



REPUBLIC OF NAMIBIA

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MINISTRY OF JUSTICE

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**REQUIREMENTS FOR SUBMISSION OF INSTRUCTIONS  
TO DIRECTORATE: LEGISLATIVE DRAFTING**

**REQUIREMENTS FOR SUBMISSION OF BILLS**

1. **Instructions.** The instructions to scrutinise and draft a bill must be under the letterhead of the instructing ministry or office and be signed by the Minister or the Permanent Secretary, and must be addressed to the Permanent Secretary: Ministry of Justice for attention the Chief: Legislative Drafting and also be hand-delivered at the Directorate: Legislative Drafting, Ministry of Justice, 1<sup>st</sup> Floor, Justitia Building, Independence Avenue. The letter must include the name, rank and email address of the contact person.
2. **Register of instructions.** The instructions are entered into the legislative drafting register and allocated a file number and a file is opened for the Bill.
3. **Assignment of file.** Once the file for a bill has been opened, the Chief: Legislative Drafting will look at the Bill and assess its weight whether it is simple or complicated,

then depending on the subject matter and the complexity of the Bill the Chief will determine to which drafter the instructions will be assigned for scrutiny and drafting.

4. ***Initial verification of instructions.*** Upon receipt of the Bill, the assigned drafter must ensure that the instructions include the following –

- layperson’s draft Bill or policy framework and electronic version thereof;
- Cabinet Decision/Action letter;
- CCL minutes and memorandum to Cabinet together with explanatory notes;
- all documents submitted to Cabinet in connection with the bill;
- the particulars (*name, rank, telephone numbers and e-mail address*) of the contact person regarding the Bill.

**Additional information, if necessary such as -**

- sufficient background information to enable the drafter to appreciate the facts and problems the Bill is to deal with;
- the consultations which have taken place on the proposed legislation;
- references to relevant court decisions on the matter covered by the Bill, if any;
- references to the reports of any Commission or other body that has considered the matter;
- the administrative provisions needed to implement the Bill and the manner in which the Bill is to be enforced;
- the extent to which existing laws may have to be amended or repealed and whether transitional provisions may be needed to deal with matters which have arisen before the Bill comes into operation;
- the procedure and manner of appeals against Ministerial decisions where, as a matter of policy, those appeals are considered desirable;
- provisions on commencement of the proposed legislation.

5. ***Drafters role.*** During the initial stages of drafting the drafter to whom instructions have been assigned will notice that the instructions for drafting are not always incomplete and clear, thus the drafter must consult with the contact person instructing ministry or office to iron out such matters, and for purpose of consultations, the drafter must –

- ❖ obtain comprehensive drafting instructions.
- ❖ avoid consultations through the phone, and most consultations must be conducted by means of a conference or a meeting at the drafter's office or at any place designated by the drafter. Where the consultation involves a person at the level of Permanent Secretary and above, the drafter is expected to consult at the place designated by such person.

6. ***Responsibilities of instructing ministry or office.*** The effective translation of policy into legislation depends on the active involvement in and ownership of the proposed legislation by the instructing ministry or office. Thus the **contact person** of the instructing ministry or officer must be -

- ❖ a person suitable to contribute to the smooth progression and prompt completion of a high quality Bill;
- ❖ a person of sufficient seniority and have sufficient knowledge and experience to be completely familiar with the background of the issues;
- ❖ a person of sufficient authority and wide knowledge and experience, to be able to take decisions and give instructions on day to day points arising in the drafting process;
- ❖ person who has at least played a major role in preparing the drafting instructions;
- ❖ a key player in the drafting team as the channel of communication between the drafter and the instructing ministry or office;
- ❖ a person who can coordinate the respective interests and contributions of the various divisions of the instructing ministry or office and those of other interested ministries or bodies that are consulted or otherwise involved.

It is true that an instructing officer will not in respect of a complex legislation with a technical content necessarily have the knowledge or the authority to deal personally with all matters raised by the drafter, but it remains his or her duty to obtain further decisions and instructions for the drafter from the appropriate persons.

The drafter and the instructing officer have a duty to develop a *harmonious and corporative working relationship* in order to deliver the good service to the instructions to the benefit of all.

- ***Responsibilities of contact person.*** The contact person of the instructing ministry or office has the responsibilities to –
  - ❖ explain the instructions;
  - ❖ respond to issues raised by the drafter;
  - ❖ fully read the drafts scrutinised and drafted by the drafter;
  - ❖ see if the draft meets the ministry or office requirements;
  - ❖ consider, from the standpoint of the user, whether the draft is clear and understandable.
  
- 7. ***Drafters duties.*** During the drafting process, the drafter must consider and raise the following matters of legal significance as to whether the proposed legislation -
  - ❖ has retroactive effect;
  - ❖ has retrospective effect;
  - ❖ is to be given extra-territorial effect;
  - ❖ is to bind the State;
  - ❖ needs savings and transitional provisions;
  - ❖ needs special provisions which concern evidence and the onus of proof; or
  - ❖ complies with Articles 21 and 22 of the Namibian Constitution-Limitation clauses.
  - ❖ affects any other law or whether any other laws that needs to be considered/ amended or repealed.
  - ❖ gives rise to implementation or administrative.

The drafter must consider the above-mentioned problems and issues and advise himself or herself and the instructing Ministry or office accordingly.

