OF A DOUBLE AMENDMENT

- Regulation A shall be amended as follows:

A

Section 6 shall read as follows:

Section 6
(…)

B

A section reading as follows shall be added after section 11:

Section 12.
With effect from 1 January 2022, section 6 shall read as follows:

Section 6
(…)

CHAPTER 6 AMENDMENT AND WITHDRAWAL OF REGULATIONS

§ 6.1 General principles

Instruction 6.1 Regulations of equal order

1. Regulations shall be amended or withdrawn by regulations of equal order.
2. Withdrawal by regulations of a higher order can only take place under the circumstances referred to in Instruction 6.24, paragraph two.

NOTES

First paragraph. This Instruction also pertains to the method occasionally applied in practice that an amendment Act also establishes an amendment to an Order in Council closely related to the subject matter of the amendment. This method is undesirable, given that it may create uncertainty regarding the status of a provision of an Order in Council amended in this way. Please see Instruction 2.32 for the two specific cases of amendment of regulations of a higher order by regulations of a lower order.

Second paragraph. Withdrawal by way of regulations of a lower order can only take place if expressly provided for in the regulations to be withdrawn. Withdrawal in this manner is generally undesirable. Please also see Instruction 2.32.

Instruction 6.2 Amendment or establishment of new regulations

1. If regulations are intended to establish a significant amendment, repealing the regulations and establishing new regulations shall be considered.
2. In the event that existing regulations are replaced by new regulations, the existing regulations shall be explicitly withdrawn.

NOTES

First paragraph. This method is likewise suitable if the existing regulations are required to remain in force for a longer period of time for existing cases. In the event of implementation, Instruction 9.4 shall apply, which, in principle, prevents any amendment that goes beyond the amendment required for implementation.

Second paragraph. The explicit withdrawal of existing regulations may not be omitted by reliance on the principle that earlier regulations should be superseded by subsequent regulations. Phrases such as 'is re-adopted as follows' should be avoided.

Instruction 6.3 Amendment and implementing regulations

If the adoption of new regulations necessitates a large number of amendments to other regulations, these amendment shall envisaged to be incorporated into separate regulations.

NOTES

The separate regulations may be amendment regulations or implementing regulations. Amendment regulations only serve to amend other regulations to the new regulations, whereas implementing

regulations also provide for the entry into force of the new regulations and any transitional provisions.

Instruction 6.4 Admissibility of collective amendment Acts

In principle, an amendment Act regulating several substantive subjects will only be effected if:

a. the various components are related;
b. the various elements are not of a scope and complexity that justify a separate legislative proposal; and
c. none of the components are anticipated to be sufficiently politically contentious or controversial so as to prejudice the effective parliamentary scrutiny of the remaining components.

Notes

This Instruction relates to so-called Collective Amendment Acts (verzamelwetten): Acts, which, unlike Acts governing one particular subject, contain amendments relating to multiple subjects. There are various types of collective amendment Acts. Collective Amendment Acts, for example, may consolidate certain legal developments, implement EU regulations or may relate to amendment or implementation Acts related to the creation of a new Act (please also see Instruction 6.3). A distinction can be made between the so-called technical collective amendment Acts (also referred to as recovery, correction or remedial Acts). These Acts are used to implement technical amendments or to rectify omissions in legislation that are expected to be adopted by Parliament without any substantive debate. This Instruction will not apply to this type of collective amendment Acts.
Please also see Instruction 9.4 with regard to the implementation of EU Regulations.
Part a. The first criterion relates to the relationship between the various parts of a collective amendment Act. When including various elements in a legislative proposal, it is critical that this does not prejudice the constitutional position of the Senate. Under Article 85 of the Constitution, the Senate can only adopt or reject legislative proposals in their entirety. The Senate should not be presented with a substantive collective amendment Act that lacks coherence between its elements. Coherence shall mean:

- substantive coherence;
- budgetary coherence, such as legislation using the proceeds of certain measures to cover other measures;
- thematic coherence, where the relationship is based on the nature of the issues; or
- technical coherence, such as legislation requiring simultaneous implementation for the target group or the implementing agency concerned.

Part b. The basic principle of collective amendment Acts is that they should consist of various elements that are not overly large in scope and substantively complex so as to justify a separate legislative proposal. There are no objections against larger components that are politically and technically straightforward to tackle. In order to avoid Parliament from being faced with large individual components of a collective amendment Act that require substantive scrutiny, such components must be included in an independent Bill.

Part c. When drawing up a collective legislative proposal, it is advisable to assess the political sensitivity of the various components. It is not recommended for a component to be included in a collective amendment Act of which its political controversy is clear in advance. Including a politically sensitive component may lead to scrutiny of that component, taking a lot of time. As a result, the collective amendment Bill may be delayed, as a result of which the other parts of the Bill may come into force later than necessary. Jeopardising those other elements may in turn put pressure on Parliament to approve the Bill, even though Parliament believes that the politically sensitive issue still requires parliamentary scrutiny.

Please also see the Memorandum on Collective Amendment Legislation submitted to the Senate by the State Secretary for Security and Justice on 20 July 2011 (Parliamentary Papers I 2010/11, 32500 VI, M).

Instruction 6.5 Sequential order relating to the amendment of multiple regulations

If a set of regulations serves to amend several regulations, the amendment provisions may be included:

a. in order of the scope or nature of the amendment;
b. in alphabetical order of the regulations to be amended;
c. in order of the Ministry with primary responsibility to which the regulations to be amended fall.

NOTES

Variant a is often applied in the case of amendments that contain both substantive changes and technical amendments to other regulations. A logical structure of the regulations would be to first include the substantive amendments to specific regulations and only then the technical amendments to other regulations arising as a result. Variants b and c are particularly suited to amendment regulations aimed at amending a large number of existing regulations. In this respect, the (official) title of the regulations is key in variant b, while variant c follows the sequential order of the chapters of the State budget. Combinations of the three variants are also possible: with the more substantive amendments of regulations presented first, followed by the technical changes of other regulations arising therefrom being presented in alphabetical order.

Instruction 6.6 Method of numbering of sections

1. Regulations relating solely to the amendment or withdrawal of one or more existing regulations shall be divided into sections using Roman numerals.
2. If new regulations also seek to amend or withdraw existing regulations, the provisions relating to amendment or withdrawal shall also be numbered using Arabic numerals.
3. In comprehensive amendment or implementing regulations in which regulations of various Ministries are amended or withdrawn, another type of numbering may be chosen.

NOTES

First paragraph. If amendment or withdrawal regulations contain transitional provisions, these will also be numbered with Roman numerals. Please also see Instruction 5.60.

Please also see Instruction 6.15 on the further classification of amendment regulations.

Third paragraph. For the sake of clarity, in the case of comprehensive amendment or implementing regulations in which regulations of various Ministries are amended, a different method of numbering may be applied. In such cases, it is common practice to include a separate chapter for each Ministry and, within each chapter, to provide a section numbered with Arabic numerals for any regulations to be amended or withdrawn. For example, please see the Work and Income (Capacity for Work) Act Implementation and Financing Act (Wet Invoering en financiering Wet werk en inkomen naar arbeidsvermogen).

§ 6.2 Amendment of regulations

Instruction 6.7 Amendment of heading and opening words

The heading and the opening words of regulations shall not be amended.

NOTES

The heading, opening words and closing formula of any set of regulations constitute the part of the regulations that have a unique meaning, tied to the time of the instrument's drafting. This section, and therefore likewise the preamble of any Act as well as the passage 'Whereas …' in the opening words of other regulations, cannot be altered through subsequent amendment of the regulations. If the scope of a law is changed, this can be expressed in the heading and the preamble of the Act providing the amendment. It should be borne in mind, however, that if a Bill is amended during the parliamentary process, this may require modification of the heading and the preamble. This can be done by way of a memorandum of amendment (please see section 6.4). The heading and the preamble are likewise eligible for amendment.

Instruction 6.8 New basis for implementation regulations

1. If amended or new regulations provide a new basis for existing implementation regulations, a provision may be included in accordance with the following model:
   After the entry into force of this Act / this Decree, [the relevant implementation regulations] is [partly] based on Section [the new delegation provision] of this Act / this Decree.
2. If it is preferable for the new basis to be included in the implementation regulations, rather than in the regulations of a higher order, a provision may be included in accordance with the following model:
   This Decree / These regulations is/are [partly] based on [Section / Sections …] of [delegating Act / delegating Decree].
3. If regulations provide a new basis for existing implementation regulations or if implementation regulations are amended using a new basis, the explanatory notes to those regulations shall include an overview of the various elements of the comprehensive implementation regulations and the principles on which they are based.

NOTES

The provisions referred to in the first and second paragraphs are required in cases in which existing implementation regulations have a new legal basis, in respect of which there may be lack of clarity. The word 'partly' is included when the implementation regulation also implements another set of regulations, which have not been amended. The phrase '[is/are] partly based' on can also be used if existing implementation regulations henceforth partly implement new or amended regulations.

Third paragraph. An overview of this type should preferably be included in the explanatory notes in the form of a table.

EXAMPLES

- After the entry into force of this Decree, Section 8 of the Regulations on designation and use of frequency space for commercial radio broadcasting 2003 (Regeling aanwijzing en gebruik frequentieruimte commerciële radio-omroep 2003) is based on Section 22(2) of this Decree. (Section 34 of the Media Decree 2008)
- This Decree is based on Sections 48 and 81(4) of the Police Act 2012. (Section 4 of the Police Ranks Decree)
- This Decree is based partly on Section 38(7) of the Bonaire, Sint Eustatius and Saba Public Entities Finances Act. (Section 6 of the Local Authorities Auditing Decree)

Instruction 6.9 Terminology 'substituted by' and 'now reads'

1. *Replacement of text in regulations shall be expressed using the phrase 'is substituted by' or, to the extent permitted from a linguistic point of view, by the phrase 'now reads:'.*
2. In the case of replacement of words or phrases, both the text to be replaced and the

new text shall be placed in quotation marks.

3. If a section or part thereof is replaced, the new text shall begin with the designation of the section or component.

NOTES

In principle, the wording 'now reads:' shall be used to establish the text of a new section, subsection or paragraph or a new chapter or new paragraph. From a linguistic point of view, the phrase 'is substituted by' may be used when one or more words are replaced. This is also the case if, for example, one section is substituted by two or more sections. In that case, the wording 'is substituted by [number] sections that read:' or the wording 'is substituted by the following sections:' may be used. Please also see Instruction 6.18.

Please see Instruction 3.30, second paragraph, for citing a phrase using parentheses.

Second paragraph. This subsection only applies to sections of text that are not an independent core element of the regulations (e.g. a section, subsection or paragraph) and which do not constitute a complete sentence.

In the case of replacement of a core element of the regulations or an entire sentence, the text to be replaced will be indicated by way of reference to the relevant core element or the relevant sentence (e.g. 'section 5, subsection 3' or 'subsection one, second sentence') and the text that follows after the colon of the amendment ('now reads:' or 'is substituted by:') is not placed in quotation marks.

Please also see Instructions 6.11, second paragraph, and 6.12, second paragraph, for the use of quotation marks when inserting, adding or repealing sections of text.

EXAMPLES

- Section 7 now reads:

  Section 7.
  Rules on speed limits may only be established by or pursuant to an Order in Council.

- Section 8 is substituted by two sections, which read as follows:

  Section 8
  (…)

  Section 8a
  (…)

- Section 18(3) now reads:
  3. The experts shall be appointed by Our Minister.

- In Section 5, subsection 3, 'Broadcasting Council' is substituted by 'Media Council'.

- In Section 28, 'event' is substituted by 'development' and 'other events' is substituted by 'other developments'.

- In Section 14, 'The judgment shall include (…) or a combination thereof' is substituted by 'The judgment shall state whether the sentence consists of a community service order, a training order or a combination of both'.

- In Section 32, 'shall reports its intention to do so' is substituted by 'the Dutch Authority for the Financial Markets shall issue a notification in writing of its intention to do so, in accordance with the procedure laid down in Section 34a. It shall submit a copy to'.

Instruction 6.10 Replacement of whole text unit

In amendments to provisions, a whole text unit shall at least be replaced by a new text unit.

NOTES

As such, an amendment will not read: 'Foreign' is substituted by 'General', but: 'Ministry of Foreign Affairs' is substituted by 'Ministry of General Affairs';

Instruction 6.11 Terminology 'insert' and 'add'

1. The verb 'insert' or 'add' shall be used to include a new section or other part of the regulations or to supplement the existing text of a section or another part of a set of regulations.
2. In an amendment provision, words and phrases to be inserted or added shall be placed in quotation marks.

NOTES

First paragraph. The verb 'add' is used for text to be inserted after any existing text, for example, at the end of a chapter or as the new last subsection of section, with the verb 'insert' being used in other circumstances.

When inserting text, the place where the new text is to be included must be indicated. In the case of a word or phrase, one or more words will be cited from the existing text, after which (or for which) the new text must be inserted: please see the first example. If a new core element is to be inserted, reference of the existing core element of the same order will suffice, after which (or for which) the new core element must be inserted: please see the second and third examples. When a new section is inserted at the start of a chapter or paragraph, it is preferable to likewise refer to the chapter or paragraph in which the new section is to be included rather than to simply suffice with 'a Section is inserted for Section …': please see the fourth example. This is to prevent any ambiguity as to the location of the new article.

When adding text, citing the core element of the regulations to which the text should be added will suffice. It already follows from the use of the word 'add' that this always takes place at the end of the existing text of that core element. When adding words to an existing sentence, it need not be stated that those words must be placed before the period at the end of that sentence (please see final example).

When including new core elements of regulations, both a formula setting out how many new core elements are to be inserted or added ('… sections shall be inserted, reading:') and wording making no reference to the number of new core elements of the regulations ('the following sections shall be inserted:') may be used. In the event of inclusion of a large number of new core elements to the regulations, the latter wording formula is preferred.

Please also see Instruction 6.18 concerning inserting or adding subsections or paragraphs in conjunction with numbering or lettering.

Second paragraph. Please see the explanatory notes to Instruction 6.9, second paragraph.

EXAMPLES

- In Section 18, subsection one, the words 'and cyclists' shall be inserted after 'drivers of motor vehicles'.
- After Section 3, a chapter shall be inserted that reads as follows:

  CHAPTER 3A
  (…)
- After Section 4, a section shall be added that reads as follows:

  Section 4a
  (…)

Section 4b
(…)

- In Chapter 4, a Section shall be inserted before Section 15, reading:

Section 14a
(…)

- A paragraph will be added to Section 3, reading:

§ 5. Rules for mopeds and motor-assisted bicycles

Section 23a
(…)

- The following sections are added to paragraph 4:

Section 51a
(…)

Section 51b
(…)

- A subsection shall be added to Section 2, reading:
  4. Subsection one shall apply mutatis mutandis to requests for residence.
- The following shall be added to Section 2, subsection two, third sentence: 'insofar as individual support is in excess of € 500,000'.

Instruction 6.12 Terminology 'repeal' and 'withdraw'

1. *The scrapping of a section or another component of a set of regulations or the scrapping of a word or phrase shall be referred to using the verb 'to repeal'. The verb 'to withdraw' shall only be used for the termination of the validity of an entire set of regulations.*
2. In an amendment provision, words or phrases that are repealed shall be placed in quotation marks.

Notes

First paragraph. One exception to this Instruction is the case in which the validity of an entire set of regulations is terminated by operation of law. In that case, reference is made to the regulations having expired' or been 'repealed' (cf. Instruction 5.71).

Second paragraph. Please see the explanatory notes to Instruction 6.9, second paragraph.

Examples

- The National Contingency Plans Act is withdrawn.
- Section 25(3) is repealed.
- In Section 2(a), 'the administrative body or' is repealed.

Instruction 6.13 Expiry of fixed-period provisions

In the event of an amendment of regulations, existing provisions to amend other rules and other fixed-period provisions of those regulations may expire.

Notes

Repeal is particularly recommended if, in the event of an amendment of regulations, an order is also given for the publication of the comprehensive text of the regulations (please see Instruction 6.22, second paragraph). Fixed-period provisions may also include transitional and amendment provisions and transitional provisions of which the fixed period has ended in a material sense.

Instruction 6.14 Repealing annexes to regulations

The repeal of an annex to a set of regulations is explicitly set out.

Notes

The repeal of the section to which an annex corresponds is not sufficient to ensure the repeal of the annex itself.

Please also see Instructions 3.61 and 3.62 with regard to annexes.

