

**WESTMINSTER
FOUNDATION FOR
DEMOCRACY**

POST-LEGISLATIVE SCRUTINY

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ParlAmericas Open Parliament Network

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The law has been voted in parliament...

➤ MPs *expect* the law to be implemented



➤ MPs *assume* the law will be implemented as intended



➤ MPs *hope* the law will have visible impact



But expectations, assumptions and hopes don't always come true.

Why Post-Legislative Scrutiny (PLS)?

- ✓ Law implementation is complex, does not happen automatically.
- ✓ Implementation of legislation depends on:
 - Clarity of legislative text
 - Compatibility with other laws, constitution, international obligations
 - Resources (human, financial) to implement the law
 - Availability of secondary legislation
 - Accessibility of legislation to those in charge for its enforcement.
- ✓ Parliament has responsibility to monitor that legislation is implemented as intended and has the expected effects.

What is Post-Legislative Scrutiny ?

- Firstly, it looks at the **enactment of the law**, whether the legal provisions of the law have been brought into force:
 - Has all secondary legislation been issued?
 - Is law compatible with constitution, other laws, internat. commitments?
 - Court rulings or legal proceedings related to the law?
 - Has the implementing agency been established, or mandated to implement the law ?
 - Have relevant target groups been notified on the law?
- Secondly, it looks at the **impact of legislation**:
 - Have intended policy objectives been met?
 - Can implementation and delivery be improved?
 - Can lessons be learnt and best practices identified?



Full cycle approach to the legislative process

- Full cycle approach encourages iterative governance with feedback loop
- Commonly adopted in electoral support sphere
- Full cycle in parliamentary work initially adopted in the budget process

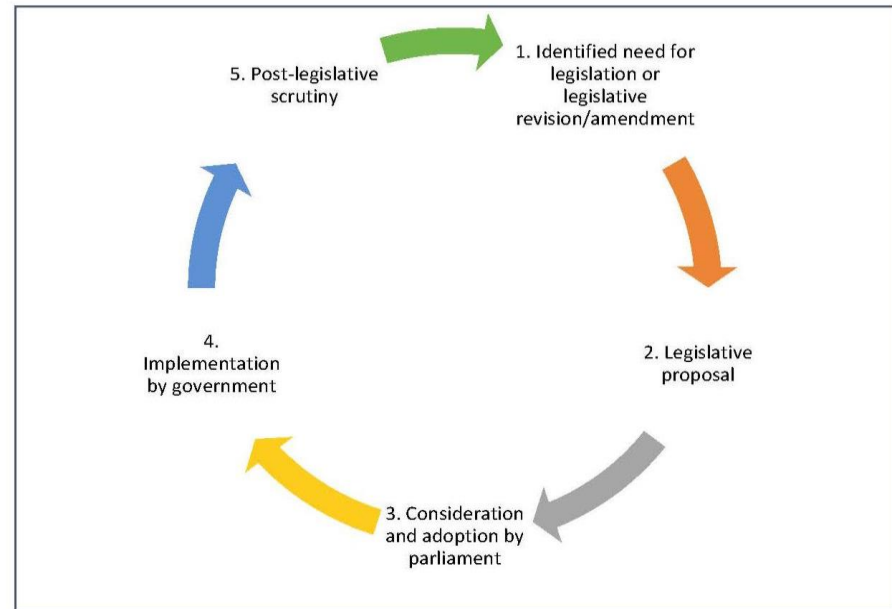


Figure 1: PLS as part of an end-to-end legislative process

Linking parliament's legislative and oversight roles

- PLS not always clearly defined
- Could be considered part of the legislative or oversight process
- Preferred approach is a component of oversight linking into the legislative cycle
- Important to distinguish PLS from parliament's broader oversight role.

