

Capacity to act: From *test* to *tools*

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Capacity to act: From test to tools

Mark Bovens en Anne-Greet Keizer¹

When preparing policy and regulations, how do you assess whether they are ‘doable’ for the public? In the study entitled *Why knowing what to do is not enough* we recommended that any new policy that directly affects people should be subjected to a capacity to act test. Some months later, at the request of the Senate of the Dutch Parliament, we developed this recommendation into a handout on *the capacity to act test*.

The government has adopted the recommendation and has started using the test. The use of the test is slowly expanding and greater attention is being focused on capacity to act in the design and introduction of policy and legislation. This practical use provides inspiration for others, but also highlights the challenges faced by policymakers and legislative lawyers. It has not proved easy to turn the ambition for a realistic perspective into action. ‘Knowing what to do is not enough’ also applies to legislators.

In this memorandum we therefore offer guidance for policymakers and legislative lawyers on ways to focus more attention on the ‘doability’ of policy and regulations. We speak of tools because this document suggests instruments that can be used by anyone seeking to increase the ‘doability’ of rules, including legislative lawyers with formal responsibility for conducting or commissioning a capacity to act test as part of the implementation tests in draft legislation, but also others involved in designing policy.

1. Mark Bovens is Professor of Public Administration at Utrecht University and a WRR council member. Anne-Greet Keizer is Senior research fellow at the WRR and project coordinator of the report ‘Why knowing what to do is not enough’.
2. A capacity to act test was conducted as part of the implementation test for the new Civic Integration Act: <https://www.tweedekamer.nl/kamerstukken/detail?id=2020D22036&did=2020D22036>



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1. Focusing on people's capacity to act in the design of policy and regulations

A lot of policies and regulations are based on a rationalist perspective: if people are properly informed and given the right financial incentives, they will automatically comply with the rules. But the reality, as evidenced by the many issues surrounding allowances and benefits, is different. Despite acting in good faith, people have got into great difficulty because regulations assumed too much alertness on their part. Behavioural science shows that people's capacity to think and act is not inexhaustible. That is true not only of less literate or less gifted people, but also of well-educated people.

When developing policy, the government would therefore be wise to adopt a realistic perspective on people and focus more attention on the 'doability' of policy and regulations. People need not only to 'know' the law but also to be able to 'act' on it. Focusing attention to the 'doability' of policy is not the same as providing better information and using intelligible forms. A greater focus on clear language is

aimed particularly at the limitations of people's *capacity to think*. An understandable explanation is certainly important, but it is not enough. People must also be able to act accordingly. This requires different types of mental capacity, such as alertness, the ability to take action, to keep a sufficiently cool head and to adhere to good intentions. Like human capacity to think, *capacity to act* also has its limits. People differ in terms of their capacity to act, and situations of stress and mental burden can greatly diminish that capacity.

How can policymakers or regulators take more account of the limitations of people's capacity to act? We distinguish five **basic steps**, suggest some potentially useful **tools** and finally focus on **how to achieve** a realistic perspective on people.



2. Basic steps

1. Ascertain how many actions people are expected to take under the existing or planned policy.

The first step is to assess how many mental burdens the scheme places on people.

The following questions may be helpful::

- How many different actions do people have to take to comply with the regulations?
- What do the intended regulations demand in terms of people's alertness?
- How often do they have to take action themselves?
- How many forms do they have to complete?
- How often do they have to check whether the information they provided is still correct?
- How many deadlines do they have to monitor?
- Is it important that they object to wrong decisions?
- Is it possible for people to develop a routine or is constant vigilance required because parts of the scheme change regularly?

2. Could the scheme possibly coincide with life events or other high-stress situations?

Behavioural science shows that people's capacity to act diminishes greatly when they are suffering from chronic stress, for example due to poverty or debt or as a result of life events. These are events having a profound impact on life, such as the birth of a child, divorce, bereavement, redundancy, a major house move or immigration.³ In such circumstances the mental stress will already be very great and the capacity to act will be much reduced. Particular caution must be exercised with regard to people's mental stress when drafting regulations that address those circumstances or affect the people concerned.