Instruction 6.15 Classification of amendment provisions

1. A separate section shall be used in amendment regulations and in the final provisions of new regulations for any regulations to be amended.
2. The various changes to the regulations with a separate section shall be indicated using capital letters.
3. In the case referred to in the second paragraph, the various amendments in a section of a set of regulations are indicated using Arabic numerals or lowercase letters.

Notes

Second paragraph. If more amendments are made in an instrument than the alphabet has letters, the lettering of the sequential order will take place by a combination of capital letters (AA, BB, CC …; AAA, BBB, CCC …, etc.).

Example

- **SECTION I**

  The **Art Council Decree 1977** is amended as follows:

  A

  In Section 3, subsection 2, paragraph b, ‘or other circumstances’ is repealed and ‘referred to in Section 16 of the Act’ is substituted by ‘referred to in Section 17a of the Act’.

  B

  Section 8 is amended as follows:

  1. In subsection 3, 'the model' is substituted by 'the models'.

  2. Subsection 5, second sentence, is repealed.

  3. Subsection 6 is amended as follows:
  a. In paragraph a, 'the model referred to in Section 12' is substituted by 'the models referred to in Sections 12 and 12a'.
  b. Paragraph k now reads:
  k. (…)

Instruction 6.16 Numbering of inserted sections, etc.

1. The numbering of sections, books, parts, chapters, titles, subsections and paragraphs inserted by amendment shall take place using letters added to the existing numbers.
2. A numbering method that has commenced must be continued.

Notes

Consequently, the numbering of inserted sections does not take place using 1bis, 1ter and the like, unless such numbers have already been used.

If a section is inserted before Section 1, either the existing Section 1 may be changed to '1a' (or '1b' or otherwise, depending on the number of sections to be inserted) and a new Section 1 may be inserted (and possibly '1a', etc.), or a section may be inserted that is clearly designated to precede Section 1, such as 'a1' (and possibly "b1", etc.). The foregoing applies mutatis mutandis to the numbering of chapters, paragraphs, etc.

EXAMPLES

- Sections 14a, 14b, 14c (…)
- Chapter 5A. Penalty payment orders and administrative fines.

Instruction 6.17 Renumbering and relettering

1. In the event of amendments to regulations, sections, books, chapters, titles, subsections and paragraphs shall not be numbered unless this is required for a logical numerical structure of the instrument.
2. The numbering or letters of sections, subsections, paragraphs, sub-paragraphs of sections shall be changed, unless there is a compelling objection against this.

NOTES

First paragraph. Please see the explanatory notes to Instruction 6.16 for situations in which a logical numbering structure for the regulations may be required.

Second paragraph. Please see Instruction 6.18 for changes to the numbering or lettering of subsections and (sub)paragraphs of a section.

Instruction 6.18 Changes to numbering and lettering within sections

1. The insertion or repeal of a subsection shall take place in accordance with the following examples:
   A. A subsection is inserted alongside an amendment to the numbering of subsections two to three, which reads:
   2. (…)
   B. Subsection one is repealed, with an amendment of the numbering of subsections two to four to subsections one to three.
2. Changes to the designation of a paragraph of a section or the insertion or addition of a paragraph shall take place in accordance with the following examples:
   A. A paragraph is inserted with amendment of the lettering of paragraphs c to f to d to g, which reads as follows:

   c. (…)
   B. A paragraph is added with replacement of the full stop at the end of paragraph d with a semicolon, which reads as follows:

   e. (…)
   C. A paragraph is added with replacement of '; or' at the end of paragraph c by a semicolon and by replacing the full stop at the end of paragraph d by '; or', which reads as follows:

   e. (…)
3. The addition of one or more subsections to a section that does not as yet consist of subsections, shall take place in accordance with the following example:
   1. The number '1.' is placed at the head of the text.
   2. A subsection is added that reads as follows:

2. (…)

4. The amendment of a section that consists of subsections to a section that does not consist of subsection shall take place in accordance with the following example: *Subsection two as well as the number '1.' in front of subsection one are repealed.*

Instruction 6.19 Designation '(new)'

If a section, subsection or paragraph in a particular set of amendment regulations is amended and its numbering or lettering structured is changed, that section, subsection, paragraph shall be identified using the new numbering or lettering, with the addition of the designation '(new)', for the purposes of that amendment.

EXAMPLE

– Section 20 is amended as follows:
1. A subsection is inserted with amendment of the numbering of subsections four to five, which reads as follows:
4. (...)
2. In subsection five (new), 'subsections two and three' is substituted by 'subsections two to four'.

Instruction 6.20 References in transitional law

A transitional provision regarding an amendment of rule shall refer to the amended rule and not to the amendment provision.

NOTES

This Instruction is explained using an example: Section 8a is inserted into Section I(C) of amendment regulations, which consists of a restriction of the claims granted to a specific group of persons in Section 8. Until 1 January 2004, that restriction should not apply to persons in that group born before 1 January 1930. In that case, the relevant transitional provision of the amendment regulations should not read as follows: 'Section I(C) does not apply until 1 January 2004 to persons born before 1 January 1930.', but: 'Section 8a of [amended regulations] does not apply until 31 December 2003 to persons born before 1 January 1968.'.

Instruction 6.21 Comparative overview of old and new provisions

In the case of complex amendments, a comparative overview of the provisions to be amended and the proposed provisions shall be sent to the Advisory Division of the Council of State, and to the House of Representatives and Senate respectively, to clarify the proposed changes to an Act or Order in Council.

NOTES

This overview may be a separate document or included in or as an annex to the memorandum or explanatory memorandum. A comparative overview can also be useful at a later stage of scrutiny of a Bill (upon submission of an amendment memorandum).

Instruction 6.22 Full publication of text of amended regulations

1. After the amendment of a set of regulations, no publication takes place of those regulations in the Bulletin of Acts and Decrees or the Government Gazette.
2. Contrary to the first paragraph, the full text may be published if a comprehensive change of the numbering structure of the entire regulations is required or if the text of the amended regulations, previously formulated using old spelling guidelines, should

be updated to applicable spelling guidelines. In such cases, a provision shall be included in the amendment regulations in accordance with the following model:
The text of [title of the relevant regulations] is published in [the Bulletin of Acts and Decrees / the Government Gazette].

3. In the case of changes to the numbering structure, the following shall be added to the model referred to in the second paragraph:
For the publication in [the Bulletin of Acts and Decrees / the Government Gazette], [Our Minister / the Minister (of/for…)] again lays down the numbering of Sections [, chapters and paragraphs] of [title of the relevant regulations] and aligns the references of Section [, chapters and paragraphs] in [that Act / that Decree / those regulations] with the new numbering structure.
4. In the case of transposition to the applicable spelling, the following shall be added to the model referred to in the second paragraph:
For the publication in [the Bulletin of Acts and Decrees / the Government Gazette], the text is transposed by [Our Minister / the Minister (from/for …)] in the applicable spelling.

NOTES

Full (consolidated) texts of regulations are already published via the government legislation database (www.wetten.nl). In exceptional cases in which the inclusion of the full text is required, the Minister of Justice and Security will ensure its publication in the Bulletin of Acts and Decrees, with the relevant official (with primary responsibility) for the regulations ensuring the accuracy of the text. The amended text of the regulations will be submitted to the Minister of Justice and Security at the same time as the amendment regulations, so that the publication in the Bulletin of Acts and Decrees of the amendment regulations and the full text can take place using successive reference numbers if possible. The full text of a set of regulations is published in the Government Gazette by the official with (primary) responsibility for those regulations.

The same applies mutatis mutandis to the publication of the full text of a set of regulations in another publication sheet, for example, the publication of the text of a Kingdom Act or an Order in Council for the Kingdom in the Law Gazette of Aruba, the Official Journal of Curaçao or the Law Gazette of Sint Maarten. In the case of Kingdom Acts and Orders in Council for the Kingdom, it must be borne in mind that the publication of a full text does not take place by Decree of the Minister of Justice and Security, but by Royal Decree, on the recommendation of the Minister of the Interior and Kingdom Relations.

If, in the case of a comprehensive set of regulations, the changes are limited to a certain part of the regulations, the text of that part of the regulations will suffice.

In the case of full text publication, no corrections can be applied to the text of a set of regulations.

§ 6.3 Withdrawal and repeal of regulations

Instruction 6.23 Formulation of withdrawal provision

Regulations shall be withdrawn in accordance with the following example:
The Firearms Act 1919 is withdrawn.

NOTES

If multiple regulations are withdrawn, each of these instruments must be identified individually. Withdrawal by means of a general formula is not permitted.

Regulations cannot be withdrawn with one or more sections excepted from withdrawal. In that case,

the route of amendment must be chosen or the remaining sections must be incorporated into new regulations.

If multiple set of regulations are withdrawn, an individual section need not be used for each set of regulations to be withdrawn. If appropriate within the structure of the regulations, one option may be to provide an enumeration of all the instruments to be withdrawn in a single section ('The following Acts. / Decrees / regulations are withdrawn:'). For example, please Section 7.1 of the Animal Holders Decree.

Please also see Instruction 6.12 (Terminology 'repeal' and 'withdraw').

Instruction 6.24 Repealed implementation regulations

1. In the event of full or partial withdrawal of a set of regulations, the implementing rules based on those regulations or the part thereof to be withdrawn shall likewise be withdrawn, unless there is a different basis for such regulations or a specific basis has been created for that occasion.
2. Withdrawal may take place in the regulations that serve to wholly or partially withdraw the delegating regulations.
3. The first and second paragraphs apply mutatis mutandis to the repeal of provisions in implementation regulations in connection with the repeal of their basis.

NOTES

First paragraph. By withdrawing delegating regulations, the legal basis for implementation regulations on which they are based is repealed and the regulations can no longer have an effect. In the past, it was therefore sufficient in certain cases to set out in the explanatory notes that the implementing regulations had expired by operation of law as a result of the repeal of the delegation basis. However, this method may lead to ambiguities because the current basis for implementation regulations is not always clear. Pursuant to Instruction 6.8, first paragraph, these implementation regulations, for example, may have been given or obtained a different basis by way of the withdrawal regulations, without this being apparent from the implementation regulations as such. In order to avoid ambiguity about the legal status of implementation regulations, it is therefore recommended that the withdrawal be explicitly set out. Incidentally, this does not mean that the fact that an instrument has not been explicitly withdrawn precludes an a contrario deduction that the regulations are still in force. The validity of a set of implementation regulations is predicated on whether a legal basis exists for those regulations in regulations of a higher order.

Second paragraph. From a legislative efficiency point of view, it may make sense for the withdrawal to be regulated in the regulations aimed at wholly or partially withdrawing the regulations on which the implementation regulations are based. In doing so, the legislator explicitly chooses either to provide the regulations with a new basis in accordance with Instruction 6.8 or to withdraw them. If implementation regulations are not withdrawn in this manner but are subsequently withdrawn separately, the provision by which the delegating regulations were withdrawn at the time may be used as a basis for the withdrawal of the implementation regulations.
Third paragraph. In the event of a partial lapse of the basis of a set of implementation regulations, explicit revocation of the affected provisions in those regulations is required. This may also be achieved through the regulations serving to wholly or partially withdraw the delegating regulations.

Instruction 6.25 Fixed-period regulations

1. Any regulations that have been implemented immediately after having come into force shall not be withdrawn.
2. Nor will such regulations include provisions for the repeal of the regulations.

NOTES

Examples of regulations to which this Instruction applies:
- laws intended solely for the adoption of conventions and which do not contain any additional law;
- municipal or provincial reorganisation laws;
- authorisation laws for the establishment of a civil-law legal entity by the State;
- laws on the transfer of management and maintenance of water works.

It also follows from this Instruction that amendments are not eligible for withdrawal unless they contain transitional provisions, which are not immediately implemented.

Under this Instruction, however, regulations that relate, for example, to a financial claim for a specific period of time, such as the provision of a one-off payment for a particular year, are eligible for withdrawal. In principle, a sunset provision should be included in regulations that are temporary in nature (please see Instruction 5.71).

Instruction 6.26 Impact of withdrawal of amendment regulations

1. The withdrawal of regulations in which amendments have been made to another set of regulations does not reverse those amendments.
2. Withdrawn regulations or repealed provisions are not revived by the withdrawal of the regulations pursuant to which they were withdrawn or repealed.

NOTES

Once regulations have expired, they can only be revived through re-adoption, possibly with retroactive effect. This should be distinguished from the scenario in which a power has expired in regulations that are still in effect, rather than the regulations themselves having expired. In that case, amendment of these regulations with retroactive effect may restore the expired power for the preceding period of time.

§ 6.4 Amendment of Bills

Instruction 6.27 Amendment Memorandum

1. Any amendment made by the government to Bills it has itself submitted shall take the form of an amendment memorandum.
2. Amendment memoranda shall be drafted in accordance with Instructions 6.9 to 6.12 and 6.16.
3. The heading shall refer to any second, third and subsequent amendment memorandum as such.
4. The opening words of an amendment memorandum shall read as follows: *The Bill is amended as follows:*
5. An amendment memorandum is not structured into sections. The components are identified using capital letters or Arabic numerals. Any further subdivision shall take place using Arabic numerals or lowercase letters.

NOTES

In addition to the body of the Bill, the heading and the preamble can also be amended by means of an amendment memorandum.

The submission of an amendment memorandum means that the Bill has been amended from that point on.

An amendment memorandum is based on the most recent text of the Bill, thus including any changes made to a previous amendment memorandum. The opening words of an amendment memorandum therefore do not read: 'The amended Bill is amended as follows:'.

Memoranda of improvement are only used with regard to correcting any discrepancies between the submitted and printed text of Parliamentary Papers. A memorandum of improvement is issued by the Legislation Office of the House of Representatives or by the Registry of the Senate respectively.

In an amendment memorandum to an amendment Act, a section to be included in another Act pursuant to that amendment Act is referred to as 'the proposed section': 'In Section III(A), the proposed Section 6a reads as follows: …'.

Please see Instruction 6.32 for the numbering of sections or paragraphs of an amendment Act by an amendment memorandum.

EXAMPLE

- **Amendment Memorandum**

  The Bill is amended as follows:

  A

  Section I(A) is amended as follows:
  1. By way of amendment of the numbering of subparagraphs two to four into subparagraphs three to five, a subparagraph is inserted that reads as follows:
  2. (…)
  2. In subparagraph four (new) '(…)' is substituted by '(…)'.

  B

  In Section I (B), the proposed Section 2a is amended as follows:
  1. In subsection one, '(…)' is substituted by '(…)'.
  2. Subsection three is amended as follows:
  a. In paragraph a, '(…)' is repealed.
  b. In paragraph b, '(…)' is substituted by '(…)'.

  C

  In Section 1 (B), '(…)' is substituted by '(…)' in the proposed Section 2c.

  D

  After Section II, a section is inserted that reads as follows:

  SECTION IIA
  (…)

  E

  In Section III, two paragraphs are inserted after paragraph C that read as follows:

  Ca
  (…)

  Cb
  (…)

  F

  In Section VII, a paragraph is inserted for paragraph A that reads as follows:

  aA
  (…)

Instruction 6.28 Explanatory notes to amendment memorandum

1. An amendment memorandum shall be provided with explanatory notes.
2. If an amendment memorandum is submitted alongside a memorandum in response to the report, reference to a specific part of the memorandum in response to the report may suffice as explanatory information.

Instruction 6.29 Signature of explanatory notes to Amendment Memorandum

1. An amendment memorandum will not be signed, but the explanatory notes to an amendment memorandum will be signed.
2. The explanatory notes to an amendment memorandum are preferably only signed by the Minister with primary responsibility. In that case, the explanatory notes shall set out the involvement of one or more other Ministers.

Instruction 6.30 Legislative test of memorandum of amendment

A memorandum of amendment with substantive significance submitted during the first reading (written stage) of a Bill, shall be submitted to the Ministry of Justice and Security for assessment.

Notes

Please see Instruction 7.4 on the testing of draft regulations by the Legal Affairs and Legislative policy division of the Directorate for Legislation and Legal Affairs of the Ministry of Justice and Security in general.

In order to avoid wasting time during the legislative process and due to the occasionally tight deadlines during the second reading (debate) stage, this test is restricted to memoranda of amendment with substantive significance during the first reading (written scrutiny) of a Bill. Part of the test centres on the issue of whether the memorandum of amendment has far-reaching consequences and must therefore be submitted to the Council of Ministers with a view to obtaining an opinion from the Advisory Division of the Council of State (please also see Instruction 7.15, paragraph two).

