Policy Compass form for **online consultation**

Title:

(Enter the title of the online consultation here)

Amendments to the WmhCN, the VROM BES Act and the Wgro BES to improve procedures at the Rent Tribunals in the Caribbean Netherlands, and a number of other amendments to improve practical implementation.

∞ Who are the stakeholders and why?

Explanation

Guiding questions

- Who are the direct or indirect stakeholders in the issue in question?

Direct stakeholders: - Tenants and landlords in the Caribbean Netherlands (CN) are direct stakeholders, as the Rent Tribunals settle their disputes. - The chairpersons and deputy chairpersons, members deputy members and secretaries and deputy secretaries of the Rent Tribunals on the islands are direct stakeholders, as the proposed amendments will impact matters such as recruitment, terms of appointment, organisational structure and the conditions they are required to satisfy. - The public bodies of Bonaire, Sint Eustatius and Saba are direct stakeholders. Firstly, because the proposed amendments will affect the way in which they work with the Rent Tribunals and the way recruitment is carried out. Secondly, because the proposed amendments would allow generally binding performance requirements to be incorporated into local building regulations. - The Rijksdienst Caribisch Nederland (RCN) is a direct stakeholder, as the joint back-office and secretarial services are housed within this organisation. - The Minister for Housing and Spatial Planning is a direct stakeholder, as the legislative proposal stipulates that the Minister for Housing and Spatial Planning is responsible for providing administrative support to the Rent Tribunals on the islands. Construction companies, property developers and contractors are indirect stakeholders, as they will be affected by the detailed implementation of technical performance requirements that will be incorporated in the building regulations instead of in policy rules.

- Who has relevant knowledge of and experience with this issue?

The Rent Tribunals in the Caribbean Netherlands and the public bodies of Bonaire, Sint Eustatius and Saba, as well as tenants and landlords who have brought proceedings before one of the Rent Tribunals in the Caribbean Netherlands.

- How have stakeholders been involved in the various stages of the policy process to date?

On several occasions, discussions have been held with the public bodies at an administrative level regarding aspects of the present proposal. Prior to the consultation phase, the public bodies and the Rent Tribunals of Bonaire and Sint Eustatius were briefed at an administrative level on the broad outlines of the full proposal. The aim was to gather initial impressions, answer initial questions and incorporate suggestions into the consultation version of the legislative proposal.

1. What is the problem?

Explanation

Guiding questions

a) What is the problem?

The legislative proposal addresses bottlenecks arising from provisions in three Acts: the WmhCN, the VROM BES Act and the Wgro BES. These are explained in more detail below.

WmhCN
The WmhCN sets out the legal framework for the Rent Tribunals in the Caribbean Netherlands. For example, this Act contains provisions on the organisation of and the performance of duties by the Rent Tribunals. At present, a number of provisions in the law hinder the effectiveness and continuity of the Rent Tribunals in the Caribbean Netherlands. There are three bottlenecks here:

- Recruitment and appointment: A combination of restrictive legal requirements, such as the residency requirement for chairpersons and deputy chairpersons and the prohibition on professional involvement in the housing market for members and deputy members, makes the recruitment of officials for the Rent Tribunals complex in a context where the labour markets are small-scale. Current members also have no involvement in the appointment or dismissal of the chairperson, although this would be desirable.
- Organisation and continuity: Legal provisions concerning the establishment of the Rent Tribunals, a fixed appointment term for the officials and the mandatory equal representation of tenants' and landlords' perspectives on the Rent Tribunal are being amended or added. In recent years, a number of policy changes have also been implemented regarding the organisational structure and funding of the Rent Tribunals in the Caribbean Netherlands. For example, the secretaries of the Rent Tribunals have been placed within a joint back-office for the Rent Tribunal, which is organisationally embedded within the RCN, and the Ministry of the Interior and Kingdom Relations has committed to covering the funding for the Rent Tribunals in the Caribbean Netherlands. The successful implementation of these policy changes also requires, on some points, amendments to legislation.
- Procedures: Under current legislation, there is a strict time limit of three weeks from the completion of the preliminary investigation for the chairperson to deliver their ruling. This deadline is difficult to meet and can compromise the quality of rulings. That is why it has also been extended in the European Netherlands. Furthermore, the Rent Tribunals in the Caribbean Netherlands (unlike the Rent Tribunal in the European Netherlands) cannot lay down rules to promote the consistency and quality in their rulings. The WmhCN also applies too narrow a criterion for refraining from handling a case. Moreover, the conditions under which officials of the Rent Tribunals can have themselves replaced are formulated too restrictively and do not reflect actual practice. Finally, there is a lack of clear procedural rules, for example regarding time limits for informing the parties.