3. For more information on life events, see: <https://www.rijksoverheid.nl/onderwerpen/levensgebeurtenissen>



2. Basic steps

Good example: alternative system for childcare allowance

The current childcare allowance system causes many mental burdens for working parents, because the level of the allowance depends on the current family income. That means a small rise in joint income can eliminate or reduce the entitlement to an allowance. This requires working parents to be on high alert. Every month they must check the current family income and whether an increase might trigger a reduction in the allowance. If they fail to do so, they will not be aware of the overpaid allowance until they file their tax return in the following year. This leads to a lot of stress and debt problems.

In 2016 the State Secretary for Social Affairs presented a draft bill that addressed the stressful situation faced by parents with young children and sought to reduce their mental burdens. A key improvement was that the amount of the allowance was based

on the confirmed taxable income earned two years earlier. That requires much less alertness on the part of young parents. Anyone taking no action is automatically in compliance.

The explanatory memorandum included a table showing how the new system would reduce parents' mental burdens.⁴

4. House of Representatives (2017-2018) Letter from the State Secretary for Social Affairs and Employment: Modification to childcare financing system. 25 April 2016. Parliamentary Papers II, 31 322, no. 352. The table is a slightly adapted version of the table in the explanatory memorandum. The government subsequently decided not to introduce this modified system but to focus instead on improvements within the current system.



2. Basic steps

Data	Childcare organization	Parent	Basic registration
National childcare register (LRK) number	•		
Childcare address			•
Childcare account number	•		
Care start date	•		
Care end date	•		
Number of hours	•		
Hourly price	•		
Change of childcare type	•		
Change of childcare location	•		
Citizen service number (BSN) of parent and child	•		
Parent's address			• (BRP)
Composition of household		•	
Parent's account number		•	
First and subsequent child/children			• (BRP)
Shift of base year		•	
Working or not working			• (UWV)
Number of hours worked			• (UWV)
Income data			• (BRI)

Source: Explanatory Memorandum, Parliamentary Papers II, 31 322, no. 352 (slightly adapted by WRR)

BRI: Basisregistratie Inkomen = Basic Registration of Income
 BRP: Basisregistratie Personen = Basic Registration of Persons (population register)
 UWV: Uitvoeringsinstituut Werknemersverzekeringen = social security agency



2. Basic steps

Bad example: the current Childcare Allowance Act

The current Childcare Allowance Act is an example of how not to do things. At what is already a very taxing and stressful time of life, working parents are expected to be very alert in monitoring and notifying changes in their family income. This formed the basis for a proposed alternative system aimed at minimizing the mental stress.

3. Is there an accumulation of burdens due to other regulations?

Do the regulations target a group that already has to cope with other existing or planned regulations that place heavy demands on them? The legislator often appears to disregard the accumulation of burdens on people. To some extent that is due to the way in which Dutch public administration is organized. Every set of policies focuses on what is deemed relevant to the task at hand, introducing rules that may be workable in that specific policy area but taking no account of rules in other areas. It is therefore important to consider the relationship between the scheme and associated schemes. What is the total burden on people who are covered by the scheme?