Instruction 6.31 Adopting amendments

If the government adopts a proposed amendment, a memorandum of amendment will not be submitted.

Notes

An amendment can only be adopted after it has become apparent that it will not be contested by the House. Adoption takes place first during the second debate session of the House or during the section-by-section scrutiny of the Bill. The President of the House will ensure that there are no objections to the adoption from any Members of the House and will then confirm that the amendment has been adopted. This is set out in the voting list and the amendment is no longer put to a vote. By adopting an amendment, the Bill will be amended with immediate effect (and therefore not only after acceptance as is the case with amendments adopted by the House).

Instruction 6.32 Renumbering of Bills

During the debate of a Bill by the House of Representatives, no amendments are made to the numbering of the sections or, in the case of amending Acts, to the lettering of the

various components of a section, unless this cannot be avoided.

NOTES

Any interim changes to the numbering of a Bill will make it more difficult for the creation history of a provision to be found in the Parliamentary Papers. Interim changes to the numbering will only take place if a section to be inserted cannot otherwise be provided with a number in a practical manner. Pursuant to Article 106 of the Rules of Procedure of the House of Representatives of the States General, the President of the House is authorised to amend the numbering of a Bill following its adoption by the House of Representatives (please also see Instruction 6.33). The numbering and lettering of subsections and (sub)paragraphs of sections is however changed with the amendment of a Bill.

Amendment Acts. New paragraphs inserted in a section of an amendment act are identified by repeating the capital letter of the previous paragraph and adding a lowercase letter in alphabetical order ('Aa, Ab, Ac …'). Please see Instruction 6.16, paragraph 1, on the insertion of sections.

If a paragraph is inserted before paragraph A of a Section, this paragraph is identified as 'aA'. If there are practical objections to this method, it may be decided that the existing paragraph A should be changed to Aa and more a new paragraph A to be inserted. When two or more paragraphs are inserted, the series existing series will be continued: 'aA, bA, cA … etc.' (if the existing lettering is maintained) or 'Aa, Ab, Ac … etc.' (in the case of a change to the lettering of paragraph A). Please also see the explanatory notes to Instruction 6.16.

Instruction 6.33 Continuous numbering

1. If there is a preference for the minister with primary responsibility rather than the President of the House of Representatives ensuring the continuous numbering of an Act, this shall be determined in accordance with the following model.
   For the publication in the Bulletin of Acts and Decrees, Our Minister [of/for …] again lays down the numbering of Sections [, chapters and paragraphs] of this Act and aligns the references of Section [, chapters and paragraphs] in this Act with the new numbering structure.
2. In that case, the adoption of the new numbering structure, and the corresponding alignment of the relevant references to a Decree adopted and signed by the relevant Minister, shall take place in accordance with the following model.
   The Minister of/for … / the State Secretary for …,
   In view of Section … [provision in accordance with the model referred to in the first paragraph];
   Has decided:
   Sole section
   In accordance with the Annex to this Decree, the numbering of Sections [, chapters and paragraphs] of the … [official title of the Act] is re-adopted and the references of Sections [, chapters and paragraphs] contained therein shall be brought into line with the new numbering structure.

NOTES

First paragraph. Particularly in the case of extensive new legislation, it may be preferable for the continuous numbering to be applied only after completion of parliamentary scrutiny by both Houses. This may be particularly appropriate if references in other legislation or Bills must also be amended in connection with continuous numbering, for example by means of an implementation act. If this provision is included, this implies that the President of the House has not invoked their power with regard to renumbering, except with regard to subsections of sections (Article 106 of the Rules of Procedure of the House of Representatives).

Second paragraph. A copy of the original of the Act will be included as an annex to the Decree, indicating the amendments resulting from the authority of the Minister to amend the numbering of and references to sections, etc. The Decree and the annex must be submitted to the Ministry of Justice and Security alongside the usual documents to be submitted to this department in the application for publication in the Bulletin of Acts and Decrees.

Instruction 6.34 Novelle

If required, an amendment proposal (novelle) may be submitted in respect of a Bill during or after debate in the Senate, however before approval by the King, this proposal shall be formulated in accordance with the following model:

SECTION I
If the Bill [as in Instruction 3.43 (2)]… submitted by Royal Message of [date] / submitted by letter of [date] is made into law, that Act is amended as follows: …

NOTES

An amendment act as referred to in this Instruction is referred to as a 'novelle', or amendment proposal. Please see Instruction 3.43, second paragraph, for the manner in which the reference to the Parliamentary Paper reference number is structured in the application of the model.

Please see Instruction 4.21, paragraph one, for the entry into force of a 'novelle' amendment proposal. It should be noted that the novelle proposal may itself equally be referendable upon the entry into force of the novelle and the Act for which the proposal was issued. In that event, the law for which the novelle was issued (or, in any event, the part of that Act to which the novelle relates) can only take effect after Instruction 4.18 has been complied with in respect of the novelle.

CHAPTER 7 PROCEDURES

§ 7.1 interdepartmental preparation

Instruction 7.1 Coordination with other Ministries

Preparation of regulations shall coordinate with the divisions of other Ministries that are involved in the issue to be regulated or a component thereof or with the issues that are affected by the regulations.

Instruction 7.2 Coordination in relation to impact on local authorities

1. The Ministry with primary responsibility shall consult with the Ministry of the Interior and Kingdom Relations at an early stage regarding regulations relevant to national policy on local and regional authorities.
2. If the regulations should make changes to the duties and powers of local and regional authorities, timely consultation shall take place with the managers of the municipal fund, the provincial fund or the BES fund on the relevant financial impact.

NOTES

First paragraph. This paragraph relates to the responsibility of the Minister of the Interior and Kingdom Relations for the coordination of national policy affecting the municipalities and provinces or the public authorities of Bonaire, Sint Eustatius and Saba (Section 116 of the Municipalities Act, Section 114 of the Provinces Act and Section 209 of the Bonaire, Sint Eustatius and Saba Public Entities Act). Please also see Instruction 7.6 in this regard.

Second paragraph. Section 2 of the Financial Relations Act and Section 87 of the Bonaire, Sint Eustatius and Saba Public Entities Finances Act provide that the financial impact and the method of funding of policy proposals that lead to a change in the performance of duties or activities by the municipalities, provinces or the public entities of Bonaire, Sint Eustatius and Saba will be discussed in good time. Please also see Instruction 4.46 in this regard.

Instruction 7.3 Coordination with Kingdom Partners

1. Preparation of regulations that relate to Kingdom relations shall involve consultation with the cabinets of the Ministers Plenipotentiary of Aruba, Curaçao and Sint Maarten. The Ministry of the Interior and Kingdom Relations shall be kept informed of the communications with the cabinets of the Ministers Plenipotentiary.
2. The first paragraph also applies to the preparation of regulations regarding which concordance has been prescribed.

NOTES

First paragraph. Please see Article 3 of the Charter for the Kingdom of the Netherlands in relation to Kingdom relations. Even in cases where there is doubt as to whether Kingdom relations are concerned, it is recommended that officials contact the Division of Constitutional Affairs and Legislation of the Ministry of the Interior and Kingdom Relations.

Second paragraph. This paragraph relates to the 'principle of concordance' laid down in Article 39 of the Charter of the Kingdom of the Netherlands. Article 39 of the Charter refers to issues relating to

civil and commercial law, the law of civil procedure, criminal law, the law of criminal procedure, copyright, industrial property, the office of notary, and provisions concerning weights and measures as issues that must be regulated in a similar manner as much as possible in the Netherlands, Aruba, Curaçao and Sint Maarten.

Instruction 7.4 Legislative review

1. Due to the primary responsibility of the Ministry of Justice and Security for the review of legislation regarding its constitutional and administrative quality, including the review of legislation on the basis of constitutional, European and international law, the following documents shall be submitted for review to the Directorate for Legislation and Legal Affairs of the Ministry of Justice and Security prior to being submitted to the Council of Ministers or to the Council of Ministers committees for review:
   a. Bills (proposals for Acts of Parliament);
   b. draft Orders in Council;
   c. far-reaching ministerial memoranda of amendment to a Bill;
   d. Bills or draft Orders in Council alongside the corresponding report on the opinion of the Council of State, in the event that the opinion of the Advisory Division of the Council of State contains significant criticism of the content or design.
2. Due to the responsibility of the Minister of the Interior and Kingdom Relations for the management of the Constitution, the Ministry of Justice and Security shall collaborate with the Ministry of the Interior and Kingdom Relations for the constitutional review of legislation.
3. Due to the responsibility of the Minister of Foreign Affairs for the unity of the interpretation of international and European law, the Ministry of Justice and Security shall collaborate with the Ministry of Foreign Affairs for the review of legislation in terms of international and European law.
4. Submission shall take place in good time such that there is sufficient flexibility for real consultation on alternatives if deemed necessary by the Directorate for Legislation and Legal Affairs.

Notes

Review by the Ministry of Justice and Security. The Ministry of Justice and Security bears primary responsibility for the review of regulations for their legal and administrative quality. Naturally, this does not alter the fact that all Ministries themselves must also ensure the quality of their legislation and take the necessary measures.

The legislative review concerns the requirements of good legislation laid down in these Instructions and the application of the Integrated impact assessment framework (Integraal Afwegingskader beleid en regelgeving, IAK). Please also see the aspects referred to in Instruction 4.4.3 in this regard.

Coordination of legislative review. The Legal Affairs and Legislative policy division of the Ministry of Justice and Security is the principal point of coordination and contact for this review. If no agreement has been reached during the legislative review, the Legal Affairs and Legislative policy division shall lay down the points of dispute in a legislative report that is submitted alongside the Bill by relevant Ministry to the Council of Ministers or the committees of the Council for the purposes of consideration.

Please see Instruction 7.14 for the review of an additional report in relation to significant criticism from the Advisory Division of the Council of State. Please see Instruction 6.30 for the review of memoranda of amendment that do not need to be submitted to the Council of Ministers.

Instruction 7.5 Business impact assessment and environmental impact

assessment

1. The various types of impact of the regulations on businesses and on the environment shall be set out and quantified by the Ministry with primary responsibility for eligible cases in the explanatory notes to the regulations.
2. The Ministry of Economic Affairs shall review the manner in which the impact on businesses has been assessed in the explanatory notes.

NOTES

First paragraph. Please see section 7 of the Integrated impact assessment framework (IAK) (What is the impact?) for the business impact assessment and environmental impact assessment. The business impact assessment includes both qualitative and quantitative questions aimed at identifying the impact on the business community.

Second paragraph. The relevant Ministry will present the results of the business impact assessment carried out in the explanatory notes and will submit the regulations to the Ministry of Economic Affairs for review via the digital quality control tool (Toetsloket).

Instruction 7.6 Assessment of impact on local authorities

1. The various types of impact of the regulations on local authorities shall be set out by the Ministry with primary responsibility for eligible cases in the explanatory notes to the regulations.
2. The manner in which this aspect is accounted for in the explanatory notes to the regulations shall be reviewed by the Ministry of the Interior and Kingdom Relations.

NOTES

The Minister of the Interior and Kingdom Relations will assess the policy proposals and Bills of the Government that envisage a role for provinces and municipalities or for the public authorities of Bonaire, Sint Eustatius and Saba. The aim of this review is to monitor and strengthen the quality of intergovernmental relations in our country. The Ministry of the Interior and Kingdom Relations has drawn up an 'Assessment Framework for Intergovernmental Relations' (Beoordelingskader Interbestuurlijke verhoudingen) (available on www.kcwj.nl) to assess the relevance of regulations on local and regional authorities at a national level.

If regulations confer duties on local authorities, if administrative instruments (in particular specific benefits) are implemented or if the regulations otherwise directly or indirectly impact local authorities, this must be addressed in the explanatory notes to the regulations. The Ministry of the Interior and Kingdom Relations will be contacted at the earliest possible stage to assess these aspects. Please see Instruction 4.46 in relation to the financial impact of regulations on local and regional authorities.

§ 7.2 Notification of draft regulations

Instruction 7.7 Notification obligations

1. When preparing regulations, the Ministry with primary responsibility for the regulations shall consider whether binding EU legal acts or other international obligations require the draft of the regulations to be notified to an institution of the European Union or to another international organisation.
2. Where applicable the prescribed standstill period shall be observed or the tacit or explicit approval of the relevant institution shall be awaited in relation to determining

the time of adoption of the regulations.

NOTES

In certain cases, the European Commission must be notified of draft independent national regulations. These notifications must be distinguished from post-notifications, such as notification for implementation regulations (please see Instruction 9.19) or notification obligations under the Services Directive (please see Instruction 5.29). The purpose of the obligation of advance notification is to give the Commission - and in certain cases the Member States - the opportunity to assess the draft national regulations for compatibility with EU law and to propose any amendments. The World Trade Organisation (WTO) also has notification obligations for draft regulations, for example under the Agreement on Technical Barriers to Trade (Treaty Series) concluded in Marrakech on 15 April 1994 (Treaty Series 1994, 235). Under this Agreement, draft technical regulations must be notified to the Secretariat of the WTO.

The omission of such notification may affect the validity of the regulations. Please see the Securitel judgment (ECJ 30 April 1996, ECLI:EU:C:1996:172) on Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983, L 109). This Directive has now been replaced by Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJEU 2015, L 241).

General information on notification procedures can be obtained from the notification coordinator designated by each Ministry. Issues related to notification with an interdepartmental dimension can be submitted via to the Interdepartmental Committee for European Law Notification (Interdepartementale Commissie voor Europees Recht-Notificatie, ICER-N) through the notification coordinator. Information on the obligation to notify and the manner of notification is included in the 'ICER Manual on Notification of technical regulations' and the 'ICER Manual on Notification under the Services Directive', available on www.kcwj.nl.

Article 108(3) TFEU on aid measures of Member States is similarly essential. Proposed aid measures must be assessed as to their compatibility with the TFEU and, if necessary, the European Commission must be informed of the measures for approval. It is also possible that notification to the European Commission may suffice. To this end, the proposed regulations must be assessed in good time regarding state aid aspects. Each Ministry has in-house state aid experts (often affiliated with the directorates of Legal Affairs) and will ensure the timely completion of the registration procedure or notification procedure. General information regarding this notification procedure can be obtained from the Ministry of Economic Affairs and from the legal affairs directorate of each Ministry. Issues regarding state aid with an interdepartmental dimension can be submitted to the Interdepartmental State Aid Consultation Body (Interdepartmentale Staatssteun Overleg, ISO) through the legal affairs directorate. Please also see the Guidelines on State Aid for the government, which are available on www.kcwj.nl.

The notification will be made at such a time that, on the one hand, the national decision-making process has been completed as much as possible and, on the other hand, there is still flexibility to amend the regulations in response to the comments received. In practice, the time of approval by the Council of Ministers is used for Bills and Orders in Council. In the case of ministerial regulations, notification may take place once an interdepartmental draft has been completed, however in any case before signature by the Minister. If the regulations are amended to a substantial extent thereafter, notification must take place again.

Notification under the Services Directive will take place immediately after the relevant regulations have been adopted. If Directive (EU) 2015/1535 also applies to certain elements, those elements will be notified during the drafting stage.

Instruction 7.8 Statement and announcement of notification

1. Where regulations lay down rules that have been notified in draft form pursuant to a binding EU legal act or another international obligation to an institution of the European Union or to another international organisation, this shall be stated in the general section of the explanatory notes to those regulations with reference to the relevant EU legal act or international obligation. The following model shall be used as a starting point for the statement:
   [The Bill / The draft Decree / The draft regulations] was/were submitted to [name of institution] on [date of notification] pursuant to Article … of [title of binding EU legal act or international obligation]. The following is noted as a result of the responses of [name of institution or other parties involved]. [response or amendments implemented].
2. If notification is taking place under the Agreement on Technical Barriers to Trade concluded in Marrakesh on 15 April 1994 (Treaty Series 1994, 235), this will likewise be recorded in the Government Gazette. The following model is used as the starting point for the announcement:
   In order to comply with [Article 2.9 / Article 5.6,] of the Agreement on Technical Barriers to Trade concluded in Marrakesh on 15 April 1994 (Treaty Series 1994, 235), the Minister [of / for …] hereby gives notice that a [bill / draft decree / draft regulations on / , governing …] in which [technical regulations / regulations regarding conformity assessment] are imposed on [designation of type of goods], has/have been notified to the Secretariat of the World Trade Organisation. Information on these technical regulations can be obtained from the Ministry of […].

