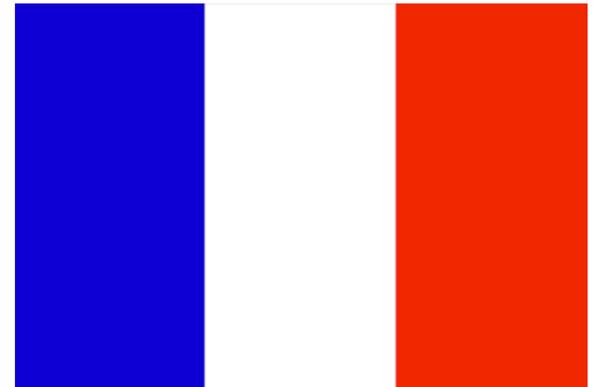


Law Reform: The Legislative Drafter's Perspective

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What is legislative drafting?

Turning policy into law

Taking the policy ideas of a Law Commission and turning it into a Bill

Example: We need to protect vulnerable witnesses in giving evidence

Draft clause: Civil Evidence (Witness) Bill

“11. (1) A special measures direction may provide for the witness, while giving evidence, to be prevented by means of a screen or other arrangement from seeing any party specified in the direction.”

Types of Law Reform

Boring: Consolidations and repeals (non-contentious)

Indian Railways - irrelevant / outdated laws

Interesting: Consolidations with amendments

Bail Bill - consolidating AND reducing powers of street bail

Interesting: substantive new laws

Business Tenancies Bill - increased security of tenure for businesses

Drafting for Law Commissions

Expertise

Bail Bill - QC and former police officer as Commissioners

Business tenancies - Top commercial solicitor as Commissioner

Academic rigour

Staff with excellent academic credentials

They read and challenge drafts

Drafting for Law Commissions

Dedication to project

Not part time, not one duty amongst many duties

Independence

Not subject to changing political tides

No political egos

Contrast with PMB and Executive Bill drafting

Private Member's Bills

Not as measured or considered

More political, less legal

Presentational issues more important - "the optics"

Executive Bills

Less flexible

Greater political awareness necessary

Politicians' law, not lawyers' law

Weaknesses of Law Commissions

Independence

Funding imperative - secure political backing for a project

No guarantee that Bill will become law

Lack of political engagement

Route into the legislature

Standing Orders in Westminster Parliament

No Standing Orders in Northern Ireland Assembly

Different drafting techniques?

Not really

Consider instructions

Understand (and develop) policy

Prepare a draft

Iterative process

Perhaps greater latitude in all this than with other clients

Perhaps greater willingness to use more progressive techniques

Conclusions

Ultimately:

Commission success measured by Bills enacted

NI Law Commission did not succeed

Personal: I really enjoy drafting for Law Commissions

Professional: Law Commissions create high quality legislation

Balancing independence

Most efficacious Bill possible

Minimal concessions to get your Bill enacted

Any questions?