

Guidance on digital-ready legislation

- on incorporating digitisation and implementation in the preparation of legislation

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1. Introduction

In January 2018, the political parties in the Danish parliament (Folketinget) adopted an agreement on digital-ready legislation, which will ensure a simpler, clearer legal framework which is easy to understand and translate into secure and user-friendly digital solutions. This guidance describes the new requirements to be fulfilled by the ministries in connection with the preparation of new legislation in order to support digital-ready legislation.

1.1 The purpose of digital-ready legislation

Digital-ready legislation must create the basis for a more up-to-date, cohesive public administration, which supports the application of resources where they provide the most value to citizens and businesses and contribute to a more user-friendly, easily accessible and transparent public sector, which supports the legal rights of the individual. In short, digital-ready legislation is about ensuring that the legislation conforms to the digital society that Denmark has become.

Complex rules with a large degree of discretion and many exceptions are difficult to administer and may hinder sufficiently effective or digital authority service. If the digital possibilities have not been incorporated in the legislation and the basic political agreements from the beginning it may also result in the development of unnecessarily complex IT solutions and more expensive development and IT maintenance.

Incorporating digital support in the preparatory legislative work may contribute to a renewal of the public sector and improve the quality of the legislation. Digital solutions and new technology are not objectives in themselves but a means of ensuring a more modern and effective public service for the benefit of citizens, businesses and the authorities themselves.

1.2. New legislation must be digital by default

It is stated in the political agreement on digital-ready legislation that new legislation must be digital by default from 1 July 2018. This means that new legislation must provide the framework conditions that enable the authorities to obtain complete or partial digital administration and use of new technology that may support a better and more effective public task solution.

The requirements apply to bills introduced from and including the parliament year 2018/2019 and to the delegated legislation, including executive orders, issued from 1 July 2018.

This means that deliberations should be made already during the preparatory legislative work regarding digitisation, the subsequent administration, data usage and control options.

In case of major or important amendments to existing legislation, the relevant ministry should consider whether a more basic revision of the entire principal act to ensure that the entire principal act becomes digital by default.

Chapter 4 describes a number of methods that the relevant ministry may apply to ensure that the legislation becomes digital by default and to ensure an early focus on incorporation of digitisation in the legislative work.

1.3. Mandatory assessment of public implementation impacts

On 1 July 2018, it becomes mandatory for the relevant ministry to assess and describe the public implementation impacts of the bill in the explanatory notes. The assessment of the public implementation impacts builds on, and replaces the previous mandatory assessment of the administrative impact of the bill on the public sector. Public implementation impacts include the following elements:

- seven principles for digital-ready legislation
- organisational conditions and administrative transitional and operating impacts
- IT support, management and risk
- data protection and reuse of data

There may also be other implementation impacts in relation to citizens and businesses.¹ Such implementation impacts in relation to citizens and businesses are detailed, as before, under the independent items in the explanatory notes.

In order to ensure focus on implementation impacts throughout the decision chain, it also becomes a requirement that implementation impacts be assessed and detailed in the form of central government decisions and political negotiations and agreements. Authorities with cases to be presented to the Government Finance Committee and Coordination Committee must therefore assess and describe the implementation impacts as part of the presentation of the case. All this is to support the mapping of implementation impacts as early as possible in the political decision-making process and to ensure that decisions and adoption of new legislation take place on a well-informed basis.

Obviously, a bill may have impacts other than public implementation impacts. The procedure for assessing these remains unchanged and is usually described in *Guidance on Impact Analyses (Vejledning om konsekvensanalyser)*² published by the Danish Ministry of Finance. It also applies that financial consequences for the public sector are still assessed and described separately.

1.4. About this guidance/reading guide

The purpose of the guidance is to guide the specific ministry on the mandatory assessment of the implementation impacts of the legislation, including methods for ensuring that the bill becomes digital by default.

Chapter 2 details the elements that should be included in the specific ministry's mandatory assessment of implementation impacts: Principles for digital-ready legislation, organisational impacts and transitional and operational impacts, IT support, management and risk, data protection and the significance for citizens and businesses.

Chapter 3 details the method for carrying out impact analyses. See *Guidance on impact analyses (Vejledning om konsekvensanalyser)*. It also includes a description of the requirement that the specific

¹ The significance for citizens is further documented in 'administrative impacts for citizens' (see Paragraph 2.5), and impacts for businesses are still detailed in the paragraph on 'impacts for the business sector'.

² See *Guidance on impact analyses (Vejledning om konsekvensanalyser)*, May 2005 (clauses 3.2, 7.1 and 7.2 revised in 2018).

ministry should submit bills involving implementation impacts for consultation with the Danish Agency for Digitisation, if possible 6 weeks before public consultation, *see Chapter 3.4*.

Chapter 4 includes a number of recommendations on how authorities may ensure that the legislation becomes digital by default. The chapter is intended solely as inspiration for the authorities and does not include any mandatory requirements.

Finally, *Chapter 5* of the Guidance includes an appendix (5.1) with a number of specific examples of how digitisation within various fields of law has been incorporated into bills in order to make the legislation digital by default. Furthermore, the chapter also includes an appendix (5.2), where excerpts from the memorandum by the Ministry of Justice from 2015 on administrative law requirements for digital solutions are repeated.

Chapter 5.3 describes the General Data Protection Regulation and the Danish Data Protection Act.

The guidance is particularly aimed at new legislation, both principal acts and amendment acts, but the same deliberations will be relevant when legislation is implemented in executive orders, circulars and guidance.

2. Which public implementation impacts should be included?

From 1 July 2018, the new requirements become effective, according to which new legislation, as a general rule, must be digital by default. In addition, it becomes mandatory to assess public implementation impacts in bills. This means that, for bills introduced from the parliament year 2018/19, the specific ministry must carry out an impact assessment of the public implementation impacts of the bill.

In the future, the assessment will include an assessment of whether the seven principles for digital-ready legislation have been followed.

Public implementation impacts should be described as a permanent paragraph in the explanatory notes to the bill. The description of public implementation impacts builds on and replaces the previous obligation to describe administrative impacts for the public sector and comprises the existing elements regarding administrative transitional and operating impacts as well as a number of new elements regarding digital-ready rules, IT law administration and data protection. Legislation may also have implementation impacts for citizens, for example if it involves safer and more secure data handling for citizens. Such impacts should be described in the permanent paragraph on impacts for citizens in the explanatory notes to the bill, and impacts for businesses should be described in the permanent paragraph on impacts for the business sector, and financial consequences for the public sector are described separately.

If the authority assesses that the bill has public implementation impacts these should be described in detail and the authority should try to quantify them if possible. If the impacts are assessed to be insignificant this should be stated in the explanatory notes to the bill.

The purpose of the assessment of public implementation impacts is to ensure a better basis for decision and increased focus on the administrative and IT related transitional impacts as well as the operating impacts of the bill. The requirements must support an evaluation of the significant preconditions for effective implementation, including subsequent administration and IT support of the legislation, prior to consideration by the Danish parliament of the bill.

2.1. Seven principles for digital-ready legislation

The specific ministry should assess to what degree the bill follows the seven principles for digital-ready legislation in order to ensure easier and simpler digitisation of the legislation - in the form of digital administration as well as digital services for citizens and businesses.

The specific ministry should state in the explanatory notes whether the bill follows the seven principles for digital-ready legislation. However, there may be cases where special considerations contraindicate compliance with the principles. If the principles are not followed the underlying reason for this should be stated in the explanatory notes. It should be detailed which considerations are safeguarded by derogating from the principles and why these considerations cannot be safeguarded within the framework of the principles.

Box 1

Principles for agile, business-oriented regulation

In a strategy for Denmark's digital growth, the government Lars Løkke Rasmussen III has launched five principles for agile, business-oriented regulation, which will make it easier for the business sector to use new digital technologies and business models. From 1 July, it will be mandatory for authorities to assess whether business-oriented regulation supports the businesses' possibilities for using new digital technologies and business models while at the same time maintaining the overall objectives and protection considerations of the act.