NOTES

First paragraph. In the case of a notification pursuant to Directive (EU) 2015/1535 (please see Instruction 7.7), the explanatory notes should also indicate which provisions are likely to contain technical requirements and why these provisions are compatible with Articles 34 to 36 TFEU (free movement of goods).

Second paragraph. The choice of one of the two articles of the Agreement on Technical Barriers to Trade depends on whether the regulations include technical regulations (Article 2.9) or requirements regarding conformity assessment (Article 5.6). If regulations contain both, both Articles and aspects must be mentioned.

§ 7.3 Advice of the Advisory Division of the Council of State

Instruction 7.9 Time of submission to Advisory Division

1. No bills or draft Orders in Council shall be submitted to the Advisory Division of the Council of State in respect of which policy preparation and the decision-making process in the Council of Ministers has not yet been finalised.
2. In principle, a draft Order in Council is not submitted to the Advisory Division of the Council of State until the bill that forms the basis of the Order in Council has been approved by the House of Representatives.

NOTES

First paragraph. The Advisory Division acts as the final advisory body to the government, after all other opinions to be obtained by the government have been issued and processed. This Instruction

does not prevent the Council of Ministers from deciding in advance to re-examine the bill or the draft in the Council, after receipt of the Division's opinion, regardless of its judgment.

Bills relating to Kingdom Acts or drafts of Orders in Council for the Kingdom must be submitted to the Advisory Division of the Council of State of the Kingdom, after the decision making process has been completed within the Council of Ministers of the Kingdom.

Second paragraph. In urgent cases, it may be required for a draft of an Order in Council to be submitted sooner, for example, when the Bill is submitted to the House of Representatives or even concurrently to the submission of the Bill to the Advisory Division. Naturally, it is not possible for a draft of an Order in Council to be submitted to the Division before the underlying Bill has been submitted. Occasionally a draft text of an Order in Council is submitted alongside a Bill to inform the States General. In that case, the rule laid down in this Instruction will likewise apply.

Instruction 7.10 Submission of recommendations to Advisory Division

In the event of an application for an opinion from the Advisory Division of the Council of State regarding a Bill or draft Order in Council, the following recommendations received by the Ministry shall be submitted to the Advisory Division regarding that Bill or draft:

a. recommendations of the European Commission;
b. recommendations from advisory boards;
c. recommendations from key stakeholders' organisations, if inclusion of their assessment may lead to improved insight into the policy decisions outlined in the Bill or draft or explanatory memorandum;
d. other opinions referred to in the Memorandum or Explanatory Memorandum;
e. other recommendations that the responsible Minister believes are necessary to submit.

Instruction 7.11 Urgent advice from Advisory Division

Request for the urgent review of an advisory request may only be submitted with the authorisation of the Council of Ministers.

Notes

If a proposed application for urgent review relates to draft regulations that are being reviewed in the committees of the Council of Ministers, the proposal can be submitted to the Council of Ministers committees (onderraad).

It follows that the review of the Council of Ministers of a proposed request for urgent review should take place at the same time as the review of the draft regulations to which the request relates. However, this will not be possible if, following review in the Council of Ministers, however prior to submission to the Advisory Division of the Council of State, time is required for other procedures, such as pre-publication and advice from advisory boards. In those cases, a proposed request for urgent review must be submitted to the Council of Ministers upon completion of such procedures, where in general there may be derogation from the 7-day period applicable to the submission of documents to the Council of Ministers.

The decision to request urgent review remains primarily the responsibility of the relevant Minister. It is vital, however, that a duly diligent assessment is carried out: requesting urgent review should be the exception to the rule. The Ministry of General Affairs is responsible for coordination in this regard. It follows that the Ministry of General Affairs should consult with the Legal Affairs and Legislative policy division of the Directorate for Legislation and Legal Affairs of the Ministry of Justice and Security regarding urgent review requests. This consultation will always take place via brief and effective official communications.

With regard to the proposal for urgent review to the Council of Ministers, the letter to the Vice-

President of the Council of Ministers requesting urgent review of the request will suffice. This letter will be submitted to the Council of Ministers in draft form.

Instruction 7.12 Withdrawal of request to Advisory Division

If, during the advisory proceedings before the Advisory Division of the Council of State, it appears that there is no longer any need for the continuation of the review of the Bill or draft Order in Council, the Minister with primary responsibility, with due authorisation from the Council of Ministers, shall ensure that the request for advice is withdrawn.

Instruction 7.13 Form of additional report

The opinion of the Advisory Division of the Council of State shall be included in full in the additional report to the King and the relevant response shall be added at the appropriate place.

Notes

The independent readability of the additional report will be increased by including the text of the Advisory Division's opinion and placing the point-by-point response in between. General remarks not specifically related to points in the opinion will be included at the beginning or at the end of the additional report. Any editorial annex to the opinion of the Advisory Division will not be included in the additional report.

If amendments are made at the stage of the additional report that are not the result of the opinion of the Advisory Division (and regarding which the Division was not consulted pursuant to Instruction 7.16, paragraph one), this will be stated in one or more independently numbered points at the end of the additional report.

Instruction 7.14 Review in the Council of Ministers following substantial criticism

If an opinion of the Advisory Division of the Council of State includes substantial criticism (ingrijpende kritiek) of the content or the design of a Bill or a draft Order in Council, the Bill or draft shall be addressed again in the Council of Ministers.

Notes

The following judgments indicate substantial criticism:

- 'The Advisory Division of the Council of State requests that the Bill should not be submitted to the House of Representatives of the States General until after the foregoing has been taken into account.' (judgment 4)
- 'The Advisory Division of the Council State requests that the Bill should not be submitted to the House of Representatives of the States General in its current form.' (judgment 5)
- 'The Advisory Division of the Council State requests that the Bill should not be submitted to the House of Representatives of the States General.' (judgment 6)

In the case of Orders in Council these judgments will read the same, on the understanding that the judgment, or dictum, in that case will relate to the decision-making of the government regarding the Order in Council.

In the event of a substantial criticism, the draft regulations and the additional report must also be submitted to the Legal Affairs and Legislative Policy division of the Directorate for Legislation and Legal Affairs of the Ministry of Justice and Security for review (Instruction 7.4, paragraph 1, part d).

Instruction 7.15 Opinion of the Advisory Division on substantial amendments

1. If substantial amendments are made to a Bill or a draft Order in Council for which the Advisory Division of the Council of State has issued an opinion, prior to the submission or adoption thereof, that are not the result of the opinion of the Advisory Division, the Division shall be heard regarding these amendments.
2. If major amendments are made to a submitted Bill by the government, the Advisory Division shall be heard regarding these amendments unless there are compelling reasons that should preclude this.
3. Instructions 7.9, paragraph one, and 7.10 to 7.14 shall apply mutatis mutandis to the opinion on a memorandum of amendment.

NOTES

Whether an amendment should be considered to be substantial will have to be assessed on a case-by-case basis, including in the light of the purpose of the opinion provided by the Advisory Division. Some amendments may also be of such great significance that it is necessary to consult the Advisory Division on these matters. A separation of a Bill (e.g. separation into controversial and non-controversial parts) or a merger of two Bills that are closely related, without this resulting in any substantive changes, will in itself not be considered to be a substantial amendment.

Pursuant to Article 4 of the Rules of Procedure for the Council of Ministers, the Council of Ministers will again consider a Bill or draft Order in Council, if it has undergone significant amendment. The Council of Ministers will then decide on whether to consult the Advisory Division again. The Council of Ministers will also decide on the substantial nature of an amendment.

Instruction 7.16 Opinion of the Advisory Division on amendment

The Advisory Division of the Council of State shall only be heard regarding a substantial amendment to a Bill if the relevant Minister believes this is required for the purpose of assessment of the amendment.

NOTES

Where an amendment is concerned that involves the functioning of the Council of State, a logical step would be to ascertain the sentiments of the Council of State on the matter, either in the form of a request for an opinion or by consulting the Vice-President.

§ 7.4 Parliamentary scrutiny of government bills

Instruction 7.17 Submission of recommendations to the House of Representatives

The recommendations relating to Bills referred to in Instruction 7.10 shall be submitted to the House of Representatives.

NOTES

Pursuant to Article 80, paragraph two, of the Constitution, recommendations issued by standing advisory boards, with regard to Bills that are submitted by or on behalf of the King, subject to exceptions determined by law, are submitted to the States General. The Instruction also includes the other recommendations and opinions submitted to the Advisory Division of the Council of State.

Instruction 7.18 Structure of memorandum following the report

1. The memorandum in response to the report shall follow the structure and order of the report as much as possible.
2. If required for reference purposes, the components or questions in the report shall be numbered in the memorandum in response to the report, if this has not been done in the report itself.
3. This Instruction shall apply mutatis mutandis to other documents having the character of a point-by-point response to questions or comments submitted.

NOTES

First paragraph. The memorandum in response to the report may paraphrase or repeat the questions contained in the report when providing responses. In addition, the text of the report may be included in full, with a point-by-point response to the questions incorporated into the text.

Second paragraph. The addition of numbering does not make any changes to the content of the text and may be useful with regard to simplifying reference to questions or responses.

Instruction 7.19 Response to report

Responses to reports of the House of Representatives shall in principle take place within the same period of time as that taken by the House Committee to publish the report, with the date of the Royal Message being the start date.

Instruction 7.20 Departmental assistance for amendments

Members of the House of Representatives who wish to propose an amendment may request assistance from the relevant Ministry with regard to formulating amendments. This assistance shall be provided as fully as possible.

NOTES

Members of Parliament, their parliamentary group staff and employees of the Legislation Office of the House of Representatives may directly request official assistance in drafting amendments. Officials shall inform their Minister of the fact that assistance has been requested and provided. Official assistance consists of legal and legislative advice in formulating an amendment or for the review of amendments. Advice may, for example, equally relate to the legal incorporation of an amendment into the Bill or its compatibility with European or international law. Pursuant to Article 96(1) of the Rules of Procedure of the House of Representatives, amendments must be accompanied by brief explanatory notes. In principle, the assistance does not extend to the formulation of these explanatory notes.

Instruction 7.21 Deadline for submission Memorandum of Reply to Senate

1. A Memorandum of Reply to a preliminary report of the Senate shall be submitted to the Senate no later than fourteen days before the envisaged date of public scrutiny of the relevant Bill.
2. In urgent cases, this deadline may be deviated from in consultation with the Registry of the Senate.

Instruction 7.22 Withdrawal of Bill

1. The withdrawal of a Bill pending before the House of Representatives or the Senate shall take place by way of a letter from the relevant Minister, under the authority of

the King.
2. If the Bill is before the Senate, the President of the House of Representatives shall likewise be informed of the withdrawal.

NOTES

The withdrawal letter be submitted by all signatory Ministers or by the Minister with primary responsibility on behalf of the others. The intention to withdraw a bill is debated in the Council of Ministers (Article 4(2)(a) of the Rules of Procedure for the Council of Ministers).

§ 7.5 Process for private members' bills

Instruction 7.23 Departmental assistance for private members' bills

Members of the House of Representatives who wish to introduce a private members' bill may request assistance from the relevant Minister for the formulation of that bill. This assistance shall be provided as fully as possible.

NOTES

As with amendments (Instruction 7.20), this relates to legal and technical legislative assistance. In addition, this may involve the provision of factual information for the general section of the Explanatory Memorandum, the drafting of passages for the section-by-section explanatory notes or calculation of the financial impact of the Bill (by the Financial and Economic Affairs Division (Directie Financieel-Economische Zaken, FEZ)).

Officials will require the permission of their Minister for the provision of assistance in formulating a private members' bill. Also see Parliamentary Papers II 2004/05, 30095, No. 5.

Instruction 7.24 Departmental contribution to private members' Bill

1. Ministers shall provide all information and opinions that are requested of them in relation to both the written reading and public debate of a private members' bill and of which the provision is not contrary to the interests of the State. The Minister shall be present at all time during the debate of the bill.
2. Ministers shall also at their own initiative make any remarks both during the written reading and public debate that they consider appropriate to arrive at an effective legislative product.
3. During parliamentary debate of a private members' bill, the parties who have introduced the bill shall similarly be offered legal and legislative support from officials as fully as possible and as soon as possible if required.

Instruction 7.25 Council of Ministers discussion of private members' bills

Ministers shall ensure that where appropriate they are able to discuss private members' bills on behalf of the government. To that end, they will raise them in good time in the Council of Ministers.

Instruction 7.26 Notification of enactment of private members' bill

1. As soon as possible, but within three months of the adoption of a private members' bill

by the Senate, the relevant Minister shall inform the States General regarding the decision making process on whether or not to enact the bill or, if a decision has not been reached, of the status of the process and of the time at which subsequent communications will take place as referred to in the foregoing.

2. In general, the government does not seek advice from the Advisory Division of the Council of State on private members' bills that have been passed by the States General, unless there are objections to their enactment.

CHAPTER 8 PREPARATION, APPROVAL AND IMPLEMENTATION OF CONVENTIONS

§ 8.1 Treaties

Instruction 8.1 Terminology in relation to treaties

1. A treaty is understood to mean any written agreement that is binding on the State in accordance with international law criteria.
2. *In Dutch titles of treaties, the term 'treaty' is preferred over the term 'agreement'*
3. In treaties, the Kingdom of the Netherlands is referred to as a party to the treaty as such.
4. In the negotiations on draft treaties, the aim is to designate the State - and therefore not the government - as the party to the treaty.

NOTES

Criteria for treaties. Factors such as the form (treaties and conventions may consist of one or more documents), the title, method of creation and function of the persons concluding the agreements do not determine the formal status of a treaty. *Please see the Vienna Convention on the Law of Treaties, in particular Article 2 (Dutch translation in Treaty Series 1985, 79) for the principles of treaty law.* 1985, 79). In addition, treaties and conventions can be concluded with international organisations. The binding nature of a treaty for the Kingdom only comes into effect after the treaty's entry into force for the Kingdom.

Naming. If a treaty does not contain the term 'treaty' in its title, the term 'treaty' should nevertheless be used in any documents concerning the treaty, unless this may result in confusion with other treaties referred to in the document. For example, this means that a letter listing its subject as the 'Agreement on …' will refer to the 'foregoing treaty'.

The Parties. If efforts to designate the State as a contracting party should fail, the explanatory memorandum will set out that the treaty will apply to the State. The Kingdom of the Netherlands is the subject of international law, even where treaties are concerned that exclusively apply to the Netherlands, Aruba, Curaçao or Sint Maarten. The designation of 'the Netherlands' as a contracting party is incorrect.

International policy agreements. Within the domain of written international agreements based on public law, there are two crucial distinct categories: treaties and international policy agreements. The essential difference between the two is that a treaty creates legally binding obligations for states (or international organisations), while an international policy agreement is only politically and morally binding on governments, ministers, other authorities or parts of international organisations.

The following applies to international policy agreements. If regulations are envisaged that do not bind states under international law, an international policy agreement can be established between governments, one or more ministers, between local authorities or with international organisations. These policy agreements should be referred to using the term 'Memorandum of Understanding' (MoU). Frequently, the objective is to come to agreement regarding future parallel action or for the coordination of policy of otherwise independent parties. Policy agreements are politically and morally binding to the signatories, but do not constitute legal obligations that can be enforced by law. International policy agreements can be expected to be complied with by the governments, ministers, etc. concerned, to the extent permitted by national constitutions and statutory rules. The government may comply immediately with a request from the Dutch parliament, for example, to discontinue any

agreements. Another reason for discontinuation may be where a court determines that the agreements may not proceed if compliance is found to be contrary to the law or otherwise unlawful.

Consultation with the Legal Affairs Department, International Law Division Preparation of international policy agreements will be discussed with the Legal Affairs Department, International Law Division of the Ministry of Foreign Affairs at the earliest possible stage to avoid any international misunderstanding on the legal nature of the agreement and to avoid any possible friction with the provisions of the Constitution on treaties. The Ministry of Foreign Affairs has drawn up a brochure on MoUs, which is available on the government portal (Rijksportaal).

Consultation with the Constitutional Affairs and Legislation Division In the event that preparation of international policy agreements should entail any potential friction with the provisions of the Constitution, the Constitutional Affairs and Legislation Division of the Ministry of the Interior and Kingdom Relations must be consulted.

The MoUs created are retained by the department responsible for the content of the international policy agreement.