VROM BES Act
Technical requirements for the construction of a building are described in the BES Buildings Decree solely in functional terms. Further details regarding performance requirements are now set out in policy rules, which are not generally binding. Consequently, there is a lack of legal certainty, whilst the granting of licences and enforcement do require a binding framework. This hinders public bodies in their ability to regulate and enforce local building regulations.

Wgro BES
The Act contains a number of provisions that are outdated or not practically feasible: The Act requires an opinion from the Social and Economic Council (SER) of the Antilles. This body no longer exists. The Act also prescribes that the development programme must be published in its entirety in the Government Gazette. Due to its size and layout (e.g. images), this programme is not suitable for this.

b) What are the causes of the problem?

WmhCN
The cause of the bottlenecks identified above is twofold. On the one hand, practical experience shows that a number of provisions are too restrictive, given the local context on the islands, or that they contain contradictions. This can hamper the effectiveness and continuity of the Rent Tribunals on the islands. One example of this is the residency requirement for the chairperson or deputy chairperson. It has become apparent that this provision, combined with the size of the labour markets in the Caribbean Netherlands, makes it difficult to recruit candidates who meet all the job requirements for the post of chairperson. It is also stipulated, for example, that tenant and landlord members of the Rent Tribunals must be drawn from the ranks of tenants and landlords, whilst it is also stipulated that these members must not be professionally involved in the housing market. This is particularly difficult for landlord members, as they are generally involved in the housing market on a professional basis.
On the other hand, one reason for the identified bottlenecks is that the legal framework governing tenancy and rent control in the European Netherlands has continued to evolve since 2017, whilst such changes have not been incorporated in the WmhCN. Where differences between the two legal frameworks do not stem from the local context, this can result in unequal treatment of citizens in the Caribbean Netherlands compared with citizens in the European Netherlands.

VROM BES Act
At its core, the problem is that the VROM BES Act opts for a system in which performance requirements are defined via policy rules. As policy rules are not generally binding regulations, in practice there is no generally binding framework for the granting of licences and enforcement.

Wgro BES
There are provisions that are outdated and unenforceable.

c) How big is the problem?

WmhCN
In quantitative terms, the problem affects the entire rental market in the Caribbean Netherlands. The exact size of the private rental market is not known. In the regulated sector of the three islands, this involves at least around 800 social housing units. Given the plans for new-build developments, the regulated segment is also set to continue growing significantly in the coming period.

In qualitative terms, the problem affects:
- Tenants and landlords in the Caribbean Netherlands. They face the risk of delays in the resolution of their disputes (for example, due to staffing problems on the Rent Tribunals) and, in some respects, there is a lack of legal equality compared with tenants and landlords in the European Netherlands.
- Rent Tribunals in the Caribbean Netherlands. There is a risk of structural overload due to the cumulative bottlenecks (restrictive recruitment criteria and no basis for additional support). The potential increase in the number of tenancy disputes could cause a further rise in the workload. This poses a risk to both the speed and the quality of dispute resolution by the Rent Tribunal.