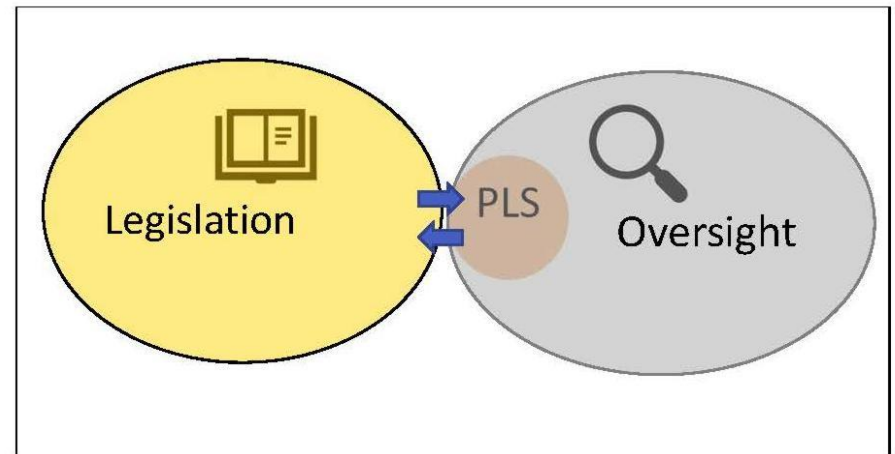


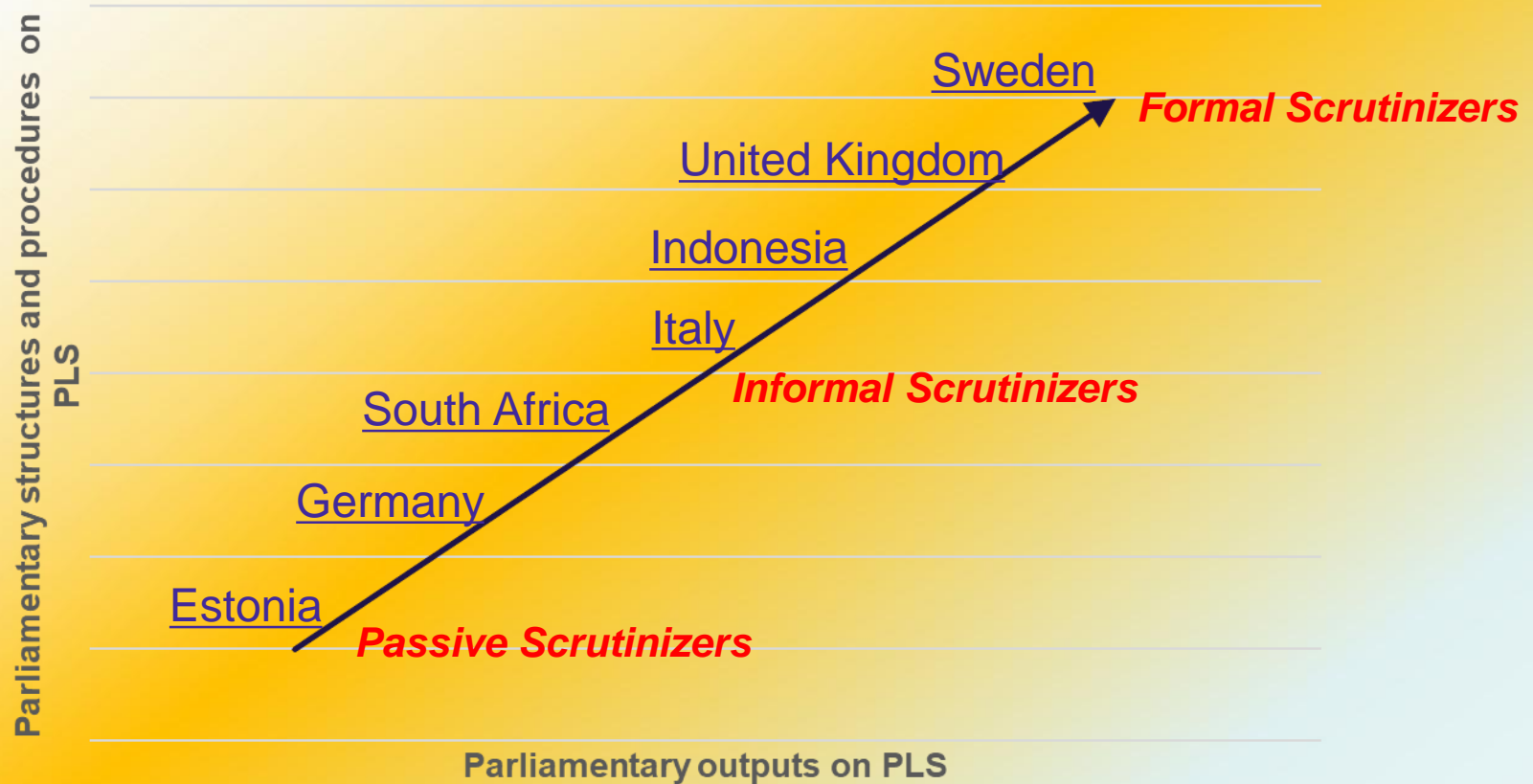
Figure 2: Situating PLS in relation to Legislation and Oversight

