

**RULES OF PROCEDURE FOR LEGISLATIVE IMPACT ASSESSMENT
2020**

Table of Contents

CHAPTER I

PRELIMINARY

TITLE	1
COMMENCEMENT	1
APPLICATION	1
OBJECTIVE	2
REPEAL	2
EXEMPTIONS	2

CHAPTER II

Legislative Impact Assessment Division	3
---	----------

CHAPTER III

Legislative Impact Assessment Process	3-4
--	------------

CHAPTER IV

Legislative Impact Assessment Report	5
---	----------

CHAPTER V

Legislative Impact Assessment Registry	6
---	----------

CHAPTER VI

Delegated Legislations	6
-------------------------------	----------

CHAPTER VII

Enforcement	6
--------------------	----------

Definition	7
-------------------	----------

ANNEX 1: LEGISLATIVE PROPOSAL	8
--------------------------------------	----------

ANNEX 2: LIA REPORT OUTLINE	9-12
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Rules of Procedure for Legislative Impact Assessment 2020

The *Rules of Procedure for Legislative Impact Assessment 2020* is aimed to help the implementation of Legislative Impact Assessment methodology in Bhutan. The objective is to describe the process and outline in detail the mandatory procedures to be followed by all ministries, commissions, and agencies while proposing legislation. It will thereby ensure the timely consideration and adoption of effective and appropriate legislation.

In pursuit of the principles enshrined in Article 20(1) and Article 20 (5)(c) of the *Constitution of the Kingdom of Bhutan* 2008, the Lhengye Zhungtshog hereby adopts as follows:

**CHAPTER I
PRELIMINARY**

Title

1. This Rule shall be called *Rules of Procedure for Legislative Impact Assessment 2020*.

Commencement

2. This Rule shall come into force on the 5th day of 9th Month of the Iron Male Mouse Year corresponding to 21st October 2020

Application

3. These Rules shall apply to an Initiative, which is:
 - 1) Government legislative proposal for
 - (a) a new Bill;
 - (b) an amendment Bill or Repealing Bill; and

- 2) A Private Member Bill if the Proponent desires it to be considered by the Lhengye Zhungtshog.

Objective

4. The objective of this Rule is:
 - 1) promote drafting of uniform and enforceable Laws;
 - 2) enable effective decision making through the systematic assessment of potential impact of proposed legislation;
 - 3) promote evidence based decision;
 - 4) enhance transparency, accountability, coordination and coherence in the law-making process; and
 - 5) encourage the use of provisions contained herein for private member Bill.

Repeal

5. The *Rules and Regulations for Regulatory Impact Assessment System in Bhutan 2011* and the *Regulatory Impact Assessment Guidelines 2011* are hereby repealed.

Exemptions

6. These Rules shall not apply to Royal Decree, Urgent Bill, Money Bill and ratification of international conventions.

CHAPTER II

Legislative Impact Assessment Division

7. The Legislative Impact Assessment Division (“LIAD”) is hereby established under the Cabinet Secretariat to perform the following functions:
 - 1) facilitate the Legislative Impact Assessment (“LIA”) process;
 - 2) provide necessary professional support to all officials engaged in the LIA process;
 - 3) ensure that all affected parties comply with the LIA process;
 - 4) update and maintain the LIA Registry, encourage and receive comments from the public, and submit such comments to the Lhengye Zhungtshog; and
 - 5) plan and coordinate information dissemination programmes to promote the LIA process, including capacity building, outreach mechanisms, sensitizations and such other relevant programs.
8. The Government shall make adequate provision for staffing, budget, facilities, and supplies for the effective functioning of the LIAD.

CHAPTER III

Legislative Impact Assessment Process

9. A Proponent shall through its PPD or identified officer where there is no PPD shall submit a Legislative Proposal as per the format provided in Annex 1 to the Cabinet Secretariat.
10. Subsequently, the Cabinet Secretariat shall submit the legislative proposal to the Lhengye Zhugtshog for approval.
11. If the Lhengye Zhungtshog approves the Legislative Proposal:

- 1) The Cabinet Secretariat shall upload the Legislative Proposal to the LIA Registry for public notice; and
 - 2) the Proponent shall undertake a LIA.
12. Upon completion of the LIA, the Proponent shall prepare LIA Report as provided in Annex 2 and submit to Cabinet Secretariat.
 13. The LIAD shall ensure whether the LIA Report is Cross Sectorial and the Proponent has identified Affected Agencies.
 14. The LIA report shall be reviewed by the Committee of Secretaries prior to submission of the report to Lhengye Zhungtshog.
 15. The LIAD shall upload the LIA Report in the LIA Registry for notice and comment by the public for not less than three weeks.
 16. The LIAD shall review public comments and in accordance with *Rules of Procedures of Lhengye Zhungtshog 2018* submit the LIA Report to the Lhengye Zhungtshog for consideration.
 17. Subsequent to the receipt of the LIA Report, the Lhengye Zhungtshog, may approve or reject the LIA Report.
 18. If the Lhengye Zhungtshog approves the LIA Report, the Lhengye Zhungtshog shall direct the Proponent or the Office of the Attorney General (“OAG”) to draft the Bill.
 19. While drafting the Bill, the drafter shall:
 - 1) Utilize the LIA Report as the Drafting Instruction; and
 - 2) If the underlying Legislative Proposal was determined to be Cross-Sectorial, specify that any delegated powers be exercised only with the approval of the Affected Agencies

CHAPTER IV

Legislative Impact Assessment Report

20. In addition to all required components stated above, the LIA Report shall include:
- 1) The objective of the proposed legislation, including its rationale, expected impacts, and outcomes, as well as any interventions undertaken prior to the Legislative Proposal;
 - 2) The problem to be addressed by the legislation, including the mediate and immediate causes of the problem, any affected stakeholders, and any previous initiatives or laws pursued to address the problem;
 - 3) The most suitable approach to achieve the objective and any alternative options, supported by academic research, reports, and statistical data intended to permit an informed and evidence-based decision;
 - 4) The impact and the inherent risks of the proposed approach and alternatives, particularly in terms of economic and social implications, including the specific affected stakeholders, the expected positive and negative impacts, proposed methods of mitigating risks, administrative compliance costs, budgetary impact, any new institutions proposed to be created, and any delegated legislation which will or may be required;
 - 5) Financial Memorandum that specifies the detailed financial costs for the enforcement of the Bill;
 - 6) Description and analysis of any stakeholder consultations conducted and record of the consultations;

Legislative Impact Assessment

- 7) Contradictions with existing laws or any other legislative measures; and
- 8) Clear statement on the limitations of the assessment carried out.

CHAPTER V

Legislative Impact Assessment Registry

20. The LIAD shall maintain a publicly accessible LIA Registry which shall be clearly divided into three categories:
 - 1) The Registry of Legislative Proposals;
 - 2) The Registry of LIA Reports; and
 - 3) The Registry of Bill.

CHAPTER VI

Delegated Legislations

21. The Office of Attorney General shall endorse all delegated legislations to ensure:
 - 1) The delegated legislation is pursuant to the empowering legislation and
 - 2) The agency responsible for administering similar and relevant delegated legislation have been consulted.

CHAPTER VII

Enforcement

21. No Government Bill shall be submitted to Parliament, unless it is listed in the Legislative Registry and approved by the Lhengye Zhungtshog.

Definitions

1. “Affected Agency” means any Ministry, Department, or Agency, apart from the Proponent, identified by the LIAD as materially affected by a Cross-Sectoral Initiative, Legislative Proposal, or Bill;
2. “Cross-Sectoral” means that, in the opinion of the LIAD, the described Initiative, Legislative Proposal, or Bill affects one or more Ministries, Departments, or Agencies, apart from the Proponent, to such an extent that its or their involvement in the LIA process is warranted;
3. “Drafting Instruction” has the meaning set out in Chapter 3 of the *Rules of Procedure for Drafting and Reviewing of Bills and Delegated Legislation 2018*;
4. “Initiative” has the meaning set forth in clause 3 of these Rules;
5. “Legislative Proposal” means the document described in clause 7(1) and Annex 1 of these Rules;
6. “LIA” means the Legislative Impact Assessment;
7. “LIA Registry” means the registry established by clause 11 of these Rules;
8. “LIA Report” means the report described in clause 7(5) and 9, and Annex 2, of these Rules;

9. “LIAD” means the Legislative Impact Assessment Division established by clause 6 of these Rules;
10. “Proponent” means any Person, Ministry, Department, Agency, or other entity that proposes an Initiative.

Annex 1: Legislative Proposal

1. Title of the proposal:

- 1) Type of Legal Measure: (e.g. Act/Rules/Regulations/other regulatory measure)
- 2) Lead Ministry/Commission/Agency:
- 3) Expected Date Of Adoption Day/Month/Year:

2. PROBLEM IDENTIFICATION

Describe the problem that the proposal is expected to tackle:

3. OBJECTIVE OF THE PROPOSAL

What is the “Objective” of the Proposal and what is expected out of the proposal.

4. POLICY OPTIONS

- 1) What are the options that are available to reach the objective and what range of alternatives will be considered?
- 2) How have the principles of subsidiarity and proportionality been taken into account?