VROM BES Act
In quantitative terms, the problem encompasses all new-build and refurbishment projects on the three islands, where performance requirements must be enforced.
In qualitative terms, current practice (where performance requirements are enshrined in non-binding policy rules) results in a lack of legal clarity. This causes difficulties for the public bodies, competent authorities and licence applicants alike.

Wgro BES
The problems described will arise in future confirmations of the development programme.

d) What is the current policy, and what were the findings of the evaluation?

WmhCN
The current policy has its origins in the WmhCN, which came into force in 2017. This Act provides the legal framework for the Rent Tribunals in the Caribbean Netherlands. An evaluation of the WmhCN must be carried out within five years of Chapter 1 of the Act coming into force in all Public Bodies; this has not yet happened. Chapter 1 has yet to come into force on Saba alone. It is expected that all the conditions for entry into force will have been met by 2027, after which the Royal Decree can be issued to bring the legislation into force. Although no formal evaluation of the current policy is available, in recent years a number of insights have been gathered from the Rent Tribunals and the public bodies in the Caribbean Netherlands regarding its implementation. The purpose of this legislative amendment is to provide a solution to the identified bottlenecks.

In anticipation of an amendment to the WmhCN, consideration was given to which measures could provide relief in the short term. For example, the Ministry of the Interior and Kingdom Relations has committed to taking over the funding of the Rent Tribunals in the Caribbean Netherlands. This is in line with the situation that already applies to the Rent Tribunal in the European Netherlands. A joint back-office has also been set up, from which the Rent Tribunals in the Caribbean Netherlands can be broadly supported in their dispute resolution work. In any event, the secretaries of the Rent Tribunals work within this back office, and support in the areas of operational management and specialist knowledge of tenancy law in the Caribbean Netherlands can be guaranteed.

VROM BES Act
The technical requirements for the construction of a building are described in the BES Buildings Decree solely in functional terms; the intention was that each island should itself flesh these out with performance requirements in policy rules. This was decided from the viewpoint of legislative restraint. This also allows the different construction conditions across the islands to be taken into account.
However, policy rules are not generally binding. Bonaire pointed out that, from a legal point of view, it is desirable for the detailed provisions setting out performance requirements to be generally binding.

e) What happens if the government does nothing (the 'do-nothing' option)? What justifies government intervention?

WmhCN
Under the 'do-nothing' option, the bottlenecks identified and the associated risks to continuity and effectiveness will persist. It is expected that these risks will increase in the absence of intervention, given the anticipated growth of the regulated rental sector - and, consequently, the potential increase in the number of requests for information, mediation processes and disputes. In practice, there also remains a legal disparity between tenants and landlords in the Caribbean Netherlands and tenants and landlords in the European Netherlands.

VROM BES Act
Under the 'do-nothing option', the island authorities will remain dependent on non-binding policy rules. This means that the risk of debate regarding the enforceability of the performance requirements remains.

With regard to all the individual Acts covered by this proposal, a formal Act may only be amended by a legislative amendment. That is why government intervention is justified.

2. What is the goal envisaged?

Explanation

Guiding questions

a) What are the policy objectives?

- WmhCN: To bring about a qualitative improvement and standardisation of the legal framework in which the Rent Tribunals in the Caribbean Netherlands operate. This improvement ensures continuity, strengthens the independent position of the Rent Tribunals and represents a step towards harmonising the legal protection afforded to tenants and landlords in the Caribbean Netherlands with that in the European Netherlands.
- VROM BES Act: The aim is to ensure that the public bodies can impose generally binding performance requirements on buildings in order to promote, amongst other things, the safety and sustainability of such buildings.
- Wgro BES: To update the legislation so that it better reflects current practice.

b) To which sustainable development goals (SDGs) and broad welfare outcomes do these objectives contribute?

The proposed amendment to the VROM BES Act will enable the public bodies to set general performance requirements that can contribute to the climate resilience of buildings (SDG 11). The proposed amendments to the WmhCN contribute to SDG 16.3, as they help to ensure equal legal protection for residents of the Caribbean Netherlands. These amendments also contribute to SDG 16.6, as they help to ensure effective and transparent institutions (in this case: the Rent Tribunals in the Caribbean Netherlands).

