Legislative drafting: the UK experience

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Drafting in the UK

- There is no single practice for drafting in the UK
- Why?
  1. Devolution: so only E & W
  2. Conviction that drafting manuals are not useful
    - Certainty v flexibility of legal rules
- But is there nothing firm there then???
The Drafting Process

*Thornton* distinguishes five stages in the process of drafting

1. Understanding the proposal
2. Analysing the proposal
3. Designing the law
4. Composing and developing the draft
5. Verifying the draft
Who drafts legislation in England?

1. Primary Legislation is drafted by PCO
   - Government Bills are instructed by Government Departments (Ministries)
   - Private Members Bills: lack of drafting support
   - Amendments to Bills: by the Government with drafting support; proper instructions are needed for an amendment to a Bill which has already been introduced in Parliament no less than for the original drafting of a Bill.

2. Delegated Legislation
   - Instructed and drafted within each Department/Ministry
Who provides drafting instructions?

- Government Bills are instructed by Government Departments (Ministries)
- The detailed policy is drafted by Administrators
  - They are civil servants dealing with policy only
- The instructions are drafted by the Department’s Legal Advisers
  - They are lawyers of the client Department
  - They:
    - identify the changes in the law needed to give effect to the policy;
    - provide the drafter with PROPER DRAFTING INSTRUCTIONS;
    - discuss with the drafter any difficulty arising from their instructions;
    - correct errors, wrong internal references etc.; and
    - ensure that every draft produced by the drafter achieves the results requested from the Legal Adviser and the Administrator;
- Drafting instructions are then sent to the PCO

ître the concept of the “Bill Team”
Recent Trends: Good Law Project

Research objectives:

- To gain further insight into how different user groups approach and use legislation and their expectations
- To understand how different drafting techniques may help or hinder users to answer a comprehension question quickly and accurately
- To investigate how additional information presented on legislation.gov.uk helps users understand what they are reading
Main usability issues identified

- Most participants expected that legislation will be hard to read – even experienced barristers
- Few participants answered all comprehension questions correctly
- Participants didn’t know what a Schedule is or where to find it
- Participants didn’t understand the date of entry into force: many assumed that all laws on legislation.gov.uk is in force
- Several participants didn’t know what S.I. stood for: the abbreviation and the numbers were very confusing; some participants also didn’t know what is secondary legislation
- All participants asked why they had to hover over the text to get the date an Act was passed, rather than having the date written within the text
The conclusions of Good Law

- There are three groups of users
- Users prefer different styles and interact with text in different ways: it is unlikely that further testing will provide conclusive results about which style is more effective
- Having extra information and links to key sections of a piece of legislation makes navigating and understanding it easier
- Less experienced users would benefit from prominent information providing explanations of how legislation is put together, e.g. what a section is, and what happens to legislation after it is enacted, e.g. how/why provisions come into force, what secondary legislation is
The innovations

- Knowing your audience is the most important step in assuring that your text is understandable to current and prospective users.
  - To write understandable documents, you need to gauge the legal sophistication of the users.

- Initiatives such as the layered approach are being tested to identify how this can be applied in practice.