Classifying parliamentary approaches to PLS

| | |
|------------------------------|--|
| Passive scrutinisers | <ul style="list-style-type: none"> • No direct monitoring or impact assessment by parliament. • Reliance on reports of government or independent agencies • Lack of a strong parliamentary administrative capacity |
| Informal scrutinisers | <ul style="list-style-type: none"> ▪ A more proactive approach ▪ Ad hoc administrative parl. Structures, research/evaluation units ▪ A-systematic connection with formal parliamentary procedures |
| Formal scrutinisers | <ul style="list-style-type: none"> <input type="checkbox"/> conducted in a formal and highly institutionalised manner <input type="checkbox"/> Legally grounded, covering both legal and impact assessment <input type="checkbox"/> Vested on parliamentary bodies <input type="checkbox"/> Supported by ad hoc procedures |



Parliamentary approaches to PLS





Passive scrutinizers

Estonia

- Rules of Good Legislative Drafting of the Government (2012) stipulate that every bill should consider if there is need for a clause on mandatory PLS, incl. when it should be conducted, types of impact to be evaluated, criteria for evaluation, mandatory content of the PLS report
- Government sends PLS report to parliament, stakeholders and Ministry of Justice.
- Parliament has no own capacity to conduct PLS but relies on government reports on legal and impact aspects of law implementation.





Germany

- *Bundestag* conducts PLS through standard oversight mechanisms: reporting duties, questioning, hearings, contact MPs-ministers.
- *Bundestag* engages in PLS through governmental scrutiny or evaluation of ex-post assessments carried out by the Federal Statistical Office and the National Regulatory Reform Council (NKR)
- Three bodies of the *Bundestag* have expertise on impact assessment: the Scientific Service, the Office of Technology Assessment (OTA) and the Parliamentary Advisory Council on Sustainable Development.
- Examples of 'soft' procedural outcomes, but already moving in the direction of informal scrutinizers.





Informal scrutinizers

South-Africa

- External panel of 17 senior experts, including leading academics and policy specialists, chaired by former Speaker, commissioned by National Assembly's Speaker's Forum
- Four policy areas:
 - Poverty; unemployment and inequality;
 - Creation and equitable distribution of wealth;
 - Land reform, restitution, redistribution and security of tenure;
 - Nation-building and social cohesion
- Public hearings in nine provinces
- Engaging experts and partly outsourcing.



Italy

Italian Parliament approach to PLS is strongly rooted in role of the administration.

Asymmetric approach to PLS, different scope and methodology for both Houses:

- Chamber of Deputies - Service for Parliamentary Oversight (legal dimension of PLS), based on data of government and other institutions
- Senate of the Republic - Service for the Quality of Regulations (legal dimension) and Office for Impact Assessment (impact dimension of PLS)

Strong analytical capacity of parliamentary bureaucracies. However, the procedural and political follow-up are poor. Reports are published on dedicated website; MPs decide on follow-up if any.



