

GUIDELINE FOR LEGISLATION AND PROPOSAL OF DRAFT LEGISLATION IN ACCORDING WITH
SECTION 77 OF THE CONSTITUTION OF THE KINGDOM OF THAILAND

Resolution of the Council of Ministers

The 4th day of April B.E. 2560

Whereas it is expedient to prescribe the rules and guidelines for the drafting of legislation, the consideration of draft legislation and the guideline for conducting a public hearing for the purpose of drafting legislation, including the assessment of impact which may arise from legislation, so that it may be used by State agencies as a framework or procedural guideline in the drafting of legislative acts, in accordance with Section 77 of the Constitution of the Kingdom of Thailand.

Part I

Guideline for drafting legislation and the consideration of draft legislation
for State agencies

In the drafting of legislative acts, State agencies shall proceed in accordance with the following rules and guidelines.

1. The draft legislation must comply with and not be contrary to or inconsistent with the Constitution and Organic Acts.

1.1 In the case where an existing law is contrary to or inconsistent with the duty of the State, the responsible State agency has the duty to amend or repeal such law at the first opportunity;

1.2 A draft legislation which prescribes a duty for the State to carry out any matter shall comply with the duties of the State as prescribed by the Constitution;

1.3 A draft legislation which restricts the right or liberty of a person shall be in accordance with the following rules:

(1) in the case where the right or liberty is specifically guaranteed by the provisions of the Constitution, the State agency shall consider the conditions or reasons for the restriction of rights or liberty prescribed by the Constitution, by considering the decision or consideration of the Supreme Court, the Supreme Administrative Court, or the Constitutional Court, as well as the opinion of the Council of State;

(2) a draft legislation shall not be contrary to the principle of the Rule of Law, shall not impose burden or restrict the right or liberty of a person disproportionately, shall not affect human dignity, shall not unjustly discriminate, and shall also specify the justification in the restriction of rights and liberty;

(3) a draft legislation shall be generally applicable, and shall not be applicable to any one specific case or to any one specific person, except for certain types of law which the Constitution allows, for instance, land expropriation laws which specify the plot of land or the owner of land for expropriation as necessary, or laws relating to the transfer of rights of ownership in property.

1.4 The drafting of legislation must comply with and not be contrary to or inconsistent with the policy of the State.

2. Draft legislation must comply with and not be contrary to or inconsistent with the National Strategy and the National Reform Plans.

The drafting of legislation must comply with the National Strategy which is the goal for the sustainable development of the country according to the Principles of Good Governance. Also to be taken into account is the guideline for national reform under Chapter XVI on National Reform of the Constitution, as well as the National Reform Plans under the Law on Plan and Procedures for National Reform.

3. The drafting of legislation must have regard to or consider the compliance with the principles and substance of the Facilitation of Official Permission Granting Act, B.E. 2558, (2015) the Royal Decree on the Criteria and Procedures for Good Governance, B.E. 2546 (2003) and the Royal Decree on the Reconsideration of the Appropriateness of Law, B.E. 2558 (2015)

3.1 The drafting of legislation relating to the granting of permission, the prescription of time or procedure for consideration to grant permission as well as the procedures must have regard to the principles and the substance of the Facilitation of Official Permission Granting Act, B.E. 2558 (2015).

3.2 The drafting of legislation must have regard to the Principles of Good Governance under the Royal Decree on the Criteria and Procedures for Good Governance, B.E. 2546 (2003).

3.3 State agencies must repeal or amend laws which are no longer necessary or are not compliant with the current situation, or those which cause obstacles to the daily life or vocation of the people without delay so that they do not impose a burden to the people, in accordance with the rules and procedures prescribed by the Royal Decree on the Reconsideration of the Appropriateness of Law, B.E. 2558 (2015).