Instruction 8.2 Consultation of Aruba, Curaçao and Sint Maarten

1. The governments of Aruba, Curaçao and Sint Maarten shall be consulted at the earliest possible stage in the creation of treaties that may also apply to these countries or may otherwise affect these countries and in the procedures to be followed in this respect. The heading shall be concise.
2. The Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs shall liaise on the matter with the Ministers Plenipotentiary of Aruba, Curaçao and Sint Maarten.

Notes

First paragraph. Under Article 3 of the Charter of the Kingdom of the Netherlands, foreign relations fall under Kingdom relations. Article 27(1) of the Charter provides that Aruba, Curaçao and Sint Maarten must be consulted in relation to treaties or conventions that affect them pursuant to Article 11(3). In practice, the governments of Aruba, Curaçao and Sint Maarten are approached with regard to all treaties of which the nature is such that co-applicability is a possibility, with the question of whether the treaty should also apply to these countries. The countries will also be involved in the event that the treaty in question otherwise affects those countries within the meaning of Section 2(2) of the Kingdom Act on the Approval and Publication of Treaties (Rijkswet goedkeuring en bekendmaking verdragen). The latter means that the treaty is considered to be of such importance to the country concerned that, although co-applicability is not an option, the country nevertheless is afforded the opportunity to participate in the parliamentary approval procedure. The governments of Aruba, Curaçao and Sint Maarten are not consulted with regard to treaties of which it is without a doubt that they would only be of interest to the Netherlands. There is no need for a treaty to apply to all four countries of the Kingdom, the treaty may also apply only to a number of these countries within the Kingdom. In cases where the internal relationship between Aruba, Curaçao, Sint Maarten and the Netherlands is at stake, the Constitutional Affairs and Legislation Division of the Ministry of the Interior and Kingdom Relations will be consulted.

Instruction 8.3 Interdepartmental preparation of treaties

1. The International Law Division and the Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs shall be contacted at the earliest possible stage regarding the preparation of treaties.
2. The Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs shall be contacted at the earliest possible stage with regard to the approval of treaties,

on expressing the intention to be bound by a treaty and the intention to terminate or extend a treaty, with a view to coordinating consistent policy with regard to treaties.
3. In cases where the initiative with regard to treaties lies with the Ministry of Foreign Affairs, the Treaties Division of the Legal Affairs Department, in turn, will contact any other ministries involved at the earliest possible stage.
4. Contact with the divisions of other ministries that are involved in the issue to which the treaty or a component thereof relates, or that are involved with the issues affected by the treaty, shall likewise be sought regarding the preparation and approval of treaties, regarding expressing agreement to being bound by a treaty and regarding any intentions to terminate or extend a treaty.

NOTES

The relevant bills, drafts and instructions must be submitted to the International Law Division and the Treaties Division in advance, in a timely manner, during consultation on the preparation of treaties. Such consultations should in any case consider the following points: relationships with other treaties, the classification of the treaty (public, confidential or secret), the level of conclusion, the status (independent or implementation), the effective date, the duration of the treaty, any direct effect and provisional application, dispute resolution, any reservations and declarations, amendment, termination and territorial validity (please also see Instruction 8.4).

The Treaties Division will be engaged in advance, in a timely manner, for the preparation of a treaty's conclusion, its consideration in the Council of Ministers (of the Kingdom) and for the approval of treaties, as well as regarding the expression of consent to being bound by a treaty. This also applies to the intention to terminate a treaty or not to extend it. The Treaties Division must also be consulted in cases where consultation with Parliament is to take place in the preparatory phase. In any event, when consulting on the approval, it must be considered whether or not parliamentary approval is required, whether or not the explicit or tacit procedure will be followed and whether there is a deadline for the entry into force. The approval documents, any implementing legislation, direct effect and provisional application will also have to be discussed during these consultations. Also see Instruction 8.9.

Instruction 8.4 Impact of treaty on national legislation

1. Within the preparation of and negotiations for a treaty, there shall be timely and diligent focus on the treaty's impact on national legislation.
2. Those participating in the preparation or negotiation of a treaty shall ensure that the legislative departments of the ministries concerned are consulted at the earliest possible stage.
3. The negotiating delegations shall include all elements that are crucial to implementation and to parliamentary approval in their report.

NOTES

First paragraph. In addition to examining issues surrounding potential implementation, attention should also be paid to the possible direct effect of the provisions of the treaty and the corresponding impact. Naturally, this is a crucial issue from a national point of view. Please also see the explanatory notes to Instruction 8.9. However, it may also be useful to raise this issue from an international perspective.

Second paragraph. Early consultation of the legislative division is crucial with a view to the timely drafting of any implementation regulations.
Third paragraph. If the timely amendment of Dutch legislation to future binding decisions under the treaty has the potential to be problematic, this will be identified in the report. These will be decisions

that become binding without any further national approval being required. The report may consider analogue application of Instruction 3.34[1] in such cases.

Instruction 8.5 Dutch text of the treaty

The authentic Dutch text of a treaty or the Dutch translation shall be drawn up by or under the responsibility of the Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs.

§ 8.2 Decisions of international organisations

Instruction 8.6 Interdepartmental preparation

1. Government representatives who are members of a body of an international organisation that takes decisions that bind the Member States of that organisation shall ensure that, if decisions are being prepared that relate to government policy or are otherwise of major significance, the drafts for these decisions shall be the subject of consultation between the relevant Ministries and will be raised in the Council of Ministers.
2. In the case of binding decisions, the Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs shall also be consulted in the preparatory stage.

NOTES

Decisions of international organisations may constitute a treaty or convention, which is why the Treaties Division must be consulted in order to assess whether this is the case and whether the decision requires parliamentary approval. Also see Instruction 8.16.

EU legal acts are likewise decisions of an international organisations Decisions to which the Member States are party and where those decisions must be ratified by the Member States before they can enter into force are considered to be decisions that are conventions in nature. In such cases, this Instruction and Instruction 8.7 will likewise apply.

Instruction 8.7 Impact on national legislation

1. The impact on national legislation shall be considered in the preparation of decisions of international organisations.
2. Where a decision of an international organisation that is binding to the Kingdom has been adopted that requires legal requirements for its implementation, these requirements shall be established as soon as possible and within the prescribed deadline.
3. If the decision contains provisions that can bind all parties and are not compatible with the applicable statutory provisions, measures will be taken without delay to amend the relevant statutory provisions.

NOTES

Please see the explanatory notes to Instructions 8.4, 8.6 and 8.9.

[1] Reference to: Ar (Drafting instructions) 9.8

Instruction 8.8 Approval of implementation decisions

1. If a treaty appoints a body to take decisions that are binding on the Kingdom and that body cannot be regarded as a body of an international organisation within the meaning of Articles 92, 93 and 94 of the Constitution, the treaty shall be approved by law.
2. In such cases, the bill for the approval of the treaty shall include an authorisation provision, stating that the decisions taken by this body will not require approval of the States General.

NOTES

The example in this case is a treaty from 2010, which appointed a council to take decisions, whereas the council in question is not an international organisations within the meaning of Articles 92, 93, and 94 of the Constitution. The example refers to the FABEC Council and its decisions for which an authorisation provision is laid down in Section I(2) of the Act of 27 September 2012 concerning the approval inter alia of the Treaty establishing the North European Functional Airspace Block (Europe Central) adopted in Brussels on 2 December 2010 between the Federal Republic of Germany, the Kingdom of Belgium, the Republic of France, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Swiss Confederation (Bulletin of Acts and Decrees 2012, 509). This Instruction likewise applies if there is uncertainty as to the way in which the body should be qualified in light of the constitutional provisions referred to.

Please also see Sections 4 and 7(a) of the Kingdom Act on the approval and publication of treaties (Rijkswet goedkeuring en bekendmaking verdragen). Please see Instruction 8.12(3) for the wording of the authorisation provision referred to in paragraph two.

§ 8.3 Preparation of legislation concerning approval and implementation

Instruction 8.9 Assessment of requirement for treaty implementation

1. The preparation process of parliamentary approval of a treaty shall examine the extent to which compliance by the Kingdom should require any statutory provisions.
2. The parliamentary approval preparation process of a treaty shall also examine whether the treaty may contain any binding provisions as referred to in Article 93 of the Constitution.
3. If any rules to be established must be adopted by law, the relevant bill shall, in principle, be submitted to the House of Representatives concurrently to the bill for the approval of the treaty. Regulating the approval and implementation of a treaty in a single Act may be considered.

NOTES

First paragraph. The assessment, conducted in consultation with the Treaties Division of the Legal Affairs Department, concerning implementation legislation referred to in paragraph one will also consider whether the treaty contains any provisions that are able to bind all parties in terms of their content and which are incompatible with the statutory provisions applicable within the Kingdom, thus requiring adaptation of those provisions. This is because Article 94 of the Constitution provides that rules applicable within the Kingdom do not apply if this application is not compatible with any binding provisions of treaties and decisions of international organisations that apply to all parties, and that, with a view to the clarity of the applicable law and in order to avoid unnecessary workload for the courts, the statutory provisions should be amended given that they will no longer be applied under this provision.

Second paragraph. The results of that investigation are included in the explanatory memorandum to the treaty. Please also see Section 2(2) of the Kingdom Act on the approval and publication of treaties (Rijkswet goedkeuring en bekendmaking verdragen) as well as Instruction 8.13.

Third paragraph. This Instruction does not require simultaneous introduction or entry into force of the Act approving the treaty and the implementation act in each case. As a result, the Act approving the treaty may be adopted and enter into force sooner than the formal implementing legislation, which, as a rule, is more complex. The treaty can then be ratified more quickly. This may be beneficial in the case of politically significant conventions, which are expected to be delayed for some time before their entry into force and of which ratification at an early stage is considered beneficial for our country. The implementing legislation must, of course, be in effect or come into force when the relevant treaty comes into force.

With due observance of Instructions 2.33 and 4.15(2), the draft Order in Council or ministerial regulations must also be introduced at such a time as to guarantee timely entry into force.

Treaties that partly relate to EU competences and partly relate to competences of the Netherlands shall take into account EU ratification in the application of this Instruction, including the time of ratification and the adoption of any binding EU legal acts.

Instruction 8.10 Treaties applicable solely to the Netherlands

1. The explicit approval of treaties that solely apply to the Netherlands pursuant to a territoriality provision or by their nature within the Kingdom shall take place by way of a national legislation, rather than by Kingdom legislation.
2. The first paragraph shall apply mutatis mutandis to the approval of treaties in which joint application for Aruba, Curaçao or Sint Maarten is an option, but where it has already been definitively established upon submission of the approval bill that application of the treaty will not extend to include Aruba, Curaçao or Sint Maarten.

Notes

First paragraph. It does not make sense for the treaties referred to in this paragraph to be approved by way of a Kingdom Act. After all, in cases relating to national regulations on Kingdom relations that do not apply in Aruba, Curaçao and Sint Maarten, Article 14(3) of the Charter of the Kingdom of the Netherlands, after all, explicitly states that they must be adopted by ordinary legislation.

'Conventional' Dutch legislative procedure will be followed for approval acts as referred to in this paragraph. This means that the bill is not considered in the Council of Ministers of the Kingdom, but in the Dutch Council of Ministers (please also see Instruction 8.14) and that advice will be provided by the Advisory Division of the Council of State rather than by the Advisory Division of the Council of State of the Kingdom (see also Instruction 8.18).

Second paragraph. In the cases referred to in the second paragraph, the text of the approval act must show that the approval for the Kingdom takes place exclusively for the Netherlands (please see Section 1 of the model cited in Instruction 8.12).

Instruction 8.11 Delegation provision for implementation regulations

If a law delegates the implementation of treaties and decisions of international organisation to regulations of a lower order, the following model shall be used as a starting point for the delegation provision:
Rules are laid down [by or pursuant to an Order in Council / by Ministerial Regulations] for the implementation of obligations arising from treaties or from binding decisions of

international organisations.

NOTES

There may be deviation from the standard and broader reference may be chosen, if there are grounds to do so. For example, it may be necessary not to adopt legally binding rules for the implementation of 'recommendations' and 'international policy agreements'. Please also see Instructions 2.21, 2.22, 2.23 and 9.8.

Instruction 8.12 Bill for approval of treaty

1. The following model shall be used for a (Kingdom) bill for the approval of a treaty:

   Approval of the treaty established on … in … [see Instruction 3.38]

   We Willem-Alexander, [also see Instruction 4.5]
   (…)

   Whereas We have considered that, pursuant to Article 91(1) of the Constitution, the Treaty concluded on … in … requires the approval of the States General before the Kingdom may be bound by it;

   We, therefore, having heard the Council of State's [of the Kingdom's] Advisory Division, and in consultation with the States General, [having considered the provisions of the Charter of the Kingdom of the Netherlands,] have approved and decreed as We hereby approve and decree:

   Section 1
   The Treaty that was established on … in …, of which the … text [and the Dutch translation] [has/have been] published in the Treaty Series [year], No. [number], is approved for [the Netherlands, the European part of the Netherlands / the Caribbean part of the Netherlands / for Aruba / for Curaçao / for Sint Maarten / for the entire Kingdom].

   Section 2
   This [Kingdom] Act enters into force on [the first day of the third calendar month following the issue of the Bulletin of Acts and Decrees in which it is published / the day after the date of issue of the Bulletin of Acts and Decrees in which it is published].

   Order and command … [please also see Instruction 4.31, first paragraph].

2. The following model shall be used for the approval of a reservation to a treaty:

   Section (…)
   Approval is given that if the Kingdom is bound to the treaty referred to in Section 1 for [the Netherlands / the European part of the Netherlands / the Caribbean part of the Netherlands / for Aruba / for Curaçao / for Sint Maarten / for the entire Kingdom], the following reservation is made: [text of reservation].

3. The following model shall be used for an authorisation provision as referred to in Instruction 8.8(2):

   Section (…)
   The decisions referred to in [Section / Sections …] of the treaty referred to in Section 1 do not require the approval of the States General.

NOTES

First paragraph. In the case of approval after the fact (meaning that the Kingdom is already bound by the treaty due to an exceptional case of an urgent nature as referred to in Article 10 of the

Kingdom Act on Approval and Publication of Treaties) and in the case of approval of termination (or a corresponding intention), the text of the bill must naturally be amended accordingly.

If, with regard to a treaty submitted to the States General for tacit approval, it has been indicated that the treaty will be subject to express approval and the Advisory Division of the Council of State is not heard again, the wording 'having heard the Advisory Division of the Council of State' will nevertheless be included in the opening words, because this Division has already been heard in the context of the tacit approval procedure.

Effective date. Section 2 of the model provides two variants for the entry into force provision. The first variant is used for approval acts that may be subject to a referendum under the Advisory Referendum Act (Wet raadgevend referendum, Wrr). These are ordinary acts approving treaties that will only apply to the Netherlands within the Kingdom. Such treaties are generally approved by ordinary law (see Instruction 8.10).

The second variant is primarily used for Kingdom acts to approve treaties that will also apply in Aruba, Curaçao or St. Maarten. As these Kingdom acts are non-referendable (Section 5(f) of the Advisory Referendum Act), the requirement that they can only enter into force after roughly eight weeks does not apply (please also see the explanatory notes to Instruction 4.21). The second variant is also used if the entry into force of the approval act cannot be postponed.

However, this requirement of entry into force after approximately 8 weeks does apply to national laws approving a treaty that will only apply to the Netherlands within the Kingdom. The second variant can also be used for these Kingdom acts, pursuant to Section 13(1) of the Advisory Referendum Act, which provides that such a Kingdom act will only be published after it has been irrevocably established that no referendum will be held on that act or if the result of the referendum has been irrevocably established.

In the event that a bill to approve a treaty regulates more than merely the approval of the treaty - for example also extends to the implementation legislation - there may be cause to use one of the other entry into force provisions outlined in Instruction 4.21.

Second paragraph. Setting out reservations has an impact on the scope of the treaty obligations undertaken by the Kingdom. That is why the reservations to be made must be approved by Parliament. Incidentally, reservations can only be made if they are permissible under international law.

Third paragraph. Please see Instruction 8.8 for the reason to include an authorisation provision in a bill.

