

REQUIREMENTS FOR SUBMISSION OF INSTRUCTIONS TO DRAFT A BILL



UNDERSTANDING CERTAIN TERMINOLOGY

Bill is a proposed law.

Act is a Bill passed by Parliament, assented to by the President and published in the *Gazette*.

CCL is the Cabinet Committee on Legislation chaired by the Minister of Justice, with its administration support housed at the Ministry of Justice.

Cabinet is a constitutional body consisting of the President, the Prime Minister and such other Ministers appointed by the President from members of the National Assembly.

Gazette is the Official Government Publication.

- 1. PROCEDURE FOR BILLS** The Administrative Directive published under Government Notice No. 1 of 5 February 1993 prescribes that all Bills, whether a proposal for a new law or an amendment to an existing law, must be scrutinised and certified by the Directorate: Legislative Drafting (*the Directorate*) in the Ministry of Justice before the Attorney General certifies them for introduction to the National Assembly. The mandate of the Directorate is to translate government policy into law.
- 2. THE DIRECTORATE** only scrutinises and drafts Bills which have been approved by Cabinet and the Cabinet Committee on Legislation (CCL). Once clearance has been obtained from these bodies, it is the responsibility of the Instructing Office, Ministry or Agency to send instructions for the drafting of the Bill to the Directorate.
- 3. INSTRUCTIONS** Instructions to scrutinise and draft a Bill must be made under the letterhead of the Instructing Office, Ministry or Agency and be signed by the relevant Minister or Executive Director of that Office, Ministry or Agency. They should be addressed to Chief, Directorate: Legislative Drafting and be hand-delivered to:

Ministry of Justice, Directorate: Legislative Drafting,
Justitia Building, 1st Floor Room 117,
Independence Avenue, Windhoek.

Electronic versions must be sent by email to drafters@moj.gov.na. The instructing letter must include the name, rank, telephone number & email address of the contact person in the Instructing Office, Ministry or Agency. Instructions must also contain the relevant



minutes of the CCL approving the Bill, the Cabinet decision number and the draft Bill. Other documents to be submitted are those that explain or clarify the policy to be translated into law, or those that relate to consultations held on the draft Bill.

- 4. STYLE, STRUCTURE AND FORMAT OF BILLS** Bills must be typed in Times New Roman, 12 font, with 1.5 line spacing. The current drafting practice is to use British English and to use **must** for peremptory provisions, **may** for discretion and **may not** to prohibit a certain action. Where it is an amending Bill the Bill must retain the language of the Law it is amending (*shall and shall not*). In case of doubt refer to the Ministry of Justice website www.moj.gov.na or contact the Directorate: Legislative Drafting or the Public Relations Office of the Ministry of Justice.
- 5. REGISTER OF INSTRUCTIONS:** The registering official of the Directorate must enter the instructions into the legislative drafting register and allocate a file number and open a file for the Bill. Before registering any instructions, the registering official must ensure that –
- (a) the instructions are under the letterhead of the Prime Minister or the letterhead of the Minister or Executive Director of the Instructing Office, Ministry or Agency, and are signed by the Prime Minister or the relevant Minister or Executive Director.
 - (b) the instructions include the layperson’s draft and CCL and Cabinet approval;
 - (c) the instructions include the name and contact details of the contact person in the Instructing Office, Ministry or Agency;
- Should the instructions not contain any information specified in paragraphs (a)–(c) above, the registering official must request the Instructing Office, Ministry or Agency to provide the required information before registering the instructions.
- 6. ASSIGNMENT OF FILE** Once the file for a Bill has been opened, the registering official submits it to the Chief, Directorate: Legislative Drafting who assesses the instructions and, depending on the subject matter and the complexity of the Bill, determines to which drafter the Bill will be assigned for scrutiny and drafting.



- 7. DRAFTERS ROLE** On receipt of instructions for drafting, the responsible drafter must immediately acknowledge receipt of instructions and provide his or her contact details to the contact person of the Instructing Office, Ministry or Agency.

During the initial stages of drafting, the drafter to whom instructions have been assigned may find that the instructions for drafting are not complete or entirely clear or the policy is not clear. In this event, the drafter must consult with the contact person in the Instructing Office, Ministry or Agency to resolve such issues. During the process of consultations with the Instructing Office, Ministry or Agency –

- The drafter must as far as possible try and obtain comprehensive drafting instructions;
- The drafter must not conduct telephonic consultations, but must instead have face-to-face meetings or conduct consultations by email and must ensure that the Instructing Office, Ministry or Agency responds or confirms policy issues and matters that require its input in writing;
- Consultative meetings with the Instructing Office, Ministry or Agency must take place at the offices of the Directorate, except where the consultation involves an official at the level of Executive Director and above, in which case the drafter is expected to conduct the meeting at the place designated by said official, where it is impractical to hold the meeting at the Directorate's offices.

- 8. THE CONTACT PERSON** The effective translation of policy into legislation depends on the active involvement and ownership of the proposed legislation by the Instructing Office, Ministry or Agency. Thus the contact person in the Instructing Office, Ministry or Agency must be –

- a person able to contribute to the smooth progression and prompt completion of a high quality Bill;
- a person of sufficient seniority and with sufficient knowledge and experience to be completely familiar with the policy area and issues under examination;
- a person of sufficient authority to be able to take decisions and give instructions on a day-to-day basis as points arise in the drafting process;
- a person who has played a significant role in preparing the drafting instructions;



- a person able to perform the critical role of providing a clear channel of communication between the drafter and the Instructing Office, Ministry or Agency;
- a person who can coordinate the respective interests and contributions of the various divisions of the Instructing Office, Ministry or Agency and those of other interested ministries, institutions or bodies that are consulted or otherwise involved.

9. RESPONSIBILITIES OF CONTACT PERSON The contact person in the Instructing Office, Ministry or Agency has the responsibility to –

- explain the drafting instructions;
- respond to issues raised by the drafter;
- fully read the drafts scrutinised and drafted by the drafter;
- verify that the draft meets the requirements of the Instructing Office, Ministry or Agency;
- consider, from the standpoint of the user, whether the draft is clear and understandable.

10. CONFIRMATION OF BILL Once the drafter has finalised the Bill, the drafter should forward the Bill to the contact person for consideration and approval by the Instructing Office, Ministry or Agency.

- Upon receipt of the Bill, the Instructing Office, Ministry or Agency must examine the Bill thoroughly and satisfy themselves with the content and form.
- If the Instructing Office, Ministry or Agency is satisfied with the Bill, it should confirm this in writing by letter from the responsible Minister of the Instructing Office, Ministry or Agency to the Directorate.

11. SUBMISSION OF BILL TO ATTORNEY GENERAL

- On receipt of the letter of satisfaction from the Instructing Office, Ministry or Agency, the assigned drafter will forward the Bill scrutinised and certified by the drafter to the Attorney General for certification and introduction to Parliament.