If the drafter believes he or she has ironed out most of the above-mentioned issues the drafter must start with the scrutiny and drafting of the Bill.

8. ***Finalisation of Bill.*** Once the drafter has finalised the Bill, the drafter must forward the Bill to the contact person for consideration and approval by the ministry or office.
- ❖ Upon receipt of the Bill, the ministry or office must examine the Bill thoroughly and satisfy themselves with the content and form.
  - ❖ If the ministry or office is satisfied with the Bill it must, in writing and by means of a letter under the hand of the Permanent Secretary of the Minister, inform the Directorate: Legislative Drafting accordingly.
  - ❖ The drafter will then forward the Bill to the Attorney-General for certification and further action.
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## REQUIREMENTS FOR SUBMISSION OF SUBSIDIARY LEGISLATION AND ADMINISTRATIVE NOTICES

The procedure for the preparation and publication of subsidiary legislation and administrative actions (such as proclamations, regulations, rules, codes, determinations and notices) differ from the procedure for the preparation and enactment of Bills.

1. **Instructions.** The instructions to scrutinise and draft subsidiary legislation or administrative action must be under the letterhead of the instructing ministry or office and signed by the Minister or Permanent Secretary, and must be addressed to the Permanent Secretary: Justice for attention the Chief: Legislative Drafting and be hand-delivered at the Directorate: Legislative Drafting, Ministry of Justice, 1<sup>st</sup> Floor, Justitia Building, Independence Avenue. The letter must include the name, rank and email address of the contact person.
2. **Register of instructions.** The instructions are entered in the legislative drafting register and allocated a file number and a file is opened for the subsidiary legislation or administrative notice.
3. **Assignment of file.** Once the file for has been opened, the Chief: Legislative Drafting will look at the instruction and assess its weight whether it is simple or complicated, then depending on the subject matter and the complexity the Chief will determine as to which drafter the instructions will be assigned for scrutiny and drafting.
4. **Initial verification of instructions.** Upon receipt of the instruction, the assigned drafter must ensure that the instructions include the following –
  - ❖ Written proof for certain actions. Where a subsidiary legislation or administrative notice is required to be made “in consultation with” or “with the approval of ” or “with the consent of” or “with the agreement of ” or “after consultation with” or “*with the concurrence of*”, of a Minister or a body, written proof of compliance with such requirement must be submitted with the instructions.

- ❖ the name and contact details of contact person.
- ❖ the electronic version of instructions.

5. ***Role of instructing ministry or office.*** The effective drafting of subsidiary legislation or administrative action depends on the active involvement in and ownership of the proposed legislation by the instructing ministry or office. Thus the **contact person** of the instructing ministry or officer must be -

- ❖ a person suitable to contribute to the smooth progression and prompt completion of proposed legislation or administrative notice;
- ❖ a person of sufficient seniority and have sufficient knowledge and experience to be completely familiar with the background of the issues;
- ❖ a person of sufficient authority and wide knowledge and experience, to be able to take decisions and give instructions on day to day points arising in the drafting process;
- ❖ person who has at least played a major role in preparing the drafting instructions;
- ❖ a key player in the drafting team as the channel of communication between the drafter and the instructing ministry or office;
- ❖ a person who can coordinate the respective interests and contributions of the various divisions of the instructing ministry or office and those of other interested ministries or bodies that are consulted or otherwise involved.

It is true that an instructing officer will not in respect of a complex legislation with a technical content necessarily have the knowledge or the authority to deal personally with all matters raised by the drafter, but it remains his or her duty to obtain further decisions and instructions for the drafter from the appropriate persons.

The drafter and the instructing officer have a duty to develop a *harmonious and corporative working relationship* in order to deliver the good service to the instructions for the benefit of all.

- ***Responsibilities of contact person.*** The contact person of the instructing ministry or office has the responsibility to –

- ❖ explain the instructions;
- ❖ respond to issues raised by the drafter;
- ❖ fully read the drafts scrutinised and drafted by the drafter;
- ❖ see if the draft meets the ministry or office requirements;
- ❖ consider, from the standpoint of the user, whether the draft is clear and understandable.

**6. *Completion of subsidiary legislation of administrative notice.***

- ❖ Upon completion of the subsidiary legislation or administrative notice the drafter must forward the proposed legislation or notice to the instructing officer for approval, if the drafter feels that there is a need for the instructing officer to look at the draft before the drafter certify the document for publication purposes.
- ❖ If the drafter feels that everything is fine and that there is no need for the instructing officer to look at the draft before the drafter certify the document for publication purposes. The drafter must forward the proposed legislation or notice to the instructing officer together with a certified copy thereof for publication.
- ❖ On receipt of the proposed legislation or notice, the instructing officer must satisfy himself or herself as to the contents and form of the document, and if he or she is satisfied both the clean document and the certified copy must be signed by the functionary concerned.

**7. *Publication of subsidiary legislation or notice.*** The instructing officer must –

- ❖ hand-deliver the certified copy as signed by the functionary to the office of the Government Gazette, Ministry of Justice, 2<sup>nd</sup> floor, Justitia Building, Independence Avenue for publication;
- ❖ Proofread the text if requested to do so by the Gazette Office; and
- ❖ Collect the published subsidiary legislation or notice from the Gazette Office after publication.