2. Basic steps

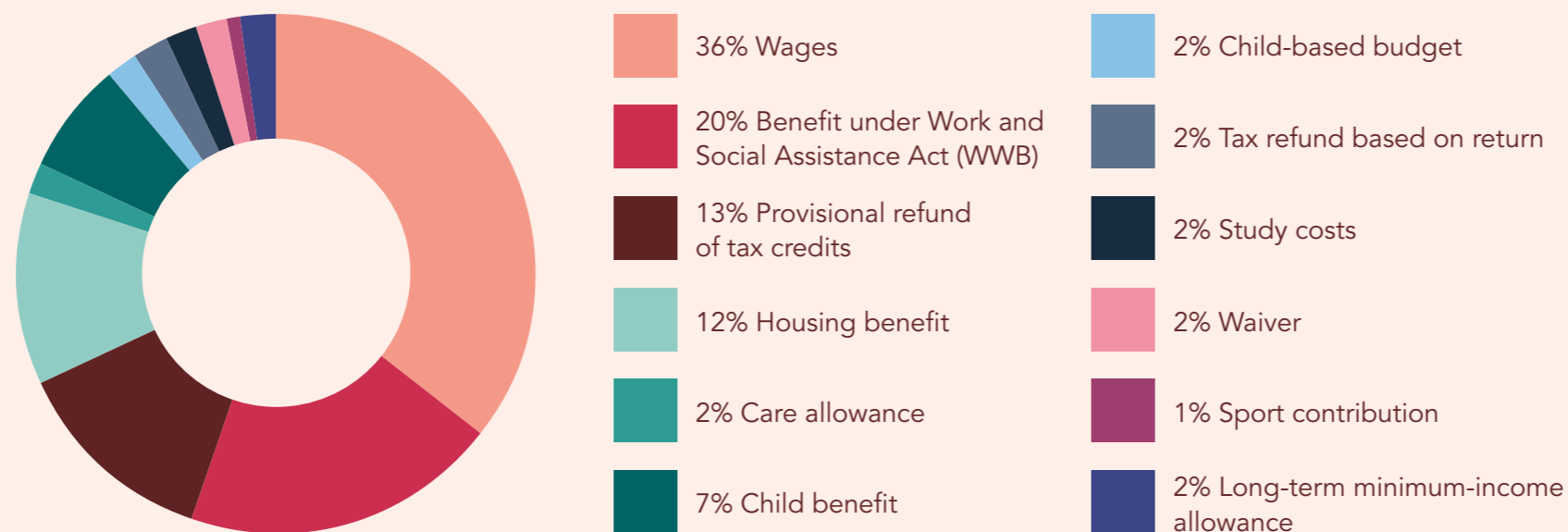
Bad example: income support schemes

The Netherlands has an extensive income support system. Each individual scheme has its own rules and requirements but takes no account of the overall mental load. In 2013 the National Ombudsman assessed the administrative burden faced by a single parent with two school-age children, a part-time job, a supplementary welfare benefit and a rented home.⁵

This parent has at least 12 different income components, must complete 18 different forms and receives 80 different payments a year. For each payment the parent has to check that the correct allowance has been received, as any overpayment will have to be repaid. This represents an excessive burden and is a major cause of problematic debts.

5. Figure from National Ombudsman (2013), *In het krijt bij de overheid (Indebted to the government)*, The Hague: National Ombudsman.

Figure from National Ombudsman (2013), Indebted to the government



Source: National Ombudsman



2. Basic steps

4. Try to minimize the mental burden, for example by using defaults and opt-outs

Any scheme that requires alertness and attention increases people's mental burden. Behavioural science shows that people do not always have the required alertness and attention under all circumstances. Therefore try to minimize the mental burden as far as possible. That can be done by keeping the number of required actions as low as possible, for example by using defaults and opt-outs. People then do not have to take action unless they want to opt out from the default.

Bad example: Students' public transport card

When a student graduates, he or she is required to cancel the students' public transport card by the tenth day of the following month, because a penalty regime comes into force immediately after graduation. The card cannot be cancelled online. It can only be cancelled by performing a number of actions on a machine at a station. Since graduation is accompanied by many changes, such as looking for new accommodation, travelling and applying for jobs, many students forget to cancel their card. That leads to rapidly mounting fines. A graduate who fails to act will soon incur a substantial additional study debt. A reversal of the default, with the card being automatically cancelled on graduation unless an objection is lodged, would be far more appropriate for this life event.



2. Basic steps

Good example: bill on pension division on separation

When separating, partners have to agree many matters, including the division of pension rights. Evaluations have revealed the low use made of statutory schemes, as a result of unfamiliarity among members of the public and professionals. The current suboptimal situation could be improved fairly easily by automatically dividing and paying out accrued old-age pension even if the person concerned takes no action.