5. IMPACTS – POSITIVE AND NEGATIVE

- 1) On a preliminary basis, what are the likely positive and negative impacts of the selected options, particularly in terms of economic, social and environmental consequences?
- 2) Who would be affected?

Annex 2: LIA Report Outline

1. Title of the proposal:

- 1) Type of Legal Measure: (e.g. Act, Rules and Regulations, other regulatory measure)
- 2) Lead Ministry/Commission/Agency:
- 3) Date of approval of Legislative Proposal:
- 4) Expected Date Of Adoption Day/Month/Year:

2. THE BACKGROUND OF THE PROPOSAL:

- 1) Details of how and why the proposed legislative change has arisen;
- 2) Detailed background information that provides a context for the objective of the proposal and the policy that is to be implemented;
- 3) The detailed description of the issue that the proposal is expected to address;
- 4) The economic, social and environmental effects including unsustainable trends of the issue;
- 5) The risks inherent in the initial situation;
- 6) The underlying motive forces;
 - a) What would happen under a “non action” scenario?
 - b) Affected stakeholders; and
 - c) Previous initiatives and existing Legal Measures that are deployed to solve the issue/problem.

3. MAIN OBJECTIVE OF THE PROPOSAL:

- 1) The comprehensive Objective intended to be achieved and the expected impacts, outputs and outcomes;
- 2) Account of any previously established objectives; and
- 3) The rationale for the objective.

4. POLICY RATIONALE FOR THE PROPOSAL:

- 1) Clear statement of the issues or problems the proposal is intended to address;
- 2) Why legislation rather than an administrative arrangement, is required;
- 3) A clear explanation of the policy to be implemented-what has to be done and why (A brief explanation of the policy may be sufficient if the proposal is for minor amendments to an Act. However, the policy background for a new Bill or for complex amendments to an Act requires more detailed explanation of the policy philosophy, context and intent, its primary and secondary objectives, and examples of the problems and issues that the legislation is intended to resolve.)

5. OPTIONS TO ACHIEVE THE OBJECTIVES:

- 1) The basic approach to reach the objective;
- 2) Policy instruments that have been considered earlier and the reasons for its failure;
- 3) The options available and the rationale for all the options;
- 4) Designs and stringency levels that have been considered;
- 5) The options that have been discarded at an early stage;

6. IMPACTS EXPECTED FROM THE DIFFERENT OPTIONS IDENTIFIED:

- 1) The expected positive and negative impacts of the options selected, particularly in terms of economic, social and environmental consequences, including impacts on management of risks, in particular:
 - a. The administrative compliance costs;
 - b. The impacts on the Budget; and

- c. Creation of a new institution.
- 2) Potential conflicts and inconsistencies between economic, social and environmental impacts that may lead to trade-offs and related policy decisions;
- 3) Impacts on a particular social group, economic sector (including size-class of enterprises) or region;
- 4) Powers and functions, decision makers, delegates and review of decisions

7. JUSTIFICATION OF THE PREFERRED OPTION

- 1) The recommended option and the rationale and reasons;
- 2) Have any accompanying measures to maximize positive impacts and minimize negative impacts been taken?

8. POWERS AND FUNCTIONS, DECISION MAKERS, DELEGATES AND REVIEW OF DECISIONS

Clarity of power and function

The functions or powers a person is required or authorized to perform or exercise under the legislation should be clearly specified especially the role a person plays in the administration of the legislation.

Decision-makers and delegates

Legislation should delegate decision-making or authorization only if essential, only to appropriately qualified staff. If extensive powers are delegated under legislation, the category of persons who may make decisions should be limited.

Decision criteria

If the legislation is to include an administrative function or power (which includes a discretion or decision), the important criteria should be specified. It may also be necessary to authorize the prescription of some criteria in subordinate legislation if the criteria are technical, minor or inclined to change. If criteria are not specified in the Act or subordinate legislation, the legislation may not have sufficient regard to the principle

that rights, liberties and obligations should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Review of decisions

If decisions affecting people's rights or obligations are to be made administratively (e.g. by the head of an agency), a process for review of the decision is usually required. Legislation would usually specify:

- a. the period within which a person may apply for review of the decision
- b. how an application is to be made
- c. whether the decision is reviewed using the same material on which the original decision was based, or also on new material
- d. what type of decision may be made on review (e.g. confirm, set aside and substitute another decision, set aside and return to the original decision maker)
- e. whether there is an entitlement to reasons for a decision.

If rights of review are not specified in the Act, the legislation may not have sufficient regard to the Fundamental rights that rights, liberties and obligations should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

9. STAKEHOLDER CONSULTATION

- 1) Which interested parties were consulted, when in the process, and for what purpose?
- 2) What were the results of the consultation?