Formal scrutinisers

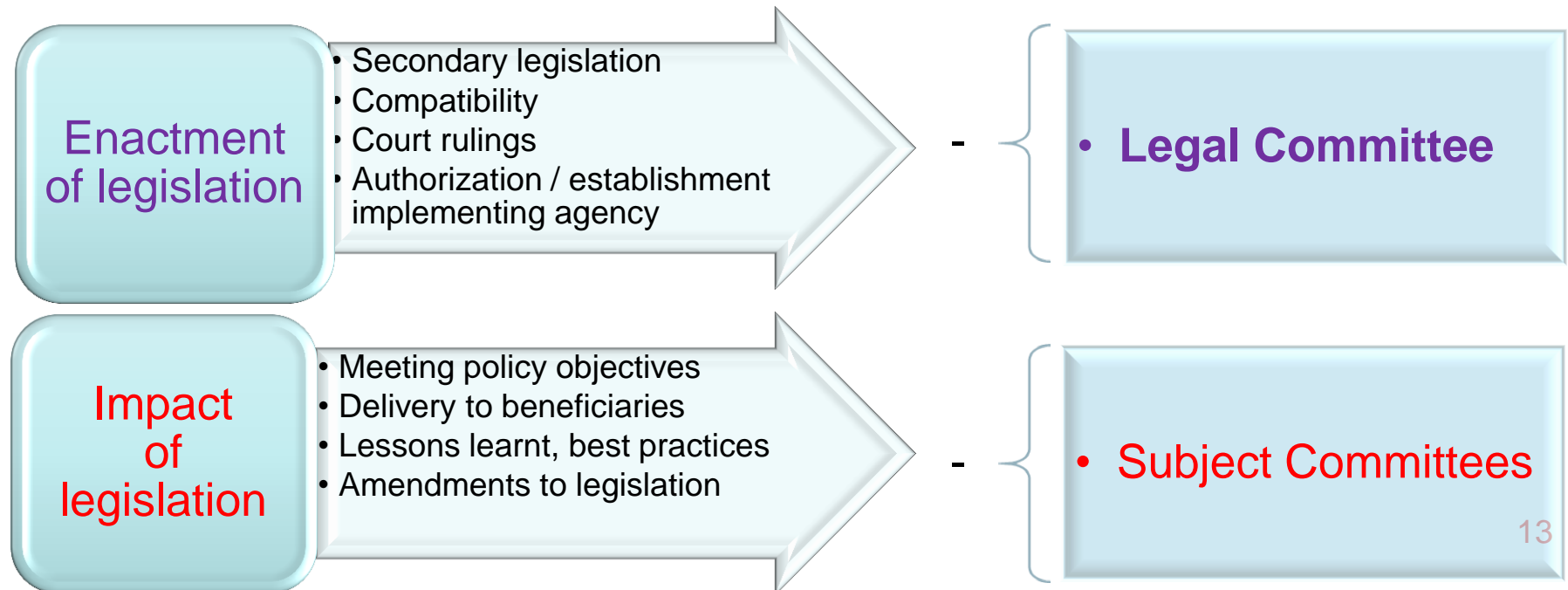
Indonesia

Standing Committee on Legislation (BALEG) of the House of Representatives (DPR)

BALEG monitors implementing regulations, challenges at Constitutional Court, applicability by implementing agencies, impact of laws on people

BALEG refers results of its Post-Legislative Scrutiny to subject Committees

Centre for Post-Legislative Scrutiny





Sweden

- PLS legal basis: Swedish constitution, legislation and RoP
- PLS covers verification of legal enactment and impact assessment
- Sources: Gov. reports, *National Audit Office* and own research capacity
- Committees in *Riksdag*: sectorial in-depth evaluation, on-going follow-up related to the budget
- Riksdag: Committee PLS reports are submitted to plenary session and trigger formal discussion of the outcomes of the evaluation process. Committees submit to the plenary their draft resolution or proposal for decision.
- Committees work with Evaluation and Research Secretariat of Riksdag.





United Kingdom, House of Commons

Government produces an initial Memorandum containing a Post-Legislative Assessment of an Act 3-5 years after it is passed



(Commons) Select Committee reviews assessment and decides if it wants to conduct further scrutiny of the Act.



Committee conducts an inquiry into the Act, or a part of the Act, and reports back to the plenary, government and public on its recommendations



If the relevant Commons Committee decides not to scrutinise further, it is still possible for a different parliamentary body in the Lords, Commons, or jointly, to examine it.

UK, House of Lords

- A temporary committee is appointed to conduct PLS and is required to report within a year.
- Like Commons Committees, the Lords Committee:
 - publishes a call for written information
 - holds multiple meetings with experts, affected individuals and organisations, and government officials and ministers
 - produces a report with recommendations for the Government. The report is published. The government must respond within 2 months.





Example: Equality Act 2010 - *Disability provisions*

- Committee set up in June 2015 and report by March 2016
- Equality Act 2010 covers all form of equality (gender, age, race, disability, etc).
- Too big for one committee in one year, so its examination was restricted to disability
- Request for Information received 144 written responses.
- All published on the website, incl. Memorandum from Govt.
- Public hearings with 53 stakeholders in 13 meetings, transcripts published online.
- End-result: comprehensive 170+ pages report on how the Act affects people with disabilities.

Example: taxi transport

- The Government's Memorandum said that section 165 of the *Equality Act 2010* was not in force.
- It requires taxi drivers to carry passengers who are in wheelchairs, without making additional charges, and to give assistance.
- Stakeholders told the committee that taxis still regularly refused to carry people in wheelchairs.
- The committee questioned the responsible minister, and eventually recommended that the provision be brought into force.
- In its response, the Government agreed to do so and has now done this.





Westminster Parliament approach: key points

The UK system seeks to ensure that:

- all Acts receive post-legislative scrutiny within Government, and are specifically considered for scrutiny within Parliament
- some then go on to receive more in-depth parliamentary scrutiny
- it tries to be proportionate to need.



❖ Government responsibility: the initial burden is on the government to provide core information for post-legislative review on each law to parliament.

Three institutional approaches to PLS.

Passive scrutinisers as the weakest approach: since the information is outsourced and the scrutiny is mediated by the government or external agencies.

Informal scrutinisers: parliamentary ability to develop its own ex-post evaluation skills is higher. However, it is not to be given for granted that research and evaluation will trigger follow-up.

Formal scrutinisers as an approach that might result in a 'hard' oversight, given the formal involvement of political bodies both in conducting the preliminary fact-finding and evaluation and in channelling scrutiny outcomes.