Under the terms of the bill, a pension provider will divide the pension unless the former partners opt out or have entered into a different agreement on the division of the pension.⁶

6. House of Representatives 2018-2019, 35287, No. 3. Rules on pension division in cases of separation from 2021 (Act on Pension Division on Separation from 2021), Explanatory Memorandum.



2. Basic steps

5. Is it possible to gauge the consequences of inattention?

What will happen if someone takes no immediate action? With all schemes, there will always be people who take no immediate action, who do not open the letter or who fill in the form but fail to send it. What are the consequences of such human behaviour? Potentially helpful questions include:

- Do minor mistakes immediately lead to major problems?
- Can mistakes be easily rectified?
- How much mental burden must people bear to rectify a mistake?
- Can people change their minds and how much capacity to act does this require?
- Is there a hardship clause and how much does it demand of people's capacity to act?

A general design principle should be that minor mistakes also have minor consequences. That principle should apply to laws and regulations, as well as to their implementation.

Bad example: automatic increase in fine without warning

Under Section 30 of the Motor Vehicle Liability Act an owner who scraps an old moped and fails to cancel the insurance is fined €330. After eight weeks the fine is increased automatically by 50%. If the payment has been forgotten, this amount is increased by a further 100%. In the space of a few months the fine has already risen to €990. A warning about automatic fine increases was sent out when first fine was imposed, but no further warnings were issued. Anyone who put the first letter away and forgot about it could therefore unwittingly incur a large debt. The Central Judicial Collection Agency (CJIB) has now changed its procedures and does send warnings.



3. Tools

It is very important that when developing and structuring a new proposal policymakers and regulators already understand the burden their rules will place on real people. That may be difficult to gauge in the relative calm of the office and for civil servants who themselves often have the necessary capacity to think and act. Internet consultations are of only limited benefit in such cases, because the people who sign up for them are precisely those who have a lot of capacity to act. Implementation tests look particularly at whether implementing organizations can work with the rules, but do not consider how ‘doable’ they are for the public. Often they are only conducted once the proposal has been drawn up, at the end of the process.⁷

7. Although the government response to ‘Why knowing what to do is not enough’ states that in future the implementation tests must explicitly consider ‘doability’ for people, they still often focus on whether the implementing organizations themselves will be able to work with the rules.

There are various ways to gain a clearer view from the outset:

1. Assess who will be affected:

Is it a general policy for everyone or one for a specific group in specific circumstances, such as divorce, unemployment or other life events?

2. Talk to implementers:

Start drawing on the knowledge of experts in implementing organizations and other practitioners at an early stage. Do not wait until the solutions chosen by policymakers are in the test phase; start earlier by discussing the analysis of the social problem. Expert practitioners are often well aware of the sticking points and what is and is not feasible. Conduct a series of discussions or spend a day on the ‘shop floor’. Implementing organizations also sometimes have resources such as customer panels that can be useful in assessing how ‘doable’ a policy is for people.



3. Tools

3. Test the 'doability' of a new policy:

Just as when businesses introduce new products and services, it is reasonable to expect the government to test new rules before they are introduced. That can be done by carrying out preliminary tests among people to observe how they cope with the proposed law or scheme. This could be likened to businesses using test panels when introducing new digital facilities to assess whether they are user-friendly and meet the consumer's wishes. Various tools can be used for this purpose, such as test panels, simulations or experiments in lab situations, with different variations being tried out. A target group could be 'created' to test a new policy, for example by putting time-pressured or mentally stressed people through various policy scenarios. Testing must be carried out in a phase in which proposed laws and regulations can still be modified.

Good example: Tax Administration experiment with allowances

The Dutch Tax and Customs Administration conducted a pilot⁸ in which people were sent a message telling them that a change in their monthly income could affect the amount of their allowance. The mail contained a link that people could use to immediately notify the Tax Administration of a higher estimated income. By taking this single step they could then reduce the risk of a reclaim themselves. The new procedure led to higher customer satisfaction, less customer contact afterwards and presumably lower implementation costs. After the pilot ended, it was decided to continue with the introduction of the procedure.