4. Draft legislation must comply with the principles of Section 77 of the Constitution.

4.1 Laws should be introduced only to the extent of necessity.

4.2 In the proposal of a draft legislation to the Council of Ministers, the State agency must strictly examine the necessity of enacting legislation in accordance with the rules for examination of necessity in the enactment of legislation, and the Secretariat of the Cabinet shall analyse and propose an opinion on the necessity of enactment of legislation for the consideration of the Council of Ministers. In the case where the Council of Ministers passes a resolution to send the draft legislation to the Office of the Council of State for consideration, the Office of the Council of State shall once again examine whether there is necessity in enacting such legislation and resubmit the draft legislation to the Council of Ministers. The Office of the Council of State who has considered the draft legislation shall also give opinion on the necessity and benefits which will arise from such legislation.

4.3 The drafting of legislation to prescribe a permit system shall only be prescribed in cases of necessity, for example, in the case of maintaining national security, public safety or the good morals of the people, or for the benefit of maintaining national economic and social stability, and in such cases of necessity, the following rules shall be adhered to:

(1) the objectives for the permission system must be clearly stated in the proposal of the legislation;

(2) the rules and time period for permission or denial of permission shall be clearly provided in the draft legislation, and the framework for secondary legislation shall also be prescribed therein;

(3) the State agency who considers the granting of permission must show evidence of readiness and true capability to examine the compliance with the permission granted;

(4) the period of validity of a permission/licence may only be prescribed in cases of necessity, and in cases where a period of validity of a licence and the extension of the period thereof are prescribed, the reasons for extension and the granting of a licence shall be stated, and there must be an examination of past compliance with a licence. In such cases, consideration shall be had to the rules on the payment of fees for a licence in place of an extension of a licence as provided in the Facilitation of Official Permission Granting Act, B.E. 2558 (2015);

(5) information technology system shall be used to facilitate the permission system and to enforce the objectives of the permission.

4.4 The drafting of legislation to provide for a committee system shall only be provided for in cases of necessity. Such a case of necessity may be, for example, to establish a committee to exercise duties:

(1) to lay down rules to regulate economic activities;

(2) to carry out a deliberation;

(3) to render technical advice or where the matter demands expertise and knowledge in the decision-making of the person having the duty and power;

(4) to reach a consensus, where there are representatives of relevant parties.

4.5 In the case where it is necessary to establish a committee, the following rules shall be adhered to:

(1) the steps and procedures for appointment of a committee shall not impose unnecessary burden on duties associated with the Royal Prerogative;

(2) a committee which performs the duty of laying down rules or a committee which performs the duty of deliberation shall not have members who hold a political office, or a representative of a State agency who may fall under such rules or may be a party to such deliberation, and there shall be a separation of duties between those laying down rules or those who are regulators from those who are the implementers.

(3) the Prime Minister shall not be the chairperson of a committee, except in a case of a committee which prescribes a policy at the national level;

(4) membership of the committee by office shall only be prescribed to the extent of necessity, and the provision of certain offices as members may be considered only to the extent of necessity, for example, the Director-General of the Bureau of the Budget, the Secretary-General of the National Economic and Social Development Board, the Secretary-General of the Office of the Civil Service Commission, since such offices already have a duty to render opinion to the Council of Ministers on related matters, and in the case where there is membership by office, once such committee passes a resolution on any matter, such resolution shall also bind the organization to which the committee member belongs, except where such member has shown dissent by casting a dissenting vote or enters a dissent into the meeting report;

(5) the appointment of qualified members shall prescribe conditions relating to expertise in the field which is the true duties and powers of the committee, and appointment shall not be made of persons where there may be a conflict of interest. The prescription of the term of office of a qualified member shall accord with the duties and powers of such committee.