The objective of the principles is to ensure that new regulation does not necessarily curb the businesses' use of new technologies and business models or make it burdensome for the businesses to use public digital solutions. In this way, they differ from the principles for digital-ready legislation, the objective of which is to ensure that new regulation supports the possibility for complete or partial digital administration and use of new technology which may support a better and more effective public task solution to the benefit of citizens and businesses.

Read more about the five principles for agile business-oriented regulation in *Strategy for Denmark's Digital Growth (Strategi for Danmarks digitale vækst)* (January 2018), *Agreement between the government Lars Løkke Rasmussen III, the Danish People's Party and the Danish Social-Liberal Party on initiatives for Denmark's digital growth* (February 2018) and *Guidance on principles for agile, business-oriented regulation (Vejledning om principper for agil, erhvervsrettet regulering)* (June 2018).

Follow-up on the authorities' assessment of the principles for agile business regulation and guidance for the assessment by the authorities of the principles are handled by the Danish Business Authority under the Danish Ministry of Economic and Business Affairs.

The seven principles for digital-ready legislation are described below. For each individual principle, a number of auxiliary questions are listed for use by the specific ministry as part of the preparatory legislative work.

Box 2

7 principles for digital-ready legislation

Principle 1: Simple, clear rules

Principle 2: Digital communication

Principle 3: Possibility of automated case processing

Principle 4: Consistency across authorities - uniform concepts and reuse of data

Principle 5: Safe, secure data handling

Principle 6: Use of public infrastructure

Principle 7: Prevention of fraud and errors

Principle 1: Simple, clear rules

The legislation should be simple and clear so that it is easy to understand for citizens as well as businesses. Simple rules facilitate the protection of legal rights by providing more clarity on the legal position of the individual and improve citizens' and businesses' experience of being treated fairly. For the authorities, simple and clear rules have the advantage of being easier to administer and contribute to a more uniform administration and digital legislative support. If the legislation is unclear or complex with many exceptions, requirements, schemes, process requirements or discretion it may be difficult to administer - also digitally.

The rules should be worded clearly and simply, unambiguously and consistently. Simple rules do not necessarily mean a brief law text. It may require more words to make it unambiguous and clear what the

rules are. This does not, however, change the overall legal principle that superfluous words in the law text should be avoided.

It should be stated clearly in the law text what the general rules and exceptions are, and it should be considered whether, instead of additional exceptions and special schemes, a basic revision of the legislation should be made to make it generally simpler and clearer. However, exceptions should be preserved to the extent it is necessary to ensure that the civil rights of citizens are protected.

Furthermore, the rules should be worded unambiguously and consistently. The same words should be used consistently throughout the bill and precise and unambiguous concepts must be used.

Finally, the rules should be drawn up systematically and be easily comprehensible and logical, see Guidance on Law Quality (Lovkvalitetsvejledning), Chapter 2.1.³

If the specialist departments of the authority have knowledge of implementation impacts of the rules, these may, with advantage, be included already during the preparation of the bill to ensure that the legal conditions for the subsequent implementation and administration of the legislation are as smooth and practical as possible. For example, knowledge of expected average case processing times and the share of cases that are expected to be comprised by exceptions etc. may be included and described, and commencement provisions may be adjusted based on knowledge on how long it will take to obtain the necessary IT support of the rules.

Control questions:

- Have rules and concepts been worded in a clear, simple, unambiguous and consistent manner?
- Is there a clear distinction between general rules and exceptions?
- If the rules include process requirements: Can the law text be translated into a number of work tasks and is the description of the individual steps listed in the sequential order of the workflow in the act?
- Is it clear which operators are targeted in the provisions?
- Is knowledge of implementation impacts such as case processing times incorporated in the preparation of the act?

Principle 2: Digital communication

The legislation must support digital communication with citizens and businesses. For citizens and businesses that cannot communicate digitally, alternative solutions should still be offered. This could be through help and guidance or alternative communication channels.

If it must be mandatory for citizens and businesses to communicate digitally with public authorities there must be legal authority for this⁴. This legal authority should be worded so as to take account of future technological development. This means that, as a general rule, it should be technology-neutral and should therefore not refer to specific means of communication such as telephone, SMS, apps, specialist systems or the like.

³ See also <https://lovkvalitet.dk/lovkvalitetsvejledningen/2-udarbejdelse-af-lovforslag/2-1-sproget>.

⁴ See also *Chapter 6* Access to digital communication.

The Danish Act on digital post from public issuers (Lov om digital post fra offentlige afsendere)⁵ has introduced requirements on the use of digital mail for direct communication with citizens and businesses. However, it is possible to obtain exemption from digital communication.

With respect to the introduction of digital self-service, there should be possibilities for receiving non-digital service on the lines of the concept that has been introduced by the four “waves” on mandatory digital self-service⁶. It follows from the concept that if the authorities, in the specific situation where the citizen makes an enquiry, assess that special conditions exist under which the citizen cannot be expected to be able to use digital self-service, the authority must offer an alternative means of communication. Special conditions may include citizens with certain disabilities and cognitive and physical functional impairment and dementia, citizens with inadequate digital competences, certain marginalised citizens, citizens with mental disorders, homeless persons, citizens with language difficulties etc. Special conditions exist for these citizens if help or co-service from the public authority is specifically assessed not to be a suitable solution for enabling digital applications, notifications or reportings etc.

Digital self-service solutions must be accessible - also for citizens with functional impairment. From June 2018, the Danish Act on accessibility of the websites and mobile applications of public sector bodies (Lov om tilgængelighed af offentlige organers websteder og mobilapplikationer)⁷ will apply. The objective of this act is to make the websites and mobile applications of public sector bodies more accessible to users and especially, but not exclusively, for persons with disabilities. With the adoption of the bill, the public sector bodies must fulfil accessibility requirements in the design and operation of the websites and subsequently also the mobile applications operated and maintained by the relevant institutions. According to the bill, the institutions must also publish a statement with indication of content that does not fulfil the requirements. It must also include contact information for use by the citizen in case of inaccessible content.

Control questions:

- Does the necessary legal basis exist for mandatory digital communication between citizens and businesses and the public sector?
- Has this legal basis been worded so as to include future technological development, meaning that it is technology-neutral?
- Is it clear what should be communicated digitally (for example applications, decisions etc.)?
- Communication with public authorities Do any requirements for mandatory use of digital self-service follow the concept from the model in the four ‘waves’ for mandatory digital self-service (see Act no. 558 of 18 June 2012, Act no. 662 of 12 June 2013, Act no. 552 of 2 June 2014 and Act no. 742 of 1 June 2015)?
- Web accessibility: Are the rules on web accessibility followed as stated in the implementation of Directive of the European Parliament and of the Council on web accessibility in order to ensure that persons with visual impairment or other functional impairment also have access to the digital solution?

⁵ Act no. 528 of 11 June 2012 with subsequent amendments.

⁶ <https://digst.dk/strategier/digitaliseringsstrategien/tidligere-strategier/digitaliseringsstrategien-2011-2015/lovgivning-om-obligatorisk-digital-selvbetjening/>

⁷ Act no. 692 of 8 June 2018 implements Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies

Principle 3: Possibility of automated case processing

The legislation should support complete or partial digital administration of the legislation with due consideration for the legal rights of citizens and businesses.

As a general rule, it is a prerequisite for a public authority using a system involving automated decisions that the automated parts of the decision can be made according to strictly objective criteria so that there is no doubt as to which factual information is relevant and what legal effects it involves if one or the other fact is presented.

In cases where the legislation in one area requires that the decision or elements of a decision are based on discretion it will restrict the scope of the automation of the case processing. This issue can be solved by making discretion manual while the remaining case processing procedure is supported digitally. It may, however, also give rise to deliberations on amendment of the legislation so that it becomes better adapted to a more automated case processing procedure. This depends on whether discretion is expedient and professionally relevant. One of the preconditions for automated case processing is that, as a general rule, the legislation is worded so that objective criteria are applied when deemed relevant and with clear and unambiguous concepts and common concepts rather than special concepts.