8. This concerns the 'Natural dialogue' experiment. The final report was published in November 2016.



3. Tools

4. Organize customer journeys:

A customer journey is a similar tool. It can be used to map the steps people must take in order to meet the requirements of the policy, how much effort will be involved and where the mental burden can be reduced. A customer journey can be useful at various stages of the process: to identify the problems or obstacles that people encounter in the current situation, but also to

test whether the proposed policy is based on realistic expectations. The people taking the customer journey must reflect the target group, but it can also be very worthwhile taking the customer journey yourself as a policymaker. Once again it is important to organize it in good time, so there is still scope to modify the proposed policy.

Good example: customer journeys in the UWV social security agency

Some implementing organizations already use customer journeys. The UWV (social security agency) uses them to understand what a customer encounters when using its services.⁹ The UWV substantiates the customer journey with data and – where necessary – qualitative customer research. That provides insight into the ‘customer experience’, but also into the sticking points and potential for improvement. For example, the UWV mapped the route that an incapacitated person must take when applying for

a benefit under the Work and Income (Capacity for Work) Act (WIA). Various stages of the route were examined: enquiry, application, decision. The examination highlighted difficulties in finding the right information on the website and uncertainty about the procedure and the amount of the benefit. The UWV then developed a guide providing ready answers to questions such as: ‘What happens after I apply for a WIA benefit?’, and: ‘What can I expect in the near future?’

9. The authors would like to thank Daniëlle Koning for her explanation of the UWV’s procedures.



4. How to achieve doability

What are the preconditions for achieving a genuinely realistic perspective? How can we increase the government's capacity to act?

1. Focus on capacity to act in every phase of the policy process

The name 'capacity to act test' may give the impression that attention is mainly devoted to capacity to act in the final phase of the policy process, in which the implementation test also takes place. But in order to design policy and regulations based on a realistic perspective on people, attention must be devoted to people's behaviour and capacity to act at each phase of the policy process, and particularly at the beginning.

2. Sufficient time, support and resources to carry out research

A policy and regulation process must allow sufficient time to research behavioural effects. Implementing organizations have knowledge or resources such as customer panels that can be used to ascertain how 'doable' policies or regulations are for people. But if the imple-

menting organization is not involved until the final phase, as part of the implementation test, it will only be possible to make limited use of such knowledge and resources. Time pressure will then limit the implementing organization's scope to conduct new research and use other tools, such as an experiment or customer journey. Good commissioning practice by a ministry takes this into account by drawing on existing expertise and conducting research at the start of the policy process.

3. Promote knowledge-sharing

Thorough research into people's capacity to act in a particular situation yields a great deal of information on their problems and life events. It would be beneficial to make that information available to policymakers working in other areas.



4. Proceselementen

Good example: reform of the subsidized legal aid system

In 2019 the government launched a multi-year programme aimed at delivering a new subsidized legal aid system in 2024. As part of the phased approach to this programme, the Minister for Legal Protection commissioned a target group analysis, among other things, to gain a fuller picture of people's wishes and requirements in relation to legal problems. Legal problems often revolve around life events, such as a divorce or dispute with the government. The knowledge this programme provides on the relationship between life events and capacity to act can be very valuable for policymakers engaged in policy in those specific areas.¹⁰

10. In the final report the researchers conclude that existing registrations do not provide a sufficient basis for defining relevant distinctive target groups for each life event. They have nevertheless produced a typology based on interviews with experts in the field and a survey. [link to report: <https://zoek.officielebekendmakingen.nl/blg-917373>]

4. Describe the steps taken and the key considerations

When assessing draft laws and orders in council, the Council of State and the parliament look not only at the tests in the final phase but also at the underlying policy assumptions. It is therefore important to describe the steps taken in developing the policy and regulations and the key considerations that were addressed. This also applies to the policy papers. What image of people was the drafting of the law based on? What differentiation does it include? What efforts have been made to minimize the mental burdens? Has a preliminary test been carried out to determine whether the proposal is 'doable'? Has attention been paid to any accumulation of schemes? A good example of how this can be done was the proposed overhaul of the Childcare Allowance Act, in which the explanatory memorandum explicitly described how attention had been focused on reducing mental burdens on young parents, in consultation with a wide range of interested parties.