4.6 The drafting of legislation to prescribe rules for the use of discretion by officials of the State and the period of time for completion of any step must have regard to the compliance with the following rules:

(1) the use of discretion must not be contrary to or be inconsistent with the essential principles guaranteed by the Constitution;

(2) the use of discretion must comply with the Principles of Good Governance;

(3) discretion must be exercised with care, where consultation may be made or a hearing of opinions from relevant parties may be held, and opportunity must be given

to affected stakeholders to give information and to lodge dissent, and reasons must be given for the use of such discretion;

(4) the use of discretion must have regard to the principle of proportionality, the benefits to be gained by the public, and the interests lost by private parties, including any damage which may occur to private parties;

(5) an official who exercises his or her discretion must not be an interested party or have a conflict of interest in the matter in which discretion is exercised, except in the case where it is necessary or expedient, and where a delay may cause irreparable damage to the public interest or individual rights;

(6) the prescription of the form, steps and procedures, including the period of time for carrying out substantial matters, and the framework for use of discretion must be clear, whereby details for practical procedures may be prescribed in secondary legislation;

(7) the guideline for the use of discretion shall be prescribed and disseminated for the general knowledge of the public.

Part II

Guideline for holding a public hearing for proposal of a draft legislation and assessment of impact which may arise from legislation

In conducting a public hearing for the drafting of legislative enactments (Acts) and analysing the impact which may arise therefrom, a State agency shall proceed in accordance with the following rules and guidelines:

1. Preparation of draft legislation by State agencies

1.1 The State agency shall arrange for a public hearing to gather opinions for the preparation of the legislative enactment (Act). A public hearing must at minimum be made through the information technology system of such State agency, or via the website www.lawamendment.go.th, or via other methods, and the period of time for a public hearing must be not less than fifteen days;

1.2 In conducting a public hearing, the State agency shall announce the procedures, the period of commencement and termination, as well as disclose relevant information, which shall at least consist of (1) current problems and causes for such problems; (2) the necessity for the enactment of the legislation to solve such problems; (3) the substantive principles of the legislation to be enacted; and (4) matters for which opinion shall be heard or the draft Act for which public hearing shall be made;

1.3 Upon the termination of the period for a public hearing, the State agency shall prepare a report to conclude the results of the public hearing which shall at least contain (1) the method for conducting the public hearing; (2) the number of sessions and the period of time for each session; (3) areas of target groups in which the public hearing is conducted; (4) matters for which opinion is heard; (5) dissent or opinion of State agencies and relevant parties in each matter; (6) statement of reasons for each matter; and (7) use of the results of the public hearing in the drafting of legislation;

1.4 The State agency shall prepare a statement according to the checklist for examining the necessity of legislative enactment annexed to the Rules on the Criteria and Methods for Proposal of Matters to the Council of Ministers, B.E. 2548 as revised and approved by the Council of Ministers on 4th April B.E. 2560, and in submitting a matter to the Secretariat of the Cabinet for proposal of draft legislation, the concluding report of the public hearing shall also be included alongside the proposal;

1.5 the Secretariat of the Cabinet shall analyse the results of the public hearing which has been conducted by the State agency and shall analyse the impact which may arise from the legislation according to the criteria prescribed by the Checklist for examining the necessity of legislative enactment for the consideration of the Council of Ministers.

In the case where the Secretariat of the Cabinet examines the conduct of the public hearing by the State agency and the analysis of the impact assessment according to the criteria prescribed by the Checklist for examining the necessity of legislative enactment and deems it necessary to conduct an additional public hearing or impact assessment, the Secretariat of the Cabinet shall return the matter to the State agency which submitted the matter to proceed with the additional requirements, and in doing so, shall clearly state the requirements. Once this has been completed, the matter shall be returned to the Secretariat of the Cabinet;

1.6 In the case where the Council of Ministers has a resolution to submit the draft legislation to the Office of the Council of State for consideration, the Office of the Council of State shall use the results of the public hearing and the analysis of the assessment of impact

which may arise from the legislation drafted by the State agency in the consideration of the draft legislation.