Use of automated case processing does not change the fact that the administrative law rules on statement of reason, guidance, consultation procedure etc. must be complied with, see *Paragraph 5.2*.

Objective criteria in the legislation are a prerequisite for automation of case processing. An objective criterion means that it can be decided objectively whether a criterion is fulfilled. For example, the criterion "majority of the year" may be subject to discretion and interpretation whereas "more than 250 calendar days per year" can be assessed objectively. If fully automated case processing is introduced based on objective criteria the specific ministry must ensure that adequate guidance is provided for citizens and businesses on, for example, avenues of complaint. Furthermore, it must be ensured that the decision is sufficiently transparent to enable the citizen to assess his/her avenues of complaint and it must be possible to verify the decision.

Objective rules should only be applied when it makes sense and when no professional discretion is required. Increased use of objective rules may give the specialists more time to spend on the more complex types of cases with a great need for professional discretion, for example cases concerning the welfare of a child and support for particularly marginalised citizens.

In some areas, there may be good reasons for stipulating requirements in the legislation for exercise of discretion. This makes it possible to conduct an overall assessment with inclusion of conditions relevant for the specific situation. For example, it will be relevant to use discretion as a basis for decisions on visitation with children in divorce cases in order to ensure that it is based on a specific assessment of the welfare of the child and the family situation. In other cases, it may be considered whether the discretion includes elements of such a general or permanent nature that it would justify the establishment of an objective criterion instead of being part of the discretion. In this case, an analysis of existing practice could help to identify whether it would be possible to establish such main criteria and maintain discretion for a "residual group" which does not fall within the general cases which exist, according to practice, for when you are entitled to, for example, receive a certain benefit. Such a procedure would help to make the citizen's legal

position more clear. At the same time, this would make it possible for a larger part of the case processing involving objective main criteria to be supported digitally. With respect to the residual group, the authority is responsible for ensuring that discretion is still exercised. This may be done by preparing a determination of discretion which comprises the remaining cases that do not fall under the main criteria. This part may, for example, be selected for manual case processing. If rules on discretion are laid down it should be considered already at the time of the legislation whether there is a relevant data basis that should be included in the discretion.

Increased use of objective rules may contribute to more effective and uniform case processing and may also support the application of resources on the more complex cases where there is a greater need for professional discretion, for example cases regarding particularly marginalised citizens.

It should also be considered whether there are repeated administrative processes such as computation of interest which could be standardised across fields of law through the stipulation of uniform rules. This could support a more uniform administration and digital support.

As a general rule, the legislation should be technology-neutral in order to ensure that it does not regulate the use of technology which will subsequently become obsolete. Note that the word "letter" may be linked to a certain procedure or technology that may not be future-proof. Instead, phrasing such as 'give notification of', 'inform', 'give notice' or the like may be used. However, an independent objective of the legislation may also be to regulate the use of a certain technology.

It is important to pay attention to article 22 of the General Data Protection Regulation, which includes provisions on automated individual decision-making, including profiling. It follows from this that data subjects are entitled to object to automated, individual decision-making. However, this does not apply if the decision is authorised by national law. If it is possible within the framework of national law to decide that decisions must be made automatically without involvement of a caseworker it is sufficient to, for example, state in the explanatory notes that the decision will be made digitally without human involvement. However, national law must include suitable measures to protect the rights etc. of the data subject. It should be considered a suitable measure if, for example, the citizen is entitled to appeal the automated decision to a higher authority where the complaint is heard by human involvement. For more information on this, see report no. 1565/2017 on the General Data Protection Regulation, pages 370-389⁸.

Control questions:

- Have the possibilities for using objective criteria been explored?
- Is it possible, based on existing practice, to establish main criteria for a part of the existing discretionary assessment?
- Have the possibilities for wording (parts of) the legislation so as to minimise discretion and discretionary assessments been explored?
- Have the possibilities for adapting the rules to automated procedures been explored, also in relation to the relevant administrative and data protection law requirements?

⁸ Regulation (EU) 679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

- Is there a need for including discretionary criteria for a residual group or for stipulating rules on the exercise of discretion to enable the inclusion of specific conditions and the specific situation?
- Has it been ensured that professional discretion will be exercised when dictated out of consideration for the legal rights of citizens?
- Are the rules technology-neutral?

Principle 4: Consistency across authorities - uniform concepts and reuse of data

In order to create cohesion across the public sector and to support an effective public service, the specific ministry should consider whether, instead of introducing new reporting requirements, it is possible to draw on data from existing public registers as a basis for administration of the legislation.

Concepts and data should be reused across authorities in so far as this is possible. If the specific ministries use uniform concepts it creates a basis for reuse of data by the authorities. In this connection, the specific ministry should pay attention to relevant requirements for sharing data and distinguishing between the different types of data.

Concepts should be defined clearly, unambiguously and consistently. There should be a clear and unambiguous definition of 'household income', i.e. the persons included in a 'household' and what types of income are included in 'income'. If concepts are used clearly and unambiguously across authorities, it supports a more uniform and effective public administration.

Furthermore, *common concepts* should be used rather than special concepts. If the same or almost the same concept is used in several acts, the same definition of similar concepts should, if possible, be used so that, for example, "income" is used as a concept and has the same meaning in different acts. Different concepts should not be used for the same or almost the same. This will also facilitate the possibility for data sharing.

When reusing data in the public sector, it should also be ensured that data security is handled in a safe and responsible manner and within the framework of the data protection legislation⁹. When using personal data, the authorities should pay attention to the rules on data protection. In connection with the preparation of new legislation involving processing of personal data, clear criteria should be established for the collection and subsequent processing of personal data by the authorities.

If data already exist that support the concepts of the act such as address data in the Danish civil registration register (CPR-register) or income data from the Ministry of Taxation the legislation may be worded so as to allow the use of this data. The authority should therefore investigate whether there are relevant data that may be used as part of the case processing. Alternatively, it may be considered whether other similar concepts may be used for which data is already available so that it becomes possible to use these in the case processing. The secretariat for digital-ready legislation may assist in specifying possibilities for and establishing framework conditions for sharing of data across authorities.

It should be considered whether other authorities may need to use data in their work and could contribute to continuous updating of these. As a general rule, authorities should make their data available to other

⁹ See also *Chapter 6* The General Data Protection Regulation and the Danish Data Protection Act.

authorities upon request unless economic, legal (including data protection law) or security considerations make this inexpedient.

When authorities share registers it must be completely clear which authority is responsible for the register and thus for fulfilling the obligations in the data protection legislation, including responsibility for the quality of the information, notification of the data subject, deletion of obsolete and incorrect data and rules on security of processing.

As a general rule, the same definitions of data, accruals etc. that exist in public registers should be used. Application of common standards and architecture for sharing of data will ensure the best prerequisites for secure reuse of data and for enabling the authorities to jointly contribute to improving the validity and quality of data. Based on the work with making the legislation digital by default, the secretariat for digital-ready legislation will examine the possibility of improving the visibility of central definitions and concepts and their primary public data sources in order to promote reuse of concepts, definitions and data.

Control questions:

- Can data already collected by the public authorities - for example address, personal, company, geo or address data - be reused (with due consideration for, inter alia, the data protection legislation) or will new data have to be collected from citizens or businesses?¹⁰
- Has it been ensured that the same definitions of data, accruals etc. are used that exist in public registers such as the income and accrual definitions used in eIndkomst?
- Are existing geodata used - for example data from Danmarks Miljøportal, Plansystem.dk and geodanmark.dk?