3. What are the options for achieving this objective?

Explanation

Guiding questions

a) What are some promising starting points for achieving the objective?

The best way to achieve a qualitative improvement and standardisation of the legal framework in which the Rent Tribunals in the Caribbean Netherlands operate is through a review of the complex, restrictive legal provisions that give rise to the aforementioned bottlenecks in the areas of recruitment and appointment, organisation and continuity, and procedures. As the bottlenecks stem from the wording of the Act, a legislative amendment is the most direct way of resolving them.

Enshrining existing implementation practices in law also presents a promising starting point. By incorporating an explicit legal basis in the VROM BES Act, the islands will be able to ensure that specific performance requirements (such as hurricane and wind resistance), which are currently prescribed by the public bodies as non-binding policy rules, are formally incorporated into the islands' building regulations as generally binding provisions.

b) Given these starting points, what are the most promising policy options?

The 'do-nothing' option would be to make no amendments to the WmhCN, the VROM BES Act and the Wgro BES, and to allow all the bottlenecks to persist, with increasing risks to the continuity and effectiveness of the Rent Tribunals in the Caribbean Netherlands. This is undesirable.

Option 1 would be to resolve the bottlenecks by means other than amending the law. For example, through administrative agreements or supplementary policy rules. To the extent this could offer a solution for the bottlenecks, this has already been implemented (see also point 1d). The remaining bottlenecks stem directly from omissions in the aforementioned Acts (such as a legal basis in the VROM BES Act) or restrictive provisions in those Acts (such as the residency requirement in the WmhCN). These can only be resolved by amending the law. This is why option 1 is also not considered appropriate.

Option 2 involves a targeted amendment to the aforementioned Acts. This will remove restrictive provisions relating to the operational practices of the Rent Tribunals in the Caribbean Netherlands, bring the legal framework more into line with that of the Rent Tribunal in the European Netherlands, and establish a basis whereby public bodies can incorporate performance requirements into the building regulations as generally binding regulations. This is therefore the preferred option.

c) What is the policy theory (objectives tree) for each promising policy option?

Under the 'do-nothing' option, the stated objectives (ensuring continuity, enhancing effectiveness and strengthening the independent position of the Rent Tribunals in the Caribbean Netherlands) will not be achieved. Nothing would in fact change compared with the current situation.
Many of the measures that would fall under option 1 have already been implemented. It may be possible to take further small steps towards the set objectives through policy or administrative agreements, but results will be limited by hard constraints arising from the legislative provisions.
Option 2 allows the bottlenecks to be tackled at their very root, as the remaining bottlenecks all stem from legislative provisions. This is the most direct way to achieve the objectives.

4. What are the consequences of the options?

Explanation

Guiding questions

a) What are the expected consequences of each policy option?

The 'do-nothing' option has no direct financial implications for the national budget, but the aforementioned bottlenecks could, in the long term, lead to hidden social costs, for example if there were to be significant delays in dispute resolution. As regards feasibility and enforcement, the consequences will remain unabatedly negative. For the Rent Tribunals in the Caribbean Netherlands, filling vacancies remains a complex task, the workload remains high and unclear or restrictive procedural rules persist. Furthermore, tenants and landlords continue to face legal inequality compared with tenants and landlords in the European Netherlands. As regards the supervision of building works, effective enforcement is not possible.

Option 1 will entail limited costs in drawing up and fine-tuning policy rules or administrative arrangements. There may be a net increase in regulatory pressure and administrative burdens, as additional rules would be added to the statutory provisions. This is also expected to have only a limited impact on enforceability, as policy rules do not take precedence over the restrictive legal provisions. The existing bottlenecks therefore will remain largely in place.

Option 2 is budget-neutral. Funding for the back office and the Rent Tribunals was already allocated at an earlier stage in the national budget. The legislative amendment merely ties in with this practice. The proposed amendments are expected to have a positive impact on practical implementation, as they will remove obstacles to the work of the Rent Tribunals in the Caribbean Netherlands. Furthermore, legal protection and equality before the law for citizens in the Caribbean Netherlands will be improved.

b) Which compulsory tests apply and what are the results of these (as far as is known)?

A regulatory impact assessment, an implementation and enforcement assessment, and an implementation assessment by the public bodies and Rent Tribunals will be carried out for this legislative proposal. The aforementioned assessments will be carried out at the same time as the consultation.

5. What is the preferred option?

Explanation

Guiding questions

a) What is the proposal?

Option 2 (a targeted legislative amendment) is the preferred option. Option 2 involves a targeted amendment to the aforementioned Acts. This will remove restrictive provisions relating to the operational practices of the Rent Tribunals in the Caribbean Netherlands, bring the legal framework more into line with that of the Rent Tribunal in the European Netherlands, and establish a basis whereby public bodies can incorporate performance requirements into the building regulations as generally binding regulations.

(b) How does the proposal take into account:

effectiveness and efficiency;

feasibility for all relevant parties (including capacity, regulatory burden and enforcement);

broad social impact?

This proposal is effective. A minor amendment to the law will improve the way in which Rent Tribunals operate and provide a basis for setting performance requirements in the building regulations, thereby making these generally binding regulations and enabling public bodies to rely on these when granting permits and enforcing the regulations. This amendment does not entail any costs, which means it is highly efficient. Feasibility will be formally assessed with the relevant parties (Rent Tribunals and public bodies) during the consultation phase. As this proposal is largely designed to remove bottlenecks in implementation and enforcement practice, it is expected to have a generally positive impact on feasibility for these parties. A modest (indirect) reduction in the regulatory burden for citizens is expected. Because Rent Tribunals can lay down rules to promote the consistency and quality of their rulings and recommendations, citizens can assess in advance the likelihood of success in such proceedings. As generally binding standards can be laid down in the building regulations, this also increases legal certainty for citizens who wish to build or renovate.

(c) What are the risks and uncertainties associated with this proposal?

This proposal entails a number of risks and uncertainties.

The proposal introduces significant changes to the embedding and organisation of the Rent Tribunals. This brings the legal framework into line with policy decisions regarding the Rent Tribunals. However, it is important to flesh out this legal framework in practice with clear agreements on the delineation of roles and operational work processes. To address this, work is currently underway on a set of regulations. These regulations set out further agreements regarding the definition of roles, funding, governance and working procedures. The parties to these agreements are the Rent Tribunals in the Caribbean Netherlands, the Public Bodies, the RCN and the Ministry of the Interior and Kingdom Relations.

The aim of amending the rules governing the appointment of members of the Rent Tribunal is to make it easier to recruit the right people. However, there may be times when a Rent Tribunal finds it difficult to secure suitable staff. The rules have therefore been drafted as broadly as possible, whilst retaining important safeguards regarding training and independence. This enables the public body to cast a wide net to ensure it has the right staff. In addition, the amendments concerning deputy officials are intended to ensure that the continuity of the Rent Tribunals is better safeguarded, even if it remains difficult to recruit additional officials. Another possible management measure should this risk arise is to arrange the necessary capacity across islands via the RCN, for example where administrative support for a Rent Tribunal is required.

(d) What does the proposed monitoring and evaluation look like?

The WmhCN will be evaluated within five years of Chapter 1 of the Act coming into force for all public bodies. In this context, a broad assessment will be carried out of the efficiency and effectiveness of the three Rent Tribunals in the Caribbean Netherlands and the functioning of the legal framework. In order to take account of the administrative burden on the Rent Tribunals in the Caribbean Netherlands, this review will examine the entire legal system governing the Rent Tribunals, including the effects of any changes to that system.