In the case where the Office of the Council of State examines the public hearing for enactment of legislation conducted by the State agency and the analysis of the impact assessment according to the criteria prescribed by the Checklist for examining the necessity of legislative enactment and deems it necessary to conduct an additional public hearing, the Office of the Council of State may proceed to conduct a public hearings by itself, or it may request the State agency to proceed accordingly. Once this has been completed, a report shall be prepared to conclude the results of the additional public hearing. In the case where the Office of the Council of State deems it necessary to make an additional assessment of impact which may arise from legislation, the Office of the Council of State may do so by itself, or it may request the State agency to proceed accordingly to be used in the consideration of the draft legislation;

1.7 In the case where amendment is made to the substance of the draft legislation following the consideration by the Office of the Council of State, and where it is necessary to further revise the analysis of the assessment of impact of the matters amended, the Office of the Council of State shall notify the responsible agency to perform such undertaking, and to submit a statement in accordance with the criteria prescribed by the Checklist for examining the necessity of legislative enactment which has been revised along with the confirmation of the approval of the draft legislation to the Office of the Council of State to proceed with the relevant matters.

2. Procedures for draft legislation that is being proposed by the Secretariat of the Cabinet to the Council of Ministers

The Secretariat of the Cabinet may consider to proceed in accordance with the guideline prescribed in 1.5.

3. Procedures for draft legislation that is being considered by the Office of the Council of State

The Office of the Council of State shall consider to proceed in accordance with the guidelines provided in 1.6 or 1.7. In the case of proceeding under 1.7, if the State agency confirms in writing the approval of the draft legislation, the Office of the Council of State may

send a written document to such State agency requesting for the latter to proceed in accordance with the provisions of 1.7.

4. Procedure in the case where the draft legislation has passed the consideration of the Office of the Council of State and is with the Secretariat of the Cabinet

In the case where the Secretariat of the Cabinet deems that the draft legislation which has passed consideration by the Office of the Council of State has been substantively amended to differ from the draft legislation proposed by the State agency and that it is necessary to amend the impact assessment in accordance with the matters amended, the Secretariat of the Cabinet shall notify the responsible agency to proceed accordingly, and to submit the statement in accordance with the criteria prescribed by the Checklist for examining the necessity of legislative enactment which has been revised to the Secretariat of the Cabinet to proceed.

5. In the case where a draft legislation is expedited or where it is necessary to proceed in secret, the responsible State agency may proceed to conduct a public hearing in a way which differs from that prescribed in 1.1 or 1.2, but the responsible State agency must show the reasons for such necessity for the Council of Ministers to consider on a case by case basis.

Checklist for examining the necessity of legislative enactment

Name of draft Act:

☐ new legislation ☐ amendment/revision ☐ repeal

Name of proposing agency:

1. Objective and target of the task

1.1 What is the objective and target?

What problems and issues will be addressed?

1.2 The necessity of enactment

What would occur in the event of non-enactment?

1.3 How many options exist for the task at hand? What are these options?

What are the pros and cons of each option?

1.4 What are the measures for achieving the objective of the task?

1.5 How will the task address the problem or the issue?

1.6 What is the task meant to achieve?

What are the achievement indicators of the legislation?

1.7 Which State or international organisation to which Thailand has the obligations and commitments does the task comply with, and on what matter?

Does the undertaking give rise to benefits or burdens to the country, and in what way?

.....

2. Person responsible for the task

2.1 Considering the effectiveness, the capital, and efficiency, why is it unsuitable for a private party to carry out this task?

Should this task be carried out in conjunction with a private party, and how?

2.2 Considering the effectiveness and benefits for the provision of service to the people, should this task be carried out in conjunction with another State agency, and for what reason?