Principle 5: Safe, secure data handling

A high degree of digitisation requires a high prioritisation of data security. Within the framework of the data protection legislation, information from public registers such as name and address in the Danish civil registration register (CPR-register) may be used to offer citizens a smooth and effective case processing procedure. But at the same time it is vital that the authorities ensure safe and secure data handling in the public sector in connection with increased data usage. At the same time, it should be considered whether citizens and businesses may obtain access to their own data and follow their own case in order to create transparency, see the administrative law and data protection law provisions. Citizens and businesses should have easy access to data on themselves held by an authority. As part of the joint digitisation strategy initiative 1.3, an effort is made to create an overview of own cases and benefits where citizens and businesses are offered insight into public data on themselves.

Even during the preparatory legislative work, focus should be on whether new legislation gives rise to special points of attention in relation to safe and secure handling of citizens' and businesses' data. It is a prerequisite for this that technical solutions are designed so that all elements of the administration support safe and secure data handling and that transparency is ensured in the public data handling. In addition, it should be considered whether the legislation supports 'data protection through design'.

¹⁰ See for example <http://grunddata.dk/>

For more information on this, reference is made to *Chapter 5* on the General Data Protection Regulation and the Danish Data Protection Act and the guidance on security of processing by the Danish Ministry of Justice, the Danish Data Protection Agency and the Danish Agency for Digitisation.

Control questions:

- Does the bill propose collection or reuse of data, including data from other authorities?
- Is there the necessary legal basis for any collection or reuse of data?
- Has safe and secure data handling been incorporated, including protection of personal data?

Principle 6: Use of public infrastructure

To the extent it is possible and expedient, public authorities should use existing public infrastructure to ensure the largest degree of reuse and cohesion across authorities. The legislation should therefore take into consideration whether it is possible to use existing public infrastructure such as NemID, Digital Post, NemKonto and eIndkomst.

Control questions:

- Are existing joint infrastructure, including for example NemID/mobile NemID, Digital Post-solution, Nem Log-in, Digital Fuldmagt, NemKonto, eFaktura, NemHandel or eIndkomst, used rather than separate, proprietary solutions?
- Will any existing joint processes be used, including processes for consultation procedure, sharing/access to large documents, receipt, notification, reporting, supervision etc.? Inspiration may be found in the joint Forretningsreferencemodel (FORM, business reference model), which includes a task catalogue that may help to find inspiration and reference examples for design of processes¹¹.
- In connection with the solution of tasks, is it necessary to log onto different public IT systems? If this is the case, should these IT systems be supported, perhaps by NemID and NemLog-in.
- Is money paid to citizens, businesses or authorities (no reimbursement)? If this is the case, would it be advantageous to use NemKonto?
- Is there communication with citizens, businesses or authorities? If this is the case, should Digital Post be used as a secure method of dispatch?

Principle 7: Prevention of fraud and errors

Already during the preparation of the legislation, the possibility of subsequent control and prevention of fraud and errors should be taken into account. The legislation should be worded so as to permit effective IT application for control purposes, for example by making it possible to control whether case information is correct by means of relevant public registers. At the same time, it should be determined whether legislation opens up new opportunities for fraud and, if so, how the control procedure can be planned to handle these risks - so-called risk-based control. If personal data is processed for control purposes it must take place within the framework of the data protection legislation and with the necessary legal authority.

In bill L 68 to the Danish Data Protection Act, which was adopted in May 2018, it is proposed that it is *not* - contrary to applicable law - a prerequisite that pooling for control purposes is based on direct legal

¹¹ <https://arkitektur.digst.dk/rammearkitektur/klassifikationer/form/form-online>

authority since the General Data Protection Legislation does not include an express requirement that there must be direct legal authority for pooling for control purposes. According to the General Data Protection Regulation, pooling for control purposes must follow the general principles and rules on processing. As, by definition, pooling for control purposes will be an intrusive processing situation such processing will, however, draw attention to the requirements in article 5 of the General Data Protection Regulation on principles for processing of personal data, including the principle of proportionality.

Control questions:

- Is there legal authority for collecting and processing relevant information from public registers etc. in order to prevent fraud and errors?
- Are digital solutions used to control or validate case information in relevant public registers prior to payment of public benefits?
- Has the legislation been worded so that any process requirements do not hinder effective IT application in connection with control?

2.2. Organisational impacts and transitional and operational impacts

Organisational conditions and transitional and operational impacts may constitute significant prerequisites and risks in relation to expedient implementation. The explanatory notes to the bill should therefore include an assessment of the organisational impacts and transitional and operational impacts for the state, regions and municipalities. If the bill is not deemed to have such impacts it should be stated in the explanatory notes. *Guidance on impact analyses* (Vejledning om konsekvensanalyser) details a procedure for further assessing public implementation impacts.¹²

In a broad sense, *organisational conditions and transitional and operational impacts* may be described as changes in activities and operation of the public administration and may be divided into transitional impacts, which are characterised by being temporary, and operational impacts, which are usually permanent.

In connection with the statement of such impacts for the government, it is of particular importance whether the bill involves the establishment of new administrative authorities or significant changes to already existing authorities. In such cases, an estimate should be made of the expected additional or reduced expenses for administration, including staff, IT systems and premises etc.

With respect to municipalities, local differences in the layout of the municipal administration may affect the administrative impacts of a bill. This applies particularly to bills that include provisions on work and decision-making processes. Such differences should therefore be included in the assessment of the implementation impacts of a bill for the municipal authorities.

A detailed regulation of work and decision-making processes may make it difficult for the municipal authorities to maintain an overview and create a significant administrative burden. It should therefore always be considered whether such regulation is necessary and whether it is compatible with the existing rules and administrative structure.

¹² <https://modst.dk/media/19528/vejledning-om-konsekvensanalyser-maj-2005-afsnit-3-2-7-1-og-7-2-revideret-i-2018.pdf>

When drawing up new legislation, an effort should be made to maintain existing administrative units and structures. The reason is that, from an expense-based and administration political viewpoint, it is impractical to complicate the public sector unnecessarily through administrative 'proliferation'. For the individual citizen, such development could also contribute to creating an impression of the public sector as being more chaotic and less accessible.

Furthermore, it should be described if there are significant risks associated with the organisational implementation of the changes, also in relation to time schedules.

A number of bills are of such nature that it may in fact be relevant to consider actual administrative simplifications such as combining several functions in one administrative unit. This could also simplify the citizen's journey 'through the system'.

If it is necessary to establish new administrative units it should be ensured that the associated economic and administrative disadvantages are limited as much as possible. This could involve transferring staff from the unit(s) ceding a given task.

Furthermore, the specific ministry should be aware that the time of commencement of the act may have administrative impacts. When assessing the administrative impacts, it should therefore be assessed whether the intended time of commencement will involve unnecessary administrative disadvantages for the public administration. For example, changes in the public budget statements and financial reporting should follow the financial year, if possible, so that no corrections have to be made to entries already made. See also *Guidance on impact analyses* (Vejledning om konsekvensanalyser) for a further details.

If special conditions in the bill dictate an assessment of the need for competence development any impacts in relation to the need for skill development/supplementary training of employees, including IT adaptations and IT support, may also be described.

The implementation impacts are described as positive if, for example, a bill reduces the administrative costs, enables less time-consuming workflows, for example through digitisation, or otherwise contributes to a more user-friendly and cohesive public sector. The impacts are negative if, for example, a bill complicates digitisation of workflows or gives rise to more time-consuming case processing procedures, resulting in a less simple and cohesive public sector.

If the bill affects municipal authorities or regions the impacts at these levels of administration should also be stated. Reference is made to Guidance no. 63 of 9 October 2007 on the Extended Total Balance Principle (Det Udvidede Totalbalanceprincip (DUT)).

2.3. IT support, IT management and risk

The specific ministry should pay attention to the wording of the bill so that it may support the use of IT solutions. It is thus important to establish whether it is possible to use digital solutions. There will be cases where an independent objective of the bill is to enable a larger degree of digital administration, see for example the development by the Danish Ministry of Taxation of the new property valuation system, which is described in *Paragraph 5.4*.

