

REQUIREMENTS FOR SUBMISSION OF INSTRUCTIONS TO DRAFT SUBSIDIARY LEGISLATION AND ADMINISTRATIVE NOTICES



- 1. DIRECTORATE: LEGISLATIVE DRAFTING** (*the Directorate*) in the Ministry of Justice scrutinises and certifies Proclamations by the President, regulations, rules and other forms of subsidiary legislation and administrative notices for offices, ministries and agencies as well as for local authorities and regional councils, public owned enterprises and other statutory bodies, but only where a Minister or State Official is involved in the making of such subsidiary legislation or administrative notices.
- 2. PROCEDURE** The procedure for the preparation and publication of subsidiary legislation and administrative notices *differs* from the procedure for the preparation and enactment of Bills.
- 3. INSTRUCTIONS** Instructions to scrutinise and draft subsidiary legislation or administrative notices must be under the letterhead of the Instructing Office, Ministry or Agency and be signed by the Minister or Executive Director of the Instructing Office, Ministry or Agency. Instructions should be addressed to Chief, Directorate: Legislative Drafting and be hand-delivered to:

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

The instructions must also be sent by email to drafters@moj.gov.na. The letter must include the name, rank, telephone number and email address of the contact person in the Instructing Office, Ministry or Agency.
- 4. STYLE, STRUCTURE AND FORMAT FOR SUBSIDIARY LEGISLATION AND ADMINISTRATIVE NOTICES** Subsidiary legislation and administrative notices must be typed in Times New Roman, 12 font with 1.5 line spacing. The current drafting practise is to use British English and to use **must** for peremptory provisions, **may** for discretion and **may not** to prohibit a certain action. In case of doubt refer to the Ministry of Justice website www.moj.gov.na or contact the Directorate or the Public Relations Office of the Ministry of Justice.



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- 5. INITIAL VERIFICATION OF INSTRUCTIONS** Upon receipt of the instructions, the registering official of the Directorate with the Chief/Acting Chief of the Directorate must ensure that the instructions include the following -
- written proof required for certain actions: Where the 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” a Minister or other State Official or Body, written proof of compliance with such requirements must be submitted with the instructions;
 - name and contact details of the contact person in the Instructing Office, Ministry or Agency;
 - electronic version of the instructions.
- 6. REGISTER OF INSTRUCTIONS** The registering official in the Directorate must enter the instructions in the legislative drafting register and allocate a file number and open a file for the subsidiary legislation or administrative notice.
- If the instructions do not contain proof of compliance with certain requirements of the primary/principal legislation (*Act of Parliament*) (*see paragraph 5*), the registering official of the Directorate should consult the Chief/Acting Chief of the Directorate and must inform the contact person to submit the proof of compliance. The Chief of the Directorate may instruct that instructions be returned to the Instructing Office, Ministry or Agency for compliance and resubmission.
- 7. ASSIGNMENT OF FILE** Once a file has been opened, the Chief, Directorate: Legislative Drafting will review the instructions and, depending on the subject matter and complexity, determine to which drafter the instructions will be assigned for scrutiny and drafting.
- 8. CONTACT PERSON** The effective drafting of subsidiary legislation or administrative notices depends on the active involvement and ownership of the proposed legislation by the Instructing Office, Ministry or Agency. Thus the contact person of the Instructing Office, Ministry or Agency must be -
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- a person able to contribute to the smooth progression and prompt completion of high quality legislation or notices;
- 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 or bodies that are consulted or otherwise involved.

9. RESPONSIBILITIES OF CONTACT PERSON

The contact person of 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. COMPLETION OF SUBSIDIARY LEGISLATION OR ADMINISTRATIVE NOTICE

- If, upon completion of the drafting of the subsidiary legislation or administrative notice, the drafter feels there is a need for the contact person to review the draft before the drafter certifies the document for publication, the drafter should forward the final version of the subsidiary legislation or notice to the contact person for approval.



- However, if the drafter feels that there is no requirement for a final review before the drafter certifies the document for publication, the drafter should forward the final version of the subsidiary legislation or notice to the contact person together with a certified copy for publication.
- Upon receipt of the subsidiary legislation or notice, the contact person must satisfy himself or herself as to the contents and form of the document, and if satisfied, the functionary who is required by the primary/principal legislation (*Act of Parliament*) to make or issue the legislation or notice should sign the certified copy of the subsidiary legislation or notice.

11. PUBLICATION OF SUBSIDIARY