2.3 Would it be more beneficial to the people if the task were to be carried out by a local administrative organisation?

3. Necessity of legislative enactment.

3.1 What issue does the task comply with, and how?

☐ the main duty of the State agency (in accordance with the basic functions) in the matter of

☐ the duty of the State and State policy on

☐ the National Strategy on the matter of

☐ the National Economic and Social Development Plan, in the matter regarding

☐ the Guideline for National Reform, in the matter regarding

3.2 Can the task be carried out using executive measures without enacting legislation?

What obstacles may arise if executive measures were used?

3.3 In relation to the task, why is it necessary to enact the legislation now?

3.4 Enforcement of law and period for enforcement.

(A) Enforcement of law

☐ Law must be enforced in every locality at the same time because

☐ Enforcement can be gradual for each locality because

Law is to be enforced in specific localities because

(B) Period of enforcement

☐ law is enforceable on the date of enactment because

- ☐ what period for enforcement is prescribed, and for what reason?
- ☐ should there be a period for termination of enforcement and why?
- 3.5 Reasons for not enacting other types of laws, for example, byelaws
- 3.6 Type of enforcement
- ☐ control ☐ regulation and monitoring (skip to 3.8) ☐ promotion
- ☐ hybrid
- Reasons for using this type of enforcement
- 3.7 Use of permission system
- 3.7.1 Why is a permission system or other system of control prescribed?
- 3.7.2 Is a fee for a licence prescribed? If so, what is the necessity and how is it cost-effective in comparison to the burden imposed on the people?
- 3.7.3 Is there a rule for the exercise of discretion in granting permission, and how?
- 3.7.4 Is there a clearly specified period of time and procedure in granting permission?
- 3.7.5 Is there an opportunity for appeal against declined application or for reapplying, and how?
- 3.7.6 Is there an extension of licence/permission?
- Is there an examination prior to the granting of for the extension of licence/permission?
- 3.8 Use of committee system in legislation
- 3.8.1 Is there a committee system in the draft legislation, and what are the necessities thereof?
- 3.8.2 Are the powers of the committee the same as those of another committee? And if there is redundancy, how will the other committee be dealt with?
- 3.8.3 Does the committee consist of persons holding a political position, the Prime Minister, or the head of a Government agency?

What is the reason?

3.9 Is there a framework or guideline for the exercise of discretion by a Government official? How?
.....

3.10 Type of penalty prescribed:

☐ criminal penalty ☐ administrative penalty ☐ hybrid system

3.11 Prescription of criminal penalty will ensure the effective enforcement of the law because
.....

3.12 How is the offence for which the criminal penalty is prescribed a serious offence?

4. Redundancy with other laws.

4.1 In carrying out this task, are there any laws on or similar to the matter?

4.1 In the case of enacting new legislation, why was the existing law on or similar to the matter not repealed, amended or revised?

5. Impact and cost-effectiveness

5.1 Persons affected by the enforcement of the legislation

☐ persons having the duty under the law, or those who will be directly affected by the draft legislation

☐ persons in the locality which may be affected by the draft legislation

5.2 Impact which will occur to such people

☐ economic impact

- positive impact

affected parties

- negative impact

affected parties

☐ social impact

- positive impact

affected parties

- negative impact

affected parties

☐ other impact

- positive impact

affected parties

- negative impact

affected parties

5.3 What personal rights and liberties are restricted?

Is such restriction proportionate, and how?

5.4 Benefits which the people and the society will receive

5.4.1 How, in which aspect and to what extent will the quality of life of the people improve, and how will the people be facilitated?

5.4.2 To what extent will there be sustainable improvement to the society and the economy?

.....

To what extent will the running of business be facilitated and the costs of production be reduced?

To what extent will the country's competitiveness be elevated?

And to what extent will research and development be promoted?

5.4.3 How will efficiency or innovation in the performance of official service be promoted?

.....

To what extent will public spending be decreased?