Digitisation may be a method for providing citizens and businesses with better public service of a high quality. Conversely, the use of IT and new technology is not an objective in itself.

The specific ministry should therefore assess whether the bill involves impacts in relation to existing IT systems or the development of new IT systems. It should be described whether the bill requires adaptation of existing IT-systems or development of new IT systems. In case of a government IT system, the government IT model should be followed and it should be stated if the IT solution is comprised by the procedure of the government IT Council for projects of DKK 10-60 million, see Paragraph 2.2.18.2 *Presentation to the IT project council* and paragraph 2.2.18.3 *Presentation to the Finance Committee* in the government budget guidelines 2016 (Statens budgetvejledning)

In addition, the specific ministry should ascertain whether any changes to the IT support within the area of the authority as a result of the bill may have derivative effects for the IT systems of other authorities that may be dependent on data or functionality from these systems.

The total implementation impacts should be quantified if possible. It may therefore be relevant to elaborate on facts in the bill, including costs for IT systems/case processing systems. In this connection, it may be practical to collect knowledge from external parties, including caseworkers at the administrative authority and IT vendors for the existing systems. Please note that it should not be detailed how the specific IT systems should be developed, including technical choices regarding open source, cloud technology etc.

Finally, it should be assessed and described whether the subject matter of the bill gives rise to deliberations on the administrative law aspects, for example in connection with consultation procedure, case information etc., see also *Appendix 5.2*.

2.3.1 Date of commencement

When determining the date of commencement, the time it will take to implement the bill in existing IT solutions/development of new solutions should be taken into consideration. This could include time for 'translation' of the act into IT requirements, IT system adaptation (programming etc.), testing and bug fixing. If the system adaptation requires the conduct of a tender procedure the time it will take to conduct an IT tender and presentation to the government IT Council must be taken into consideration when fixing the date of commencement.

In special cases, it could be considered to postpone the commencement of a bill to the subsequent executive order. This is particularly relevant if, at the time of preparation of the legislation, it has not been possible to make thorough estimates of the adjustments of the IT support necessitated by the legislation.

It is pointed out that common dates of commencement have been introduced for business-oriented legislation so that, as a general rule, all bills and executive orders will enter into force on 1 January or 1 July if they have direct impacts for the business sector.

Furthermore, a risk assessment of the time schedule for the IT system should be stated in relation to the date of commencement proposed. This is to ensure that the risks associated with the implementation of the bill are stated. It should also be described how risks are handled, including any special measures for handling such risks.

2.4. Data protection

Public authorities must handle citizens' data in accordance with the applicable legislation, including the data protection legislation. This also applies to any data sharing and exchange of data between public authorities. The specific ministry should therefore assess whether it has been ensured that the handling of data, including any data sharing, takes place in accordance with the legislation. When personal data is processed it may be relevant to describe the legal basis for the processing or whether the legislation involves pooling of registers or control measures. If there are special points of attention and risks associated with the use and sharing of data this should also be described in the legislation.

It is stated in the General Data Protection Regulation that in special cases involving a high risk the public authorities must prepare impact analyses identifying the impacts of the specific data processing for the protection of personal data. Analyses must be carried out when public authorities process personal data in a way that may be characterised as involving a high risk for the rights and freedoms of citizens. This is especially the case in connection with the use of new technology, for example use of biometric data, including iris recognition, or artificial intelligence that processes sensitive data such as health information. However, it must involve new technology from an objective point of view. Change to another IT platform does therefore not in itself give rise to the performance of an impact analysis. According to the General Data Protection Regulation, it is possible, already at the adoption of new legislation that forms the basis of processing by public authorities of personal data, to assess whether such an analysis should be performed. Furthermore, impact analyses may be performed "once and for all" when ministries prepare legislation instead of authorities having to perform these analyses separately. It may therefore be advantageous for the ministry to consider performing such an impact analysis in connection with the preparation of the bill.

It is pointed out that, according to proposal for section 28 of the Danish Data Protection Act, a statement must be obtained from the Danish Data Protection Agency in connection with preparation of legislation that affects the protection of privacy in connection with the processing of personal data.

2.5. Significance for citizens

It is important that the specific ministry pays particular attention to bills that have a direct impact on citizens. This may be relevant for bills within education, labour market, health care, tax or the social area where the bill may include administrative procedures that require IT support with direct impacts for citizens as well as the caseworkers who are going to use the IT system. For areas where it is necessary to apply special considerations or exercise discretion in certain situations, it should be considered whether there is a need for special residual categories in connection with objective main categories to ensure, for example, the rights of marginalised citizens. The specific ministry should assess the advantages and disadvantages for citizens involved in the introduction of new digital procedures in the legislation. This may be changes regarding consultation procedure, complaint procedure or the like.

Please note that impacts for citizens should not be described in the paragraph on public implementation impacts but rather in the fixed paragraph on 'administrative impacts for citizens' in the general comments.

3. Method for assessing implementation impacts

Chapter 3 reviews the various steps in the general procedure for impact analyses, see *Guidance on impact analyses* (Vejledning om konsekvensanalyser), in relation to the assessment of implementation impacts. The description of the method is therefore based on implementation impacts.

Reference is made to *Guidance on impact analyses* (Vejledning om konsekvensanalyser) for a detailed description of the performance of impact analyses.¹³

3.1. Step 1: Initial assessment of implementation impacts (screening)

Step 1 is an initial assessment (screening) of whether the bill involves implementation impacts. If it is assessed that the bill has implementation impacts the analysis should proceed to step 2. If the bill is not assessed to have implementation impacts this should be stated in the comments together with the reason, if necessary.

An initial overall review (screening) of the bill should be performed in order to identify whether the bill has administrative or IT related transitional or operational impacts. Implementation impacts may be described as changes in activities and operation of the public administration. This also includes for example digitisation and use of new technology. The assessment of implementation impacts includes the following elements:

- Does the bill follow the principles for digital-ready legislation?
- Does the bill involve changed organisational conditions with resulting administrative transitional and operational impacts?
- Does the bill involve significant risks associated with IT support and management?
- Does the bill effectively implement reuse of data within the framework of applicable rules for data protection?
- Does the bill contribute to a simplified and more cohesive public administration?
- What are the impacts of the proposed changes in relation to citizens?

As stated above, there may be implementations that affect citizens. As a general rule, this assessment is made as part of the consideration of the administrative impacts of the bill for citizens.

The screening of whether the bill has implementation impacts may be based on the checklist in *Box 3*. The checklist is not exhaustive.

¹³ See <https://modst.dk/media/19528/vejledning-om-konsekvensanalyser-maj-2005-afsnit-3-2-7-1-og-7-2-revideret-i-2018.pdf>

Box 3

Checklist for implementation impacts

- Workflows and case processing
 - Administrative procedures: Are there changed administrative procedures?
 - Digitalised workflows: Do the rules support digitisation?
 - Administrative law requirements for case processing?
 - IT systems, storage and sharing of data
 - IT systems: Existing or development of new systems?
 - Safe data handling and effective data sharing?
 - Reuse of common concepts and data?
 - Institutions and tasks
 - Establishment/closing down of institutions?
 - Tasks of existing institutions?
 - Staff and operating conditions
 - Operating conditions: For example, the need for more office space, changed opening hours?
 - Staff in numbers or composition?
 - Need for competence development?
 - Other conditions
 - Date of commencement: Risks in relation to IT adaptations etc.?
 - Other conditions of importance to the public administration?
-

There may also be bills that do not have implementation impacts. This may be the case for the Danish Act on naturalisation (Lov om indfødsrets meddelelse) (citizenship)

3.2. Step 2: Detailed stipulation of contents and scope (scoping)

The detailed stipulation of contents and scope includes pinpointing the degree of implementation impacts and, if possible, it should be clarified who (citizens, businesses etc.) are affected by the bill and how. For example, it may be clarified whether the bill affects all public authorities or only selected groups.