Instruction 8.13 Explanatory Memorandum for treaties

1. Bills for the approval of a treaty shall be provided with an explanatory memorandum.
2. *A bill for the tacit approval of a treaty shall be accompanied by an explanatory report.*
3. Explanatory memoranda to treaties shall be restricted to elements necessary for a good understanding of the relevant treaty. Where appropriate, it shall state that an amendment of an annex that forms an integral part of the treaty and the content of which is operational in nature as compared to the provisions of the treaty itself does not require parliamentary approval, unless the States General reserves the right to do so.
4. If a treaty impacts national legislation, this will be discussed in the explanatory memorandum. Reservations in relation to the binding of the Kingdom and declarations that do not contain any reservations are likewise set out in the explanatory memorandum.
5. The explanatory memorandum to a treaty discusses whether, in the government's opinion, a treaty may contain any provisions that are binding to all parties.

6. The explanatory memorandum to a treaty that is not concluded for the Kingdom as a whole shall outline the reasons why that treaty may or may not be valid or if application is extended to Bonaire, Sint Eustatius and Saba.
7. The explanatory memorandum to a treaty that is not concluded for the Kingdom as a whole shall set out whether the treaty is or is not valid to or has joint validity for Aruba, Curaçao and Sint Maarten.

NOTES

If, in the context of an international organisation in which the negotiations on a treaty took place, a joint explanatory memorandum has been drawn up, it is recommended that an independent explanatory memorandum be drafted, supplemented with a discussion of the aspects specific to the Netherlands (European Netherlands and Caribbean Netherlands) or the aspects specific to Aruba, Curaçao or Sint Maarten, with reference to the source of the joint explanatory memorandum. If the joint explanatory memorandum has been drafted for the purpose of serving as part of the independent memorandum, the joint explanatory memorandum will be added to the independent (concise) memorandum as an annex.

Fourth paragraph. The distinction between reservations and declarations is crucial to this paragraph. The principal difference is that reservations usually alter the treaty obligations, whereas declarations make no changes. There are many types of declarations, for example, concerning the interpretation of certain treaty articles or the designation of authorities.

Please see Instruction 4.53 for the signature of the explanatory memorandum to a bill for the approval of a treaty and the explanatory report in the event of tacit approval of a treaty. The Ministry of Foreign Affairs (Treaties Division) will always be consulted in relation to the preparation of these documents and a Minister of Foreign Affairs will always be a co-signatory to the treaty approval act.

Fifth paragraph. Any treaty submitted to Parliament for approval will state whether, in the opinion of the government, the treaty contains provisions that, in their substance, can bind all parties within the meaning of Articles 93 and 94 of the Constitution and, if so, which are the relevant provisions. This obligation applies both to treaties submitted for explicit approval and to treaties submitted for tacit approval. Please also see Section 2(2) of the Kingdom Act on the approval and publication of treaties (Rijkswet goedkeuring en bekendmaking verdragen).

Sixth paragraph. In addition to the Kingdom as a whole, treaties may also be concluded for one or more specific countries or parts of the Kingdom. Due to the fact that constitutionally Bonaire, Sint Eustatius and Saba are part of the Netherlands, but are geographically part of the Caribbean part of the Kingdom, the explanatory memorandum to a treaty should explicitly consider the issue of whether the treaty will similarly apply to Bonaire, Sint Eustatius and Saba. The geographical location may give cause to have a treaty to be concluded for Aruba, Curaçao or Sint Maarten extend its application to Bonaire, Sint Eustatius and Saba or for a treaty to be concluded for the Netherlands to exclusively apply to the European part of the Netherlands. Conversely, the connection with the Netherlands under constitutional law can in fact be reason not to allow a Caribbean treaty to apply to Bonaire, Sint Eustatius and Saba or to have a treaty concluded for the Netherlands to be equally applicable to the European and Caribbean part of the Netherlands. In special cases, it is even conceivable that a treaty will be concluded exclusively for Bonaire, Sint Eustatius or Saba, without also applying to the other parts of the Kingdom.

Seventh paragraph. In the case of treaties that have not been concluded for the Kingdom as a whole but for one or more specific countries of the Kingdom, the explanatory memorandum will clarify the validity and application for these countries in detail. The Treaties Division will ensure the coordination of this information.

§ 8.4 Consideration in the Council of Ministers (of the Kingdom)

Instruction 8.14 Consideration of the treaty in the Council of Ministers (of the Kingdom)

1. In relation to treaties, the Council of Ministers (of the Kingdom) shall consider the signature or establishment by other means and any provisional application, as well as the parliamentary approval legislation, simultaneously. Moreover, in the context of Sections 12 and 16 of the Advisory Referendum Act, it shall be considered whether the approval of the treaty may be subject to a referendum under the Advisory Referendum Act. The Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs will be consulted to this end.
2. The first paragraph shall not apply if it is deemed necessary that the signature or establishment by other means and any provisional application of the treaty should be considered first.
3. During its considerations of the signature or establishment by other means of a treaty and the approval thereof, the Council of Ministers (of the Kingdom) shall determine whether the treaty affects Aruba, Curaçao and Sint Maarten within the Meaning of the Section 2(3) of the Kingdom Act on the approval and publication of treaties.

NOTES

The issue of referendability discussed in the Council of Ministers is related to the urgent procedure included in Sections 12 and 16 of the Advisory Referendum Act. It is also possible that a treaty is not signed, as is the case with ILO Conventions, for example (please also see the explanatory notes to Instruction 8.17 as regards ILO Conventions). In addition, it is possible that a treaty can no longer be signed and accession must take place by other means.

It may be the case that only the signature or establishment of a treaty is submitted to the Council of Ministers (of the Kingdom), because parliamentary approval is not required. It is also possible that a treaty is only submitted for approval, as with the example mentioned above. Please refer to the explanatory notes of Instruction 8.2 in relation to paragraph three.

If necessary, following the decision of the Council of Ministers (of the Kingdom), the Minister of Foreign Affairs may grant authorisation for the signature of the treaty to the person who is to sign the treaty.

§ 8.5 Retention and publication

Instruction 8.15 Retention of treaties

Original signed copies of bilateral treaties and certified copies of multilateral conventions shall be submitted to the Treaties Division of the Legal Affairs Department, to be deposited in the treaty archives, which is managed by the Ministry of Foreign Affairs.

Instruction 8.16 Publication of international decisions

Texts of decisions of international organisations and treaty information shall be submitted to the Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs for the purposes of publication.

Notes

Decisions of international organisations. In any event, the following decisions must be published:
- those that may either directly entail rights and obligations for citizens or may result in rights or obligations of sufficient impact for the government;
- those amending a treaty, or its annexes;
- those that require acceptance by the Kingdom or one of its countries; or
- those that must be submitted to the States General, the Estates of Aruba, the Estates of Curaçao or the Estates of Sint Maarten under international regulations (e.g. recommendations from the International Labour Organization).

With regard to the decisions to be published, reference is likewise made to Sections 16 to 20 of the Kingdom Act on Approval and Publication of Treaties. In urgent cases (the text must after all have been published in the Treaty Series before the effective date or provisional application), the Treaties Division of the Legal Affairs Department should be consulted in a timely manner and sent a draft text if possible.

If there is doubt as to whether a decision is eligible for publication in the Treaty Series, the Treaties Division must likewise be consulted.

Some decisions of international organisations are treaties in actual fact; please see third category of this Instruction. The name of the decision is irrelevant to this assessment. One example is the Council Decision of 26 May 2014 on the system of own resources of the European Union (Treaty Series 2014, 157). The Treaties Division will assess whether these decisions must follow a parliamentary procedure.

Binding EU legal acts will not be published in the Treaty Series (Tractatenblad) but in the Official Journal of the European Union.

Treaty information. Treaty information means information relating to the signing, ratification, acceptance, approval, accession, termination, territorial application, declaration of continued commitment, making or withdrawing reservations, making, amending or withdrawing declarations, making communications provided for in a treaty, provisional application, entry into force and extension.

Instruction 8.17 Publication of treaty text

When a treaty is signed or otherwise established, the Treaties Division of the Legal Affairs Department of the Ministry of Foreign Affairs shall be consulted on the speedy publication of the text in the Treaty Series.

Notes

All treaties and conventions (except those that are confidential and secret) are published in the Treaty Series and thereby brought to the attention of Parliament. In addition, treaties that do not require approval will be explicitly brought to the attention of Parliament by the Minister of Foreign Affairs as soon the Treaty Series has been published. As a result, treaties that do not require parliamentary approval are also reviewed by Parliament. If Parliament is particularly interested in a particular treaty, a Treaty Series will be published as soon as possible. Unless the interests of the Kingdom dictate otherwise, treaties of a confidential or secret nature will also be brought to the attention of Parliament on the condition of confidentiality.

Conventions of the International Labour Organization (ILO) are not signed. Pursuant to Article 19(5) of the ILO Constitution, they must be submitted to Parliament within a maximum period of time, meaning that they must be submitted for approval or that Parliament must be informed of why the relevant treaty is not or has not yet been submitted for approval, alongside relevant reasons.

§ 8.6 Tacit and explicit approval

Instruction 8.18 Advice from the Council of State

1. With regard to the tacit and explicit approval of a treaty, the Treaties Division of the Ministry of Foreign Affairs shall submit a letter to the King, requesting that this treaty be submitted to the Advisory Division of the Council of State (of the Kingdom), for advisory purposes.
2. In urgent cases, a proposal for approval of a treaty may be submitted to the Advisory Division before the treaty has been signed or otherwise concluded, provided that the decision-making process in the Council of Ministers (of the Kingdom) on the text of the treaty, the accompanying explanatory memorandum and the other documents necessary for approval by the States General have been completed and the use of the emergency procedure has been completed.
3. After receipt of the opinion, an additional report shall be drafted, which will address any remarks made by the Advisory Division.

NOTES

First paragraph. In cases where approval applies solely to the Netherlands, the treaty will be submitted to the Advisory Division of the Council of State for advisory purposes. If approval (likewise) relates to Aruba, Curaçao or Sint Maarten, the treaty will be submitted to the Advisory Division of the Council of State of the Kingdom for consultation.

Second paragraph. Under the emergency procedure, a copy of the text of the treaty is submitted to the Advisory Division after it has been adopted. It is only then that the Division will issue its opinion.

Instruction 8.19 Submission of treaty for tacit approval

1. In the event of tacit approval, the treaty shall be submitted to both Houses of the States General, and concurrently to the Estates of Aruba, Curaçao and Sint Maarten or all three if the treaty should affect the relevant countries, by the Minister of Foreign Affairs after having received relevant authorisation from the King.
2. If the conclusion of the commitment to the treaty cannot be delayed, reference shall be made to Section 16 of the Advisory Referendum Act at the time of submission.

Instruction 8.20 Submission during parliamentary recess

1. A date shall for the submission of a treaty to both Houses of the States General for tacit approval shall be chosen in such a way that at least two thirds of the period referred to in Section 5(1) of the Kingdom Act on Approval and Publication of Treaties falls outside of the parliamentary recess period of the Houses.
2. With regard to submission of a treaty to both Houses of the States General that exclusively relates to the implementation of an approved treaty, as referred to in Section 7(b) of the Kingdom Act on Approval and Publication of Treaties, a date shall be chosen in such a way that at least two thirds of the period referred to in Section 8(2) of the Kingdom Act on Approval and Publication of Treaties falls outside of a parliamentary recess period of the Houses.
3. With regard to submission of a treaty to both Houses of the States General that relates to the extension of an expiring treaty, as referred to in Section 7(e) of the Kingdom Act on Approval and Publication of Treaties, a date shall be chosen in such a way that at least two thirds of the period referred to in Section 9(2) of the Kingdom Act on

Approval and Publication of Treaties falls outside of a parliamentary recess period of the Houses.

4. The two Houses of the States General shall be informed of the decision referred to in Section 15(2) of the Advisory Referendum Act that at least three quarters of the period referred to in paragraph one falls outside of a parliamentary recess period of the Houses.
5. If the foregoing paragraphs cannot be observed, this will be stated explicitly and substantiated upon submission or notification by the Minister of Foreign Affairs.

NOTES

This ensures that the States General can actually exercise its rights in this matter.

With regard to tacit approval of treaties, Section 15(2) of the Advisory Referendum Act provides that if it is has been irrevocably established that a referendum has led to an advisory decision of rejection, the binding commitment to the treaty cannot be concluded until four weeks have elapsed after the Minister of Foreign Affairs has informed the States General that no bill for the withdrawal of the approval granted with regard to the treaty will be submitted. At least three of these four weeks should fall outside of the parliamentary recess period, unless an explicit and substantiated statement was provided alongside the provision of the information as to why this period could not be observed.

§ 8.7 Establishment of binding agreement

Instruction 8.21 Objections to binding nature of treaties

Before the Minister of Foreign Affairs establishes the binding commitment of the Kingdom, for any part thereof, to a treaty, after having obtained parliamentary approval, the Treaties Division of the Legal Affairs Department shall ascertain that there are no objections to the establishment of the binding agreement for relevant part of the Kingdom from the relevant Ministries and, where appropriate, from the Ministers Plenipotentiary of Aruba, Curaçao and Sint Maarten.

NOTES

It may be the case that the immediate establishment of the binding agreement is inopportune, for example, because such a commitment must take place jointly within the framework of the EU or because implementing measures are yet to be put in place. In addition, it could be the case that due to a sudden change in circumstance, the establishment of the binding agreement is no longer expedient.

CHAPTER 9 PREPARATION, ESTABLISHMENT AND IMPLEMENTATION OF BINDING EU LEGAL ACTS

§ 9.1 Definitions and scope

Instruction 9.1 Implementation

In this chapter, implementation is understood to mean the implementation of binding EU legal acts in national law by adopting generally binding rules.

NOTES

The purpose of the Instructions in Chapter 9 is to ensure the timely and correct implementation of binding EU legal acts (please see Instruction 1.3 for the definition of binding EU legal acts). Both regulatory and non-regulatory activities may be required for implementation (for example, the application and enforcement and the implementation notification). In this chapter, implementation refers in particular to the implementation of measures of internal law taken by a Member State of the European Union for the implementation of binding EU legal acts (the term 'transposition' is generally used in an EU context). The implementation of EU directives is only completed once notification to the European Commission has been carried out (please see Instruction 9.19). This chapter pertains to regulatory activities, such as:

a. establishing rights and obligations to be safeguarded;
b. amending conflicting regulations;
c. creating necessary implementation and enforcement structures (for example, the appointment of a regulator).

As such, these directions are not only relevant to legislative lawyers, but to anyone involved in the preparation and implementation of binding EU legal acts.

Instruction 9.2 Scope of Application

Chapters 2 to 8 shall apply to the preparation and establishment of regulations for the implementation of binding EU legal acts, in so far as not deviated from in this chapter.

NOTES

Chapter 9 provides special rules, specifically for implementation, for a number of issues, such as the delegation of regulatory competence or procedures.

§ 9.2 General principles for implementation

Instruction 9.3 European Economic Area and Switzerland

If the binding EU legal act to be implemented also applies to the European Economic Area or Switzerland, this shall be taken into account when determining the scope of the implementation regulations.

NOTES

Under the Agreement on the European Economic Area and the Agreements between the EU and Switzerland, the European Economic Area Joint Committee and the EU-Switzerland Joint Committee respectively shall determine whether new binding EU legal acts in the area of the Agreements shall be incorporated into the Annexes to the Agreements and thus enter into force in non-EU Member States that are Parties to the Agreements. The relevant EU legal act must be declared applicable by separate decision of the Joint Committee. These decisions shall be published in the Official Journal. For example, please see, Decision of the EEA Joint Committee No 153/2014 of 9 July 2014 amending Annex X (Services in general) to the EEA Agreement [2015/88] (OJEU 2015, L 15).

Instruction 9.4 Pure implementation

No rules shall be included in the implementation regulations other than those required for implementation.

NOTES

In view of the need for timely implementation, 'inclusion' of the implementation of binding EU legal acts in a broader review of the relevant regulations or inclusion of the implementation regulations in 'additional' national policy is avoided. The latter, in particular, relates to rules that are not related to the binding EU legal act and to unnecessary refinements in respect of those regulations. In general, it is also necessary to avoid waiting for a subsequent amendment to the relevant binding EU legal act in order to include it in the implementation regulations.

Compliance with this Instruction is also essential in view of the Advisory Referendum Act. Section 5(e) of that Act provides that no referendum can be held on laws that are exclusively aimed at the implementation treaties or decisions of international organisations. Laws containing rules that are not necessary for implementation are referendable as a whole. This has a significant impact on the entry into force of the act (see the explanatory notes to Instruction 4.18). This is also relevant to the assessment of memoranda of amendment and amendments relating to such a bill.