5.4.4 What is the method and period for evaluation of effectiveness and benefit to the people and the society?

5.5 Complexities which may occur in compliance with the law

5.6 Cost-effectiveness of the task, having regard to the amount of budget expenditure, the burden imposed to the people, and the restriction of individual rights and liberties in comparison to the benefits to be gained by the people

6. Readiness of the State

6.1 Readiness of the State

(A) Manpower to be used

(B) Qualifications and experiences necessary

(C) Budget forecasted to be expended in the first five years of enforcement
Amount from the operation budget and amount from the investment budget

6.2 Where the draft legislation affects the establishment of an agency or manpower, has there been any opinion from the agency responsible for manpower and the budget, and what is such opinion?

6.3 Methods for ensuring that persons under the enforcement of the law have understanding and readiness to comply with the law

☐ methods for ensuring the understanding of the people under the enforcement of the law

☐ access to information by the public

7. Responsible agency and person having charge and control

7.1 Is there any other agency which performs duties that are redundant or similar? What are the proposals for cooperation with such agencies?

7.2 Will there be any relation or impact on the performance of work by other agencies, and how?
.....

7.3 Has there been any integration of work with other agencies, and how?

7.4 Person having charge and control of the Act

Reason for giving charge and control of the Act to this person

8. Methods of work and examination

8.1 Is the system of work compliant with the Principles of Good Governance?

☐ gives rise to the public benefit

☐ gives rise to success in carrying out the responsibilities of the State

☐ is efficient and cost-effective in carrying out the responsibilities of the State

☐ does not contain unnecessary procedures

☐ the responsibilities of the government department has been adapted to suit current situations

☐ the people are facilitated and their needs are met

☐ there is consistent evaluation of the performance of official duties

8.2 Disclosure of the exercise of official duties by government officials

8.2.1 For what matters does the legislation prescribe steps for the performance of official duties by Government officials? And for what time limit is prescribed for each step?

8.2.2 How does the use of discretion comply with the Principles of Good Governance and the Rule of Law?

8.2.3 In the consideration by government officials, how is the power distributed or delegated so that the people benefit from convenient, efficient and fast service?

8.3 What measures exist to ensure the checks and balances of powers?

8.3.1 Is there an internal system for checking the performance of work, and how?

8.3.2 Is there a procedure for receiving complaints from outsiders, and how?

9. Enactment of secondary legislation

9.1 Has a plan been made for the enactment of secondary legislation, a time frame and the substantive principles of such legislation?

In what matters has secondary legislation been enacted?

9.2 What limits are imposed in the enactment of secondary legislation to prevent excessive expansion of the duties and powers of government officials or the burden imposed on individuals?

10. Public hearing

☐ a public hearing has been conducted ☐ a public hearing has not been conducted

10.1 Relevant parties or those who may be affected that have been heard

State agencies

☐ the Bureau of the Budget ☐ the Office of the Civil Service Commission

☐ the Office of the Public Sector Development Commission

☐ the Office of National Economic and Social Development Board

Name of agencies relevant to the task

The general public/ other organisations

☐ people who are or may be affected

☐ the general public

☐ other organisations

10.2 Have the results of the public hearing been disclosed to the general public, and how?

10.3 Conclusion of the results of the public hearing has been prepared and proposed for the consideration of the Council of Ministers:

☐ yes.

☐ no.

Where a conclusion has been prepared, does it contain the following substantive matters?

☐ method of conducting the public hearing

☐ number of sessions and the period of time for each session

☐ the locality in which each public hearing has been conducted

☐ the matters for which public opinion is heard

☐ objections or opinions of agencies and interested persons in each issue

☐ statement of reason for each issue and the use of the results of the public hearing in considering the drafting of legislation

I certify that in the proposal of draft legislation, I have proceeded in accordance with the Royal Decree on the Proposal of Matters to the Council of Ministers and the Rules on the Criteria and Methods for Proposal of Matters to the Council of Ministers.

Signed

(.....)

Head of Government Department
at the level of Director General, or equal
/ Head of Agency

Date of completion

Responsible agency

Responsible official

Contact number

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