It may be relevant to elaborate on the auxiliary questions under each principle, see *Paragraph 3.1*, so that it is clarified which concepts or data should be used in which context. If the legislation contemplates mandatory use of digital communication (as is the case with the second principle) the target groups of such communication should be specified.

It may also be relevant to clarify how the administrative procedures should be planned and with what type of IT support, see the auxiliary questions under Step 1.

3.3. Step 3: Assessment of implementation impacts

Once steps 1 and 2 have been completed, and it has been pinpointed which types of implementation impacts the bill involves as well as who and what is affected the actual assessment should be made. Step 3 will thus probably result in a systematic communication of the impacts of the bill.

After completion of the assessments regarding the implementation impacts of the bill, they should be detailed in the permanent paragraph 'Public implementation impacts' in the explanatory notes to the bill. The description should reflect the impacts as much as possible, duration etc.

If a bill has implementation impacts for the public sector the specific ministry should describe these in detail, including quantification to the extent possible. However, it may be necessary to take into account

the negotiation positions of the public authorities, for example in relation to suppliers and the operators that are responsible for the implementation itself.

It is also a requirement that it is stated in the explanatory notes whether the bill follows the principles for digital-ready legislation. If this is not the case, it should be explained why the principles are derogated from.

In addition, it should be described whether there are processes that are affected by the bill and whether there is a need for development of or changes to the existing IT support. Furthermore, risks related to IT projects and data protection as a result of the bill should be described, *see Paragraphs 3.3 and 3.4*.

It should also be described if the bill contributes to simplified public administration.

On this basis, the overall importance of the implementation impacts for the bill should be outlined. The implementation impacts are described as positive if a bill reduces the administrative costs, establishes less time-consuming workflows or otherwise contributes to a more user-friendly, simpler public sector. The impacts are negative in the opposite situation.

Finally, the impacts should be stated in the table in the explanatory notes (positive and negative, respectively).

3.4. Consultation regarding the bill at the Danish Agency for Digitisation

Bills which, in the assessment of the specific ministry, involve implementation impacts, see above, should be submitted for consultation with the secretariat for digital-ready legislation under the Danish Agency for Digitisation, preferably 6 weeks before public consultation. For example, this would be relevant if the bill involves a need for adaptation of IT support, risks associated with IT support of a complex set of rules or reuse of data in a way that may be expected to involve special requirements for coordination between authorities.

Draft bills, including the specific ministry's draft description and assessment of implementation impacts, are sent to klarlovgivning@digst.dk.

The deadline for submission 6 weeks before public consultation corresponds to the deadline for referring regulation with administrative impacts for the business sector for consultation with the Danish Business Authority.

Regulations, including executive orders, issued from 1 July 2018 should also be digital by default and follow the 7 principles but should not be referred for consultation with the Danish Agency for Digitisation.

In special cases, for example due to the urgency of the regulation, the requirement for consultation with the secretariat for digital-ready legislation may be disregarded after prior notification.

The secretariat for digital-ready legislation will review the draft bill with a view to an assessment of the implementation impacts of the bill, including any need for additional description of these. The secretariat will issue a consultation letter, which should be included in the continued work with the bill by the specific ministry. The consultation letter may include recommendations on the preparation of the law text.

The specific ministry's assessment and description of public implementation impacts, including compliance of the bill with the principles for digital-ready legislation etc., should be stated in the draft bill which is referred for public consultation. This enables external parties to come to a decision on and provide input for the assessment by the specific ministry of the public implementation impacts.

The secretariat maintains and develops relevant guidance material and supportive tools for assessment of implementation impacts and guides the ministries on digital-ready legislation.

In addition, the Secretariat receives the legislative programme before the summer holidays with a view to screening of the bills for which it will be particularly relevant to initiate an early dialogue with the specific ministry on digital-ready legislation.

The Secretariat prepares an annual status report for the government in which the application of the principles for digital-ready legislation is accounted for.

4. Recommendations for making the legislation digital by default

Chapter 4 includes a number of recommendations on how authorities may ensure that the legislation becomes digital by default so that it supports subsequent digital administration.

It is very important that the authorities focus on digitisation early in the preparatory legislative work, see *Paragraph 4.1*. *Paragraph 4.2* describes the mapping of substantive and formal rules as well as legal point of attention in connection with digital case processing systems. *Paragraph 4.3* then describes how the authorities, through performance of an administrative procedure analysis, may identify existing and future administrative procedures/administration flows. It may also help to identify data requirements, including deliberations on any data sharing options and definitions in the bill. *Paragraph 4.4* describes how law, IT and business may be combined in connection with the development of IT solutions. Finally, the possibility for establishing a digital task force is described in *Paragraph 4.5*.

Chapter 4 is intended solely as inspiration for the authorities and does not include any mandatory requirements.

4.1. Early focus on digitisation in the legislative work

Public authorities should, as early as possible and as a permanent part of the preparatory legislative work, consider the subsequent administration of the legislation, including especially the processes, administrative procedures etc. which the bill entails, and whether the bill enables subsequent digital administration.

The purpose of taking digitisation into account already during the preparation of the bill is to prevent the risk that, during the implementation phase, administrative procedures, processes, communication with citizens and businesses etc. become difficult to administer and cannot be sufficiently supported through digital solutions. Early inclusion of deliberations on digitisation may also help to ensure that the bill fulfils its purpose more effectively since knowledge of existing and future administrative procedures, existing data and definitions, relevant IT-systems and existing public IT infrastructure etc. may be included in the preparation of the bill.

It is also important to obtain an overview of data requirements and data sharing options early in the preparatory legislative work so that the public sector resources are used in the best possible way and cohesion is established in the public service. For example, public authorities might have to share data or cooperate on maintaining data. In this connection, it would be practical to involve relevant authorities such as data owners already in the early legislative deliberations to support, for example, data reuse.

Incorporation of digitisation already during the preparation of the draft bill serves, firstly, to ensure that the statutory rules/law text is worded so that they/it may be digitised. This means that the rules are worded clearly, precisely and consistently and that the rules may be "translated" into programme codes that can be included in a digital solution. It is about ensuring that the rules include objective requirements etc. that may be translated into quantitative requirements and calculations. As a general rule, such rules will follow the 7 principles for digital-ready legislation, see *Paragraph 2.1*.

Incorporation of digitisation already during the preparatory legislative work serves, secondly, to clarify the digital aspect of a bill as thoroughly as possible in the bill so that the Danish parliament (Folketinget) is able

to include it in the decision-making process during the consideration of the bill. The requirement for an assessment of the implementation impacts in the explanatory notes must support this, see *Chapter 2*.

Incorporation of digitisation does not necessarily mean that the words 'digitisation' and 'IT' are included in the text of the bill because the bill includes for example obvious IT related processes. Incorporation of digitisation may just as well serve to phrase the legislation so that the wording and impacts of the act enable the best possible application of digitisation and new technology in the public task solution now and in the future. This may be supported by ensuring that the law text is technology and process neutral.

4.2. Mapping of the legal environment

Introduction of digitally supported public administration in one area requires combined incorporation of IT development, data requirement, business requirements, administrative procedures and legal aspects. If the legislation is to be supported digitally the authority must therefore map the legal environment, i.e. the substantive and formal rules, to be supported by a digital solution. In this way, the authority is able to identify the elements in legal rules that may present challenges to digital administration at an early stage.

Firstly, a digital solution must support the requirements that are stipulated in the legislation to be digitised (the substantive requirements). When the public sector handles a case the IT solution should be worded so that the formal rules for case processing such as administrative law requirements for consultation procedure, statement of reason, data protection etc. are observed.

To ensure this, it is vital that the authority from the beginning obtains a very exact overview of the rules and processes that a digital case processing system will support. It should be very clear which formal and substantive rules apply to the processing of the relevant cases, and it should be meticulously ensured that the system is designed in a way that allows compliance with the rules in all the different processes that the cases may possibly undergo. This may be done by an administrative procedure analysis. At the same time, an assessment of the implementation impacts, including the principles for digital-ready legislation, may contribute to considerations on the wording of the law text, see *Box 4*. This is where it is vital in the preparatory legislative work to ensure that the legislation is worded with a view to the subsequent digital administration - that it is digital by default.