Instruction 9.5 Burden-free implementation

1. Implementation shall involve the selection of the implementation method that results in the least burden on the businesses affected by the regulations.
2. In the event of a deviation from the first paragraph, this shall be explicitly stated in the explanatory memorandum and the reasons that led to this decision shall be outlined.

NOTES

In principle, implementation will take place with as low a burden as possible, with a view to the competitive position of the businesses affected by implementation regulations (Parliamentary Papers II 2012/13, 29362, no. 224). However, other interests, such as those of consumers, institutions or businesses other than those directly affected, may give cause to deviate from this principle. It is also conceivable that a different decision may be taken for the benefit of the enforcement, feasibility or transparency of the entire set of rules applicable to undertakings concerned. It is also possible that the most burden-free integration into the existing system would require extensive changes to existing rules, which, under Instruction 9.4, should not take place within the implementation process. In such situations, deviation from the principle of burden-free implementation must be explicitly stated and substantiated in the explanatory memorandum.

Designation 9.6 Obligation to take effective action

Provisions from binding EU legal acts that require central government to take effective actions without third parties being entitled to do so shall not be implemented.

NOTES

Such provisions (for example, a notification obligation of the Member State to the European Commission or the collection and submission of data to the European Commission) need not be implemented because the obligation to do so already arises directly from the EU legal act that is binding on the Member State. By their nature, provisions addressed to EU institutions are similarly not eligible for implementation. This does not diminish the fact that it must be clear how such obligations will be fulfilled. This can be achieved by focusing on the nature and content, the party being addressed and the method of implementation in the explanatory memorandum to the implementation.

If the ability to comply with a constructive obligation by the Netherlands should require the cooperation of authorities other than that of the government, independent administrative bodies, or private individuals, statutory provisions may be necessary or required - please see, inter alia, ECJ C-237/90 (ECLI:EU:C:1992:452) and Section 119 of the Municipalities Act and 117 of the Provinces Act. This also applies if third parties (including other Member States) must be able to invoke these obligations of the government.

Instruction 9.7 Alignment with existing instruments

In the event of implementation, alignment shall take place as much as possible with existing instruments already provided for by existing legislation.

NOTES

In order to avoid delays in the implementation alone, it is vital to make as much use as possible of existing, legally regulated systems of licences and exemptions, prohibitions, approvals, enforcement mechanisms, systems of legal protection, etc.

Instruction 9.8 Delegation in the event of EU implementation

Without prejudice to Instructions 2.20 and 2.21, when considering the level of regulations at which implementation should take place, delegation of regulatory competence is more likely to be eligible as:

a. the binding EU legal act to be implemented gives the Dutch legislator less flexibility to make policy decisions in relation to implementation;
b. the binding EU legal act to be implemented is more specific in nature;
c. the time limit within which implementation must take place according to the binding EU legal act to be implemented is shorter;
d. it may be expected that in future, the binding EU legal acts to be implemented will undergo more frequent changes;
e. a decision has been made for the delegation of regulatory competence more often within the existing system of regulations in which the implementation regulations will be given a place.

NOTES

The consideration referred to in this Instruction must always be preceded by the question of whether the Constitution or the primacy of the legislator requires that rules be included in the law itself: please see Instructions 2.20 and 2.21. As far as the legislator's primacy is concerned, the nature of implementation regulations - implementing binding EU legal acts that form an integral part of the Dutch legal system - entails that this can be interpreted differently. This Instruction must therefore be considered as a nuance in relation to Instruction 2.19, second sentence, and contains a number of guidelines when opting for delegated regulations for implementation. Pursuant to instruction 2.31, no delegation provisions are provided for that allow for derogation from regulations of a higher order by way of those of a lower order for the purposes of implementation.

Instruction 9.9 Implementation of EU Regulations

Provisions of an EU Regulation are not incorporated into national regulations unless there is a special reason to do so.

Notes

Regulations have direct effect in the Member States of the European Union. In order to ensure this direct effect, it is in principle not permitted to incorporate provisions of an EU Regulation into national regulations. However, a special reason may be the fact that the Regulation contains an explicit directive for implementing measures to be put in place, with the comprehensibility of national regulations being seriously undermined if they are not put in place. It is often still necessary to implement the Regulation in the sense that national legislation must still include provisions on sanctions, legal protection and the appointment of bodies charged with the implementation of the Regulation and that any regulations in conflict with the Regulation must be adapted. A great deal of care should be taken in the design of such national regulations in order to avoid any change to the content of the Regulation by the national measures.

Instruction 9.10 Dynamic and static reference

1. Reference to a provision of a binding EU legal act, as it will read, including future amendments (dynamic reference), shall take place by way of a single reference to the text of the European provision in the text of the implementation regulations.
2. In the event of a dynamic reference to provisions of an EU Directive, an independent indication shall be provided of the date on which the relevant provisions take effect under Dutch law. The following model shall be used in the implementation regulations for this purpose:
   An amendment to [designation of (provision of) EU Directive referred to] shall apply to the application of [designation of the national regulations or the national provision in which the reference is included] from the day on which the relevant amendment is to be implemented.
3. *If selection of another date is required, the following phrase shall be added to the model, replacing the full stop at the end with a comma: unless a different date is established by a Ministerial Decree that is published in the Government Gazette.*
4. Reference to a provision of a binding EU legal act as it reads at a certain time (static reference) shall take place by way of reference to the text of that provision in accordance with the following examples:
   A. *Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJEU 2006, L 376), in accordance with the text laid down in that Directive.*
   B. *Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJEU 2009, L 335), as last amended by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 (OJEU 2016, L 354).*

Notes

First paragraph. A distinction can be made between static and dynamic reference. In static reference, reference is made to specific European provisions as they read at a given time, while dynamic reference refers to European provisions including future amendments or additions thereto. In relation to dynamic reference, additions such as 'as it has been or shall be amended' are superfluous. If no clause within the meaning of the fourth paragraph has been provided, this is a case of dynamic reference. Please also see Instruction 3.47, paragraph one.

Dynamic reference offers the advantage that any changes to the relevant binding EU legal act do not

always require the amendment of national regulations. Dynamic reference must always take into account that future changes to the relevant binding EU legal act automatically affect national legislation. Dynamic reference will never be able to fully prevent the need for national legislation to be amended following changes to the relevant binding EU legal act. Amendment, for example, is required in cases where the numbering of the articles of provisions of the binding EU legal act referred to has changed. It may also sometimes be necessary for national legislation to provide for transitional law following an amendment of the relevant binding EU legal act or for additional provisions to be included.

If implemented by means of dynamic reference, from a point of view of transparency, the Government Gazette must report the effect of changes to the relevant binding EU legal act (see instruction 9.13). If use is made of the option provided for in the national regulations to choose a different effective date (please see paragraph three), this notification will take place when this ministerial decree is published.

Second and third paragraphs. In principle, these paragraphs only apply to Directives. In the case of dynamic reference to a Regulation, such a provision will in most cases neither be required not desirable. After all, provisions in a Regulation regarding the effective date and its application have direct effect in Dutch law. However, there may be special reasons that nevertheless require the implementation of a Regulation (please see Instruction 9.9). If, in such cases, a dynamic reference is made to a Regulation, it may be useful, by way of derogation from the foregoing, to similarly use the standard provision in paragraph two of this Instruction for Regulations.

This will usually relate to adopting an earlier date. Naturally, there may only be cause to set a later date if the Directive not only contains a deadline for implementation, but also includes a later date by which Member States should have implemented the national implementation regulations (i.e. by way of transitional law provided for in the Directive).

Moreover, the format of the reference, in accordance with paragraphs one and four, is crucial in determining whether is dynamic in nature, not whether the standard provision of paragraph two has been included.

Fourth paragraph. Static reference can be achieved by adding a phrase that reflects the static nature of binding EU legal acts after the title of binding EU legal acts. When using the variant included in Example B, the amending Directive need not be cited with its full heading and the information on the adopted and publication of the Directive outlined in Example B will suffice.

Instruction 9.11 Explanatory notes to EU implementation regulations

The first paragraph of the explanatory notes to implementation regulations shall state:

a. that the regulations are intended for implementation, with reference to the binding EU legal act, in accordance with Instruction 3.42;
b. the time limit by which the implementation must be realised;
c. reference to the section of the explanatory notes containing the correlation table.

NOTES

Part a. If many binding EU legal acts are implemented simultaneously and therefore cited, use of an abbreviated title is recommended for the sake of the clarity and legibility of the explanatory notes, with the full title, referred to in Instruction 3.42. included in a footnote.

Instruction 9.12 Transposition table for EU implementation regulations

1. The explanatory notes to regulations implementing a binding EU legal act shall include a transposition table showing whether and how the individual provisions of the relevant binding EU legal act have been or will be implemented. The transposition table shall

include reference to the relevant binding EU legal act in accordance with Instruction 3.42.
2. If a provision of the relevant binding EU legal act allows flexibility for or requires policy choices to be made, this shall be set out in the transposition table, with reference to the passages of the explanatory notes that clarify the policy decisions made by the government.
3. If a provision of a binding EU legal act does not require implementation, this shall be stated in the transposition table. This shall include the relevant reasons and where necessary shall include reference to the relevant passages in the explanatory notes.
4. The transposition table shall be part of the explanatory notes to the implementation regulations.

NOTES

The model for the transposition table is established by the Interdepartmental Committee for European Law - Implementation (Interdepartementale Commissie Europees Recht - Implementatie, ICER-I).

For the sake of clarity and transparency, it is recommended that the transposition table be included at the end of the explanatory notes. If a provision does not lead to changes to existing regulations or new regulations, the transposition table will briefly outline why this is the case. This includes the following cases:

a. the provision relates to actual actions of the central government without third parties being entitled (please see Instruction 9.6)
b. the provision is directed only at the EU institutions themselves, such as bases for implementing decisions;
c. an optional provision that is not used;
d. the provision has already been implemented by means of existing law (see Instruction 9.13).

Where further clarification is required (e.g. to outline in what existing law can be regarded as implementation of the new EU obligation), the transposition table will refer to the relevant passage in the explanatory notes.

If the binding EU legal act is also implemented in other national regulations, these should also be listed in the table. This Instruction is without prejudice to Instructions 4.10 and 4.13.

Instruction 9.13 Implementation by means of existing law

1. If a binding EU legal act requires implementation and this obligation has already been implemented by means of existing law, the Minister with primary responsibility shall immediately publish the following in the Government Gazette, after the relevant binding EU legal act has taken effect:
   a. the binding EU legal act to be implemented;
   b. the existing national regulations by which compliance already exists with the binding EU legal act to be implemented;
   c. the date with effect from which the regulation to be implemented shall apply within the Dutch legal system or from which time amendments to the relevant provisions of the binding EU legal act affect Dutch law;
   d. the transposition table referred to in Instruction 9.12.
2. The notification may be omitted if the implementation does not lead to a material change to the law in force and the implementation by means of existing national regulations has already been sufficiently disclosed by other means.

NOTES

This Instruction relates to cases where the national laws and regulations are already in accordance with the binding EU legal act to be implemented. In that case, similarly, an explicit act is required to

comply with the standard provision in a Directive that, when Member States adopt provisions to implement them, those provisions themselves or their official publication must refer to the Directive. There are two distinct scenarios:

a. Existing law complies with the implementation obligation due to dynamic reference previously included in the regulations that cover the newly implemented binding EU legal act (see Instruction 9.10). In this case, there is a material change to the applicable law as a result of an amendment of the substance of the underlying standard. For the sake of transparency of applicable law, this should always be reported in the Government Gazette. This also fulfils the requirements included in EU Directives that reference must be made to the implemented Directive in the national implementation provisions or at the time of the official publication of those provisions, in a manner adopted by the Member States.

b. Existing law complies with the implementation obligation because, unlike dynamic reference, it substantively complies with the implementation obligation created by the binding EU legal act. In this case, contrary to the above under a, there is no change to substantive law. However, for the sake of transparency of the system of national regulations and binding EU legal acts and in order to comply with the obligation to refer to the Directive, it is vital that the implementing nature of that national provision should be disclosed. If no implementation regulations are drawn up at all, this obligation must be fulfilled through the publication of a notice in the Government Gazette. If implementation regulations are required alongside the existing regulations, the explanatory notes to those regulations will already set out how the binding EU legal act is implemented, including implementation through existing law. The second paragraph of this Instruction sets out that in such cases, a separate notice may be omitted.

The notice in the Government Gazette must be notified to the European Commission as a means of implementation. As stated in the explanatory notes to Instruction 9.10(3), where appropriate, the publication of the decree to determine an effective date of validity will be combined with the notifications referred to in this Instruction.

§ 9.3 Preparation of implementation procedures

Instruction 9.14 Consultation of legislative divisions

1. Those participating in the preparation or negotiation of binding EU legal acts shall ensure that the legislative divisions of the relevant Ministries are consulted in the process.
2. Consultation shall take place at the earliest possible stage, though no later than when the form (fiche) referred to in Instruction 9.15 is completed.

NOTES

Timely consultation of the legislative division may prevent problems in relation to the implementation of established binding EU legal acts and contribute to the legal quality of the binding EU legal acts themselves.

Depending on the nature of the subject matter, the involvement of legislative divisions may vary. Possible versions of involvement include:

- submitting EU documents with reference of the stage at which the proposal is and a targeted request for comment;
- conducting an internal instructional meeting to coordinate input (if there are no legislative lawyers taking part in the negotiations);
- participating in the negotiations if implementation is expected to have a significant impact on national legislation;

- setting up a dossier team, in which the legislative lawyer is increasingly involved from the negotiation stage up to and including the implementation stage.

Instruction 9.15 BNC fiches

1. At the request of the Working Group on Assessment of New Commission Proposals, the Ministry with primary responsibility shall complete the appropriate fiche in relation to a proposal for a binding EU legal act submitted to the Netherlands.
2. If several Ministries are involved in the implementation of the relevant binding EU legal act, completion shall take place in consultation with those Ministries.
3. Completion shall take place by or in consultation with the legislative division of the Ministry with primary responsibility for implementation.
4. The completed forms shall be the responsibility of the Secretariat of the Working Group on Assessment of New Commission Proposals.

Notes

This Instruction relates to the drafting of the so-called 'fiches', or data sheets, that are distributed by the Working Group on Assessment of New Commission Proposals (Werkgroep Beoordeling Nieuwe Commissievoorstellen, BNC) in the form of a standardised form established by the Working Group. All ministries are represented in the working group and it is headed by the Ministry of Foreign Affairs. The fiches are submitted to Parliament in abridged form, following approval by the Council of Ministers. The fiches are fully accessible to officials of the departments via the website of the Centre of Expertise for European Law (Expertisecentrum Europees Recht, ECER): www.minbuza.nl/ecer.

Instruction 9.16 Advice on new proposals

1. In the case of new proposals for binding EU legal acts, the Minister with primary responsibility shall always consider whether there are reasons to consult the advisory bodies and representative organisations of stakeholders, which the government would consult if government proposals were concerned, in order to determine the position of the Netherlands.
2. In principle, no advice is requested regarding the draft implementation regulations nor is there external consultation and the draft is not published in advance, made available for inspection or otherwise published externally.

Notes

First paragraph. Consultation of advisory bodies and representative stakeholder organisations by the Ministry with primary responsibility may contribute to diligent preparation of binding EU legal acts. It must always be assessed whether this is beneficial in the given circumstances. In particular, consultation may be useful if it is foreseeable that there will be little or no flexibility for making choices ('restrictive' implementation) within the implementation.

In addition, consultation is only beneficial if recommendations can be given at such a time and if they are of such a nature that they may affect the determination of the Dutch position. In addition, specific arrangements must be made regarding the manner and period of consultation, taking into account the commencement date and the progress of discussions at an international level. In cases where the consultation of advisory bodies and other bodies on national legislation is not required by law, it makes sense that the consultation in the phase of the preparation of binding EU legal acts should replace consultation on the final implementation regulations.

Second paragraph. Pursuant to Title 1.2 of the General Administrative Law Act, there are no requirements regarding advice, consultation, contribution and advance publication for regulations implementing binding EU legal acts. There is an exception to this for certain preliminary scrutiny procedures (please see Section 1:8(2) of the General Administrative Law Act.

Due to the risk of delays to implementation, there is only cause for a deviation from the principle of not requesting advice or external consultation regarding implementation regulations if requesting advice or conducting consultations should be required for the diligent preparation of the regulations. This may be the case, for example, if the binding EU legal act to be implemented leaves essential policy choices open that have not yet been discussed during consultation at an earlier stage.

The term 'advance publication' refers to the practice of publishing draft regulations in an official journal, providing an opportunity for participation.

Instruction 9.17 Implementation plan

1. Where required, an implementation plan shall be drawn up by or in accordance with the legislative division of the Ministry with primary responsibility, if necessary in consultation with other relevant Ministries.
2. The implementation plan shall be submitted to the ICER-I within two months after adoption of the relevant EU Directive.
3. The implementation plan shall reflect how the relevant EU Directive will be implemented in as much detail as possible.
4. The Ministry with primary responsibility shall incorporate the details of the implementation plan in the interdepartmental implementation database.

Notes

First and second paragraphs. An implementation plan is created to provide insight at an early stage into how an EU directive will be implemented and to identify whether other Ministries should be consulted in good time, thereby ensuring timely and correct implementation. If implementation takes place by means of so-called 'dynamic reference' (see Instruction 9.10, paragraphs one to three), there is no need for regulations to be amended and an implementation plan may be omitted. In addition, in the event of application of Instruction 9.18(3) (very brief implementation period following adoption), no plan needs to be drawn up (any longer). Implementation plans will be discussed at the ICER-I consultations, whose duty is to monitor progress and advise on implementation issues. For the purpose of carrying out that duty, the ICER-I will establish the model for the implementation plan.

Third paragraph. In the case of the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union, the conclusion of the Council's position at first reading generally already provides sufficient points of reference at a relatively early stage for drawing up a detailed implementation plan.

Fourth paragraph. For the purposes of timely implementation, progress is monitored by means of the implementation database (iTimer), on the basis of which the quarterly reports to the House are drawn up.

Instruction 9.18 Time of referral to Council of Ministers

1. If the implementation of a binding EU legal act should require an Order in Council, the draft shall be submitted to the Council of Ministers at least 9 months before the end of the implementation period.
2. If an act is required for the implementation of a binding EU legal act, a bill to that effect shall be submitted to the Council of Ministers at least 18 months before the end of the implementation period.
3. By way of derogation from the first or second paragraph, the draft or bill shall be submitted to the Council of Ministers as soon as possible but no later than 2 months after the adoption of the binding EU legal act, if the implementation period is less than 9 and 18 months respectively.

NOTES

With respect to binding EU legal acts, the Instruction includes further detailing of the requirement laid down in Instruction 8.7(3) for the timely implementation of decisions of international organisations. The implementation period applicable in particular cases is set out by the binding EU legal acts themselves. The implementation plan under Instruction 9.17 shows whether formal legislation is required or whether an Order in Council or Ministerial Regulations may suffice. The Instruction compels (interdepartmental) preparations to be initiated at such a time that sufficient flexibility will remain available after submission to the Council of Ministers for consultation with the Advisory Division of the Council of State and for parliamentary debate in the case of bills. As a rule, 'submission to the Council of Ministers' should be understood to include submission to the competent Council of Ministers committee in question. If the implementation regulations must be considered in an official gateway, the period of 9 or 18 months also relates to submission to that gateway.

Instruction 9.19 Notification of (draft) implementation regulations

1. When preparing and adopting implementation regulations, the Ministry with primary responsibility shall always consider whether European obligations require the notification of the European Commission of the draft of the implementation regulations or of the implementation regulations that have been adopted.
2. Notification of regulations for the implementation of EU Directives shall take place electronically using the European Commission's dedicated notification system.
3. Notification of regulations for the implementation of other types of binding EU legal acts shall take place in writing to the Ministry of Foreign Affairs, which shall submit the information to the European Commission and, where appropriate, to the Council of the European Union.
4. Notification shall inform the European Commission of:
    a. the implementation regulations envisaged or adopted for that purpose and the related transposition table(s);
    b. the existing national legislation that already complies with the binding EU legal act to be implemented;
    c. the date from which regulations for the transposition of the binding EU legal acts to be implemented shall become applicable within the Dutch legal system or from which their effective functioning is ensured.

NOTES

First and second paragraphs. EU directives always contain an obligation to notify the European Commission of the implementation regulations adopted for that purpose and this is increasingly becoming the case for other types of binding EU legal acts. A provision to that effect is generally included in the final provisions of the binding EU legal act.

It should be noted that on occasion, a draft must be submitted to the European Commission for information purposes at an earlier stage or must be submitted to the Commission for approval.

Third paragraph. At present, the European Commission's electronic progress system only offers the option to report the implementation of directives.

ABBREVIATIONS

amvb	*Order in Council (Algemene maatregel van bestuur)*
Awb	*General Administrative Law Act*
BW	*Dutch Civil Code*
CBb	*Trade and Industry Appeals Tribunal (College van Beroep voor het bedrijfsleven)*
CRvB	*Central Appeals Tribunal (Centrale Raad van Beroep)*
ECLI	*European Case Law Identifier*
ECHR	*European Convention on Human Rights*
HR	*Supreme Court (Hoge Raad)*
CJEC	*Court of Justice of the European Communities*
CJEU	*Court of Justice of the European Union*
IAK	*Integrated Impact Assessment Framework (Integraal Afwegingskader beleid en regelgeving)*
ICER-I	*Interdepartmental Committee for European Law - Implementation (Interdepartementale Commissie Europees Recht - Implementatie)*
ICCPR	*International Covenant on Civil and Political Rights*
kb	*Royal Decree (Koninklijk Besluit)*
	Knowledge Centre for Legislation and Legal Affairs (Kenniscentrum Wetgeving en Juridische Zaken)
NJ	*Nederlandse Jurisprudentie*
OJEC	*Official Journal of the European Community*
OJEU	*Official Journal of the European Union*
Stb.	*Bulletin of Acts and Decrees*
Stcrt.	*Government Gazette*
Trb.	*Treaty Series*
TEU	*Treaty on European Union*
	Treaty on the Functioning of the European Union
WarBES	*Administrative Decisions (Appeals) (BES Islands) Act (Wet administratieve rechtspraak BES)*
Wrr	*Advisory Referendum Act*

CORRELATION TABLE OLD TO NEW

OLD	New
1	1.1
2	1.3
3	1.3
4	1.2
5	1.2
5a	2.1
6	2.2, 2.4
7	2.3
7a	2.16
8	2.5
9	2.2, 2.9, 2.10
10	2.6
10a	2.41
10b	2.41, 2.42
11	2.7
11a	Repealed
12	2.8
13	2.10
14	2.10
15	2.11
16	2.13
17	2.14
18	2.15
19	2.17
20	2.18
21	2.22
22	2.19
23	2.20
24	2.21
25	2.23
26	2.24
27	2.25
28	2.26
29	2.27
30	2.28
31	2.28
32	2.29
33	2.30
33a	2.31
34	2.32
34a	2.33
35	2.35
36	2.36
37	2.36
38	2.39
39	2.39
40	2.40
41	2.40
42	2.37
43	2.37
43a	2.38
44	(previously repealed)
44a	2.43, 3.37 and 4.2
45	(previously repealed)
46	2.44
47	2.45
48	2.45
49	2.46
50	2.47
51	2.48
52	3.1

OLD	New
53	3.2
54	3.3
55	3.4
56	3.5
57	3.6
58	3.7
59	3.8
60	3.9
61	3.10
62	3.11
63	3.12
64	3.13
65	3.14
66	3.15
67	3.16
68	3.17
69	3.18
70	3.19
71	3.20
71a	3.21
72	3.22
72a	Repealed
73	3.23
74	3.24
75	3.23
76	3.25
77	3.26
78	3.27
79	3.28
80	3.29
81	3.30
82	3.31
83	3.32
83a	3.33
83b	3.34
84	Repealed
85	3.35
86	3.36
87	3.37
88	3.38
88a	3.39
88b	3.40, 3.41
89	3.42
89a	3.43
90	3.45
91	3.46
91a	3.48
92	3.47
92a	3.51
93	3.52
94	3.53
95	3.54
96	3.55
97	3.56
98	3.57
99	3.58
100	3.59
101	3.60
102	3.61
103	3.62
104	2.34, 3.63

OLD	New
104a	3.64
105	4.1
106	4.2
107	4.3
108	4.4
109	4.5
110	4.6
111	4.7
112	4.8
113	(previously repealed)
114	4.10
115	(previously repealed)
116	(previously repealed)
117	4.11
118	4.12
119	4.13
120	4.12
120a	5.4
121	5.1
122	5.2
123	5.3
123a	5.6
123b	5.7
124	Repealed
124a	5.8
124b	5.9
124c	5.10
124d	5.11
124e	5.12, 5.13
124f	5.13
124g	5.14
124h	5.15
124i	5.16
124j	Repealed
125	5.17
126	5.18
127	5.19
128	5.20
129	5.21
130	5.21
130a	5.22
130ab	5.23
130b	Repealed
130c	5.27
131	5.25, 5.26
131a	5.26
131b	5.25
131c	5.28
131d	5.29
131e	5.30
132	5.35
133	5.36
134	5.37
135	(previously repealed)
136	5.38
137	(previously repealed)
138	5.38
138a	5.39
139	5.40
140	5.41
141	5.41
142	5.42
143	5.43
144	5.44
145	5.46
146	5.45
147	5.47

OLD	New
148	5.48
149	5.48
150	5.48, 5.50, 5.51
151	(previously repealed)
152	Repealed
153	5.53
154	(previously repealed)
155	5.54
156	5.54
157	(previously repealed)
158	(previously repealed)
159	(previously repealed)
160	5.55
161	5.31
162	5.32
162a	5.33
162b	5.34
163	5.56
163a	5.57
163b	5.5
164	5.58
165	5.59
165a	5.60
166	5.61
167	5.62
168	5.63
169	5.64
170	5.64
171	5.65
171a	5.67
171b	5.68
172	4.14
173	4.15
173a	5.70
174	4.17
175	4.16
176	4.19
177	4.20
178	4.21
179	(previously repealed)
180	4.22
181	5.71
182	5.72
183	5.73
184	4.24
185	4.25
186	4.26
186a	4.27
187	(previously repealed)
188	4.28
189	(previously repealed)
190	4.29
191	(previously repealed)
192	4.30
193	4.31
194	4.31
195	4.31
196	4.31
197	(previously repealed)
198	(previously repealed)
199	4.32
200	Repealed
201	4.33
202	4.33
203	4.34
204	4.35
205	4.36

OLD	New
206	4.37
207	(previously repealed)
208	4.38
208a	4.39
209	4.40
210	4.41
211	4.42
212	4.43
213	4.44
214	4.47
215	4.45
216	4.46
217	4.48
218	4.49
219	4.51
220	4.49
221	4.53
222	4.52
223	6.1
223a	6.5
224	6.2
225	6.3
226	6.7
227	6.8
228	6.13
229	6.21
230	Repealed
231	6.10
232	6.12
233	6.9
234	6.6
235	6.15
236	6.16
237	Repealed
238	6.17, 6.18, 6.19
239	6.20
240	6.2
241	6.1
242	6.23
243	6.24
244	6.25
245	6.26
246	6.22
247	(previously repealed)
248	6.27
248a	6.30
249	6.31
250	6.32
251	6.33
252	6.34
253	6.28
253a	6.29
254	7.4
255	(previously repealed)
256	7.5
256a	7.6
257	(previously repealed)
258	(previously repealed)
259	7.1
260	7.3
261	Repealed
261a	7.7
261b	7.8
262	7.9
263	Repealed
264	(previously repealed)
265	Repealed

OLD	New
266	(previously repealed)
267	(previously repealed)
268	7.10
269	(previously repealed)
270	(previously repealed)
271	Repealed
271a	7.11
271b	Repealed
272	(previously repealed)
272a	7.12
273	(previously repealed)
274	7.13
275	Repealed
276	7.14
276a	Repealed
277	7.15
277a	(previously repealed)
277b	(previously repealed)
278	7.16
279	7.9, 7.10, 7.11, 7.14, 7.15
280	7.9
281	(previously repealed)
282	(previously repealed)
282a	Repealed
282b	Repealed
283	Repealed
284	(previously repealed)
285	(previously repealed)
286	(previously repealed)
287	(previously repealed)
288	(previously repealed)
289	(previously repealed)
290	(previously repealed)
291	7.17
292	(previously repealed)
293	7.18
293a	7.19
294	7.20
295	(previously repealed)
296	7.21
297	7.22
298	7.23
299	(previously repealed)
300	7.24
301	7.25
302	7.26
303	(previously repealed)
304	8.1
305	8.2
306	8.3
307	8.4
308	8.5
309	8.6
310	8.7
310a	8.8
311	8.9
311a	8.10
311b	8.11
312	8.12
313	8.13
314	8.14
315	8.15
316	8.16
317	8.17
318	8.18
319	Repealed

OLD	New
320	Repealed
321	Repealed
322	Repealed
323	Repealed
324	Repealed
325	Repealed
326	8.19
326a	8.20
327	8.21
327a	(previously repealed)
328	9.1
329	9.2
330	9.3
331	9.4

OLD	New
332	9.6
333	9.7
334	9.8
335	9.9
336	9.10
337	9.11
338	9.12
339	9.13
340	9.14
341	9.15
342	9.16
343	9.17
344	9.18
345	9.19

TRANSPOSITION TABLE NEW TO OLD

New	OLD
1.1	1
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1.3	2, 3
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2.2	6, 9
2.2	6, 9
2.3	7
2.4	6
2.5	8
2.6	10
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2.9	9
2.10	9, 13, 14, 15
2.10	9, 13, 14, 16
2.10	9, 13, 14, 17
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2.12	New
2.13	16
2.14	17
2.15	18
2.16	7a
2.17	19
2.18	20
2.19	22
2.20	23
2.22	21
2.21	24
2.23	25
2.24	26
2.25	27
2.26	28
2.27	29
2.28	30
2.28	31
2.29	32
2.30	33
2.31	33a
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New	OLD
2.48	51
3.1	52
3.2	53
3.3	54
3.4	55
3.5	56
3.6	57
3.7	58
3.8	59
3.9	60
3.10	61
3.11	62
3.12	63
3.13	64
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3.33	83a
3.34	83b
3.35	85
3.36	86
3.37	87
3.38	88
3.39	88a
3.40	88b
3.41	88b
3.42	89
3.43	89a
3.44	New
3.45	90
3.46	91
3.47	92
3.48	91a
3.49	New
3.50	New
3.51	92a
3.52	93
3.53	94
3.54	95
3.55	96
3.56	97
3.57	98
3.58	99
3.59	100
3.60	101

New	OLD
3.61	102
3.62	103
3.63	104
3.64	104a
4.1	105
4.2	106
4.3	107
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4.18	New
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4.20	177
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4.22	180
4.23	New
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4.27	186a
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4.40	209
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4.42	211
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4.46	216
4.47	214
4.48	217
4.49	218, 220
4.49	218, 220
4.50	New
4.51	219
4.52	222
4.53	221
5.1	121
5.2	122
5.3	123
5.4	120a

New	OLD
5.5	163b
5.6	123a
5.7	123b
5.8	124a
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5.10	124c
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5.13	124e, 124f
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5.14	124g
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5.18	126
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5.21	129, 130
5.22	130a
5.23	130ab
5.24	New
5.25	131 - 131b
5.25	131 - 131b
5.26	131 - 131b
5.26	131 - 131b
5.27	130c
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5.29	131d
5.30	131e
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5.32	162
5.33	162a
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CHANGE HISTORY OF THE DRAFTING INSTRUCTIONS FOR LEGISLATION

	Signature	Publication	Date of entry into force
Date first adopted:	18-11-1992	Government Gazette 1992, 230	1-1-1993
1st amendment	21-12-1995	Government Gazette 1995, 251	1-1-1996
2nd amendment	5-9-1996	Government Gazette 1996, 177	15-9-1996
3rd amendment	19-2-1998	Government Gazette 1998, 45	8-3-1998
4th amendment	21-9-2000	Government Gazette 2000, 191	1-12-2000
5th amendment	23-5-2002	Government Gazette 2002, 97	29-5-2002
6th amendment	14-10-2004	Government Gazette 2004, 213	1-1-2005
7th amendment	27-4-2005	Government Gazette 2005, 87	11-5-2005
8th amendment	21-8-2008	Government Gazette 2008, 176 Government Gazette 2008, 183 (republication) Government Gazette 2008, 190 (correction on republication)	13-9-2008
9th amendment	1-4-2011	Government Gazette 2011, 6602	11-5-2011
10th amendment	22-12-2017	Government Gazette 2017, 69426	1-1-2018

GLOSSARY

(for definitions and expressions, please see 'terminology')

A

B

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