5. The government's capacity to act

There are also limits to the government's capacity to act. The capacity to act test is particularly useful if it is deployed in good time, before the overall design and specific instruments have been finalized. A lot of planned policies and regulations, however, result from political negotiations, often at a late stage, in which people are no longer the focal point.

Moreover, policymakers and legislative lawyers are already responsible for the existing implementation tests and the capacity to act test is an additional requirement. That is a source of mental burdens for them too. Not all tools have to be used in every case, however. It is important to keep in mind the purpose of the test and of these tools: policy designed on the basis of a realistic perspective will contribute to fair treatment of people and increase the effectiveness and legitimacy of policy.



The capacity to act test

Make the public's perspective part of implementation tests

In preparing legislation, legislators should examine more closely whether it is 'doable' for the public.

Implementation tests should consider not only the perspective of the implementing organizations but also that of ordinary people. They need not only to know the law but also to be able to 'act' on it. Key question: Is the legislation based on realistic assumptions about people's mental resilience? The following process- and content-related questions can help in assessing planned laws and regulations to ensure that correct preparations are made.

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Process

The following process-related questions can help in assessing the proposed legislation during its preparation:

Have preliminary tests been carried out among the public, for example using test panels, simulations or experiments?

Did they involve all the relevant target groups and user profiles?

Have other sources been consulted that could help to analyse the viability of the proposed legislation, such as research or experience with similar legislation?

Content

The following content-related questions can help in assessing the quality of the proposed legislation:

1. Mental burdens

What mental burdens – such as processing information, assessing one’s own situation, taking action, checking deadlines, objecting to wrong decisions – does the scheme impose on people? Can those burdens be lightened? Is it possible for people to develop a routine or is constant vigilance required because parts of the scheme change regularly? Does the scheme require people to take action themselves much of the time, or does it work with a default option?

2. Cumulative burdens

What is the relationship between the scheme and associated schemes? What is the total mental burden on people who are covered by the scheme? Could the scheme plausibly coincide with life events that are known to have a negative impact on people’s mental resilience?

3. Consequences of inertia or mistakes

What happens if someone does not immediately take action, for example does not open an envelope or forgets to complete or send in a form? Do small mistakes immediately have major consequences, or can they be rectified? Can people change their minds and how much capacity to act does this require? Is there a hardship clause and how much does it demand of people’s capacity to act?

4. Help and early warning

Is an easy-to-access front office available for those who cannot manage? Is an early warning system in place, and a regime of actively approaching problem cases?



Why knowing what to do is not enough

A realistic perspective on self-reliance

In today's society, people are expected to take responsibility for their own lives and be self-reliant. This is no easy feat. They must be on constant high alert in areas of life such as health, work and personal finances and, if things threaten to go awry, take appropriate action without further ado.

What does this mean for public policy? Policy-makers tend to assume that the government only needs to provide people with clear information and that, once properly informed, they will automatically do the right thing. However, it is becoming increasingly obvious that things do not work like that. Even though people know perfectly well what they ought to do, they often behave differently. Why is this? This book sets out to explain the reasons for the gap between 'knowing' and 'doing'. It focuses on the role of non-cognitive capacities, such as setting goals, taking action, persevering and coping with setbacks, and shows how these capacities are undermined by adverse

circumstances. By taking the latest psychological insights fully into account, this book presents a more realist perspective on self-reliance, and shows government officials how to design rules and institutions that allow for the natural limitations in people's 'capacity to act'.

'Why knowing what to do is not enough' is available in hardcover or e-book (open access) on www.springer.com.

How do you focus more attention on people's capacity to act in practice? Inspired by expert sessions, we have written a follow-up to our capacity to act test: *Capacity to act: from test to tools*. This gives policymakers and legislative lawyers suggestions on ways to focus more attention on the 'doability' of policy and regulations.



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