The authority should ensure that a digital solution is tested for fulfilment of the substantive and formal legal requirements. Reference is made to the joint IT project model regarding development and testing of public IT solutions.¹⁴

¹⁴ <https://digst.dk/styring/projektstyring/statens-it-projektmodel/>

Box 4**Legal points of attention during the development of digital case processing systems**

Process	Activity
Preparatory legislative work	1. Decision on digitisation early/as part of the preparatory legislative work
	2. Administrative procedure analysis (identification of manual processes and data requirements) and mapping of the legal environment
	3. Assessment of implementation impacts, including principles for digital-ready legislation
	4. Need for adaptation of rules?
Development of IT solution	5. Wording with due consideration for substantive and formal rules
	6. Development/adaptation of IT solution with due consideration for applicable rules
	7. Verification/testing of IT solution
	8. Need for adaptation of rules?

For example, with respect to the formal requirements for the case processing, it will have to be ensured that the rules on consultation procedure and statement of reason can be complied with, *see Appendix 6.2* on administrative law requirements for digital solutions.

It is important to pay attention to article 22 of the General Data Protection Regulation, which includes provisions on automated individual decision-making, including profiling. For more information on this, see report no. 1565/2017 on the General Data Protection Regulation, pages 370-389¹⁵.

With respect to the substantive requirements for the case processing/administration, the set of rules may require that discretion is exercised in the individual case. If this is the case, the processes should of course be planned so that they fulfil these requirements. This could mean that the case processing cannot be purely digital in all possible scenarios and that, for example, only parts of the process is digital. As a general rule, it is a prerequisite for a public authority using a system involving automated decisions and no manual case processing, that the decision (the automated parts of the decision) can be made according to strictly objective criteria so that there is no doubt as to which factual information is relevant and what legal effects it involves if one or the other fact is presented.

In cases where the legislation in one area requires that the decision or elements of a decision are based on discretion it will restrict the scope of the automation of the case processing. This issue can be solved by making discretion manual while the remaining case processing procedure is supported digitally. It may, however, also give rise to deliberations on amendment of the legislation so that it becomes better adapted to an automated case processing procedure. This depends on whether discretion is expedient and professionally relevant, *see Paragraph 2.1, Principle 3*.

In some areas, the understanding and application of a number of legal rules will depend on a specific interpretation where, for example, deliberations on objective have to be included. In such cases, this

¹⁵ Regulation (EU) 679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

should also be incorporated in the case processing system. The set of rules must be interpreted ‘in advance’, so to speak, so that the interpretation has been taken into consideration in cases where this may occur in practice. One solution to the challenges that may arise in relation to automation of decisions may in some cases be to design a system where cases in certain situation are selected by the system for manual processing.

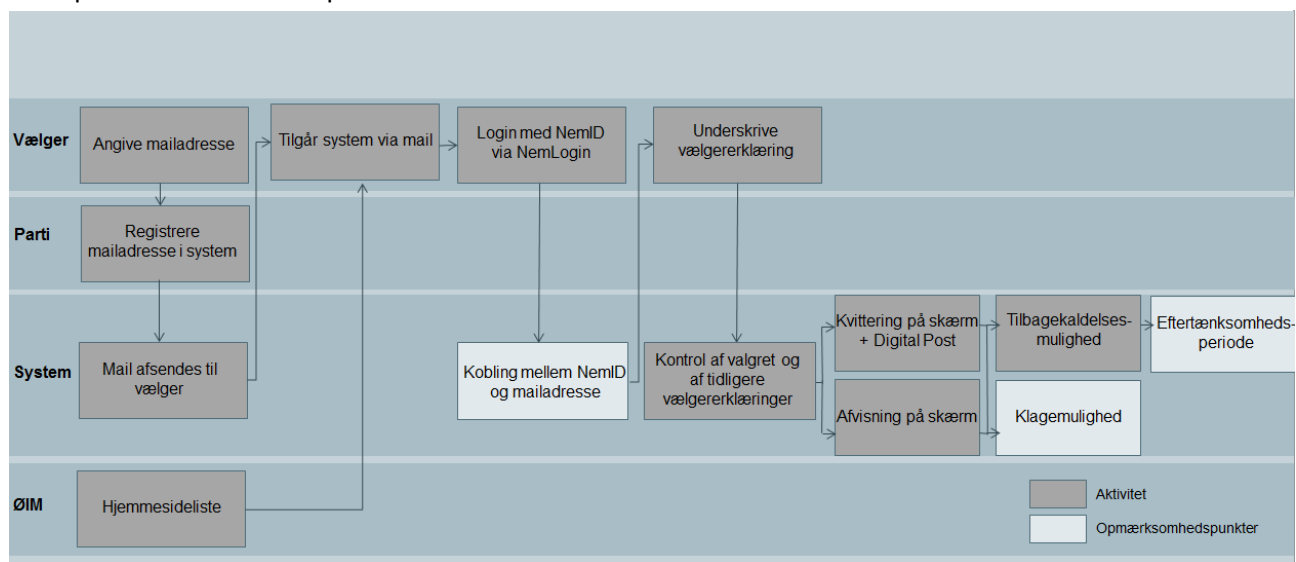
4.3. Administrative procedure analysis

If a bill includes many or complex administrative procedures it may be advantageous to prepare an administrative procedure overview of selected administrative procedures to be used during the preparation of the bill. This will help to visualise contexts and any inexpediciencies in the case flow and identify places where it could be relevant to include digital administrative procedures. Furthermore, it may also identify areas where it could be possible to support the case processing by reusing data, i.e. possible data requirement.

The administrative procedure analysis should not be included in the bill but should be used as part of the preparatory legislative work.

An administrative procedure overview can be prepared in many ways, but an example is shown below (not translated) which was prepared in connection with the preparatory legislative work carried out by the Ministry for Economic Affairs and the Interior, which resulted in proposal for an act amending act on election for the Danish parliament (Folketinget) and Act on Election of Danish Members to the European Parliament (Authorisation for digitisation of the procedure for collection of voter statements etc.).¹⁶ It is noted that the figure was used as a tool in the preparatory legislative work and does not reflect the procedure that resulted from the bill and the executive order that implements the authorisation in the Act.

Example of administrative procedure overview:



Based on the specific bill and the resulting processes, the grey boxes, which show the activities in the flow from start to finish in the statutory administrative procedure, are drawn first.

¹⁶ <http://www.ft.dk/samling/20131/lovforslag/L124/baggrund.htm>

Then, it is assessed which administrative procedures present challenges with respect to digitising the process. These are marked in white. In the above example, the white markings indicate areas with special challenges to be solved in the bill - for example, it is not possible to establish a connection between NemID and email address. Therefore, another solution had to be found to the safe identification of the voter.

In the administrative procedure overview, it may be chosen to mark areas in white where it would be advantageous to transition from manual to digital and perhaps completely automated processes. The administrative procedure overview may also provide input with respect to data that are needed in order to make a decision, including deliberations on reuse of data.

On this basis, a draft bill may be expanded by the requested details on how selected administrative procedures can/should be planned to ensure that they are digital by default.

4.4. Combined incorporation of law, IT and business

Digitisation projects within public administration involve combined incorporation of business, IT and legal considerations. It may therefore be advantageous in relation to digitisation projects to also bring together legal, business and IT competences.

In connection with the development of the new property valuation system, the Danish Ministry of Taxation has had a particularly business-driven approach to the work where system development, data modelling, business clarifications and the legislative work have been brought together organisationally and combined from the start.

The Danish Ministry of Taxation has established Implementation Centre for Property Valuation (Implementeringscenter for Ejendomsvurdering (ICE)), the purpose of which is to develop a new and better property valuation system. Preparation of new and better property valuations requires an improvement and updating of the quality of existing data and provision of brand new data. At the same time, the current legislation in this area is very complex, and it has been necessary to prepare a completely new and modernised property valuation act.

The result has been that the possibility of using data and registers has been incorporated into the legislation. Furthermore, the new property valuation act has introduced a legal basis for the use of cloud technology for development and operation of the IT system itself.

These days, several ministries are experimenting with new forms of co-operation in connection with digitisation projects. The Danish Agency for Digitisation will follow the development with a view to exchange of experience.

4.5. Establishment of a digital legislation task force

In case of legislation that is expected to become the subject of digitisation, the authority may consider appointing an interdisciplinary coordination committee - a digital legislation task force - in order to ensure representation of legal competences and competences from the authority's digitisation function.

Such a task force may include the following roles:

- Process owner / legislator

- IT architect
- UX designer / user travel consultant
- Data and business specialist within rules and concepts for IT solutions¹⁷
- Product owner
- Representatives for the service desk function of the solution

The above should of course be regarded as a list for inspiration since the areas of responsibility in the individual authorities will be organised differently. It is thus quite possible that one representative may be able to assume several of the above roles, and the list should be viewed as exhaustive.

The specific staffing should always be based on the actual digitisation project on which the authority is about to embark. Some authorities will be able to draw on bodies already appointed for IT governance.

¹⁷ If necessary visit <https://arkitektur.digst.dk/metoder/regler-begrebs-og-datamodellering>

5. Appendix

5.1. Examples of ways to incorporate digitisation in bills

For inspiration for the preparatory legislative work, a number of specific examples of the incorporation of digital principles in legislation are described below. Editorial adaptations have been made to underline relevant sections of text.

Reuse of existing concepts, definitions and data

What	Income concept
Explanatory notes	It is suggested that supplementary child allowance should be means-tested based on the applicant's individual, taxable income. It is suggested to use as starting point the same income concept as that used when calculating other means-tested social cash benefits (for example housing benefit, social pension and financial childcare exemption for day-care institutions etc.)
Source	L224/2012 Proposal for an act amending the Active Social Policy Act (Lov om aktiv socialpolitik), the Act on the Danish State Educational Grant (SU-loven), the Danish Act on Child Benefits and Advance Payment of Child Support (Lov om børnetilskud og forskudsvis udbetaling af børnebidrag) and various other acts. http://www.ft.dk/samling/2012/lovforslag/L224/20121_I224_som_fresat.htm

Reuse of data from register

What	Income concept
Explanatory notes	See Paragraph 2.2.3.2 Payment of the flexible wage subsidy: "Payment is made in arrears in the following month based on information from the income register and any other financial information to be included in the calculation of the flexible wage subsidy." See Paragraph 2.2.5 Flexible unemployment benefit - on calculation of flexible unemployment benefit See Paragraph 2.5 Calculation of early retirement allowance for beneficiaries of the subsidised flexible employment scheme based on information from the income register See paragraph 2.6 Provision of data basis
Source	L 53/2012 Proposal for an act amending the Danish Act on Active Employment Measures (Lov om en aktiv beskæftigelsesindsats), Active Social Policy Act (Lov om aktiv socialpolitik), Act on Social Pension (Lov om social pension) and various other acts (Reform of early retirement pension and flex job, including the introduction of resource-building employability enhancement programme, rehabilitation team, flexible wage subsidy etc.) http://www.ft.dk/samling/2012/lovforslag/L53/index.htm

Reuse of data from applicant

What	Reuse of data previously reported by applicant
Explanatory notes	The self-employed person must submit a request to Udbetaling Danmark for payment of maternity benefit. Udbetaling Danmark receives the necessary information from the self-employed person, which is used as a basis when compensation is paid from the maternity equalisation scheme. Upon request, information is provided on the extent of the work in the company and indication of the maternity period.
Source	LF 194/2012 Proposal for act on maternity equalisation for self-employed persons (Forslag til lov om barselsudligning for selvstændigt erhvervsdrivende) https://www.retsinformation.dk/Forms/R0710.aspx?id=145768

Objective criteria

What	Age criterion
Explanatory notes	Payment of state pension depends on date of birth.
Source	Letter 9910 of 19 September 2016 on amendment to Guidance on state pension under the Danish Act on Social Pension. https://www.retsinformation.dk/forms/R0710.aspx?id=183982

Set-off without consultation procedure

What	The example shows that administration is simplified by allowing set-off without consultation procedure. Instead, objections from the debtor are processed in a fast track scheme.
Explanatory notes	According to section 9a of the bill, setoff effected by the debt collecting authority or the customs and tax administration as the creditor may take place without consultation with the debtor and without prior assessment of the debtor's financial conditions. Explanatory notes: It will go against the consideration given to system support of set-off that a large majority in the Danish parliament (Folketinget) accepted at the adoption of Act no. 346 of 18 April 2007 if, in connection with each set-off, SKAT has to conduct consultation with the debtor and investigate the debtor's financial conditions. In 2012, SKAT thus made almost 900,000 set-offs for a total amount of approx. DKK 6.2 (..) billion The very high number of set-offs gives rise to only a very modest number of complaints. In 2012, the National Income Tax Tribunal made a decision in 132 complaints and found in favour of four of these in whole or in part. An obligation for consultation procedure would mean that it would not be possible to perform many set-offs before the deadline for payment that applies to the debt against which they are set off.
Source	LF 122/2015 Proposal for act on the collection of debts due to public authorities (Forslag til lov om inddrivelse af gæld til det offentlige). https://www.retsinformation.dk/Forms/R0710.aspx?id=177448

Digital reporting

What	The example shows how legal authority for digital reporting of income tax return for businesses is ensured and the deliberations made regarding the administrative impacts.
Explanatory notes	"The bill includes possibilities for businesses to reduce their workload in connection with submission of income tax return and financial statements to the tax authorities. This is done by setting up a possibility for digital submission of data to the tax authorities. (...) It is a prerequisite that a possibility for digital submission of income tax return is set up for all businesses. This possibility does not exist today for businesses etc. It is assessed that the appendices in hardcopy are a significant obstacle to digital submission of income tax return and that the businesses would view the digitisation opportunity as a simplification that may relieve their work burden in connection with submission of income tax return and financial statements."
Source	LF 31/2004 Proposal for act amending the Tax Control Act (Skattekontrolloven) and Act on the collection of taxes etc. (Lov om opkrævning af skatter og afgifter mv.) (Digitisation of financial information, abolition of businesses' duty of notification and abolition of tax at source fine). https://www.retsinformation.dk/Forms/R0710.aspx?id=89978

Legal authority for digital communication for businesses etc.

What The example shows that communication between municipalities, employers and self-employed persons regarding subsidy schemes etc. under the Danish Act on Active Employment Measures (Lov om en aktiv beskæftigelsesindsats) may take place digitally.

Explanatory notes The bill introduced legal authority for the minister for employment to stipulate rules administratively on the use of digital communication between municipalities, employers and self-employed persons regarding subsidies.

Source Bill L 124/2012 Digital communication on subsidy schemes etc.
<http://www.ft.dk/samling/20121/lovforslag/L124/index.htm>

Legal authority for mandatory, digital self-service

What The example shows how legal authority has been ensured for mandatory digital self-service and the deliberations in connection with possibilities for exemption.

Explanatory notes In order to impose a duty to use digital self-service solutions on citizens in connection with applications, notifications and reportings etc. to the public authorities, this must be authorised by law.

It is proposed that it (...) is stipulated that as the overriding general rule it becomes mandatory to use the digital self-service solutions within the selected areas. The consequence of not submitting an application, notification or reporting etc. digitally is that the public authority will reject the application, notification, reporting etc. after due guidance.

Source LF198/2012 Proposal for act amending various statutory provisions on applications, notifications, requests, messages and statements for the public authorities.
<https://www.retsinformation.dk/Forms/R0710.aspx?id=145921>
