

DIRECTORATE: *Legislative drafting*

HOW SUBSIDIARY LEGISLATION IS MADE IN NAMIBIA



Introduction Subsidiary legislation, also known as subordinate or delegated legislation, refers to legislation made by the functionary named in the primary legislation (*such as Acts of Parliament and Pre-Independence primary legislation in the form of Ordinances or Proclamations*), in respect of matters prescribed in that legislation. The functionary can be a Minister, the Chief Justice, the Judge President, a Board, Council or other functionary specified and empowered to make the subsidiary legislation.

It is subsidiary legislation because the competent legislative authority, which is the Parliament, delegates its lawmaking powers to the functionary that is identified in the primary legislation.

Subsidiary legislation can be in the form of regulations, rules, codes, resolutions, notices, determinations and technical standards.

Regulations issued by Proclamation in the *Gazette* by His Excellency the President under Article 26(5) of the Namibian Constitution also qualify as a special type of subsidiary legislation. This lawmaking power is conferred on the Executive by the Namibian Constitution.

PROCEDURE FOR MAKING SUBSIDIARY LEGISLATION



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STAGE 1

Preparation of layperson's draft

Functionary prepares
layperson's draft of the
subsidiary legislation



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STAGE 2

Submission to Ministry of Justice, Directorate: Legislative Drafting

Functionary submits the
layperson's draft legislation
or drafting instructions
under cover letter of the
Executive Director in the
case of an office, ministry
or agency of government
to the Chief, Directorate:
Legislative Drafting,
Ministry of Justice



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Where the primary legislation requires that the subordinate legislation be made by a local authority council or a statutory body, with the approval of or after consultation with or on the recommendation of a Minister or a specified State Official, the instructions must be submitted under the letterhead of the Executive Director of the office, ministry or agency under which that council or statutory body falls

STAGE 3

Drafting

- > Assigned drafter consults functionary and drafts subsidiary legislation
- > Assigned drafter finalises draft, certifies final version of subsidiary legislation and sends it back to functionary



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> In the case of regulations to be issued by the President by Proclamation in the *Gazette*, the assigned drafter certifies the final Proclamation and sends it to the Attorney General for his certification and submission to the President for signature

STAGE 4

Signature by functionary

- > Functionary signs certified draft and submits subsidiary legislation to *Gazette* Office for publication
- > *Gazette* Office provides layouts of the legislation to the functionary and responsible drafter to proofread before final publication



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STAGE 5

Publication

Gazette Office publishes the subsidiary legislation in the *Gazette*



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STAGE 6

Commencement

Subsidiary legislation commences on date of publication or on a date specified in the subsidiary legislation

For further information access the Ministry of Justice website:
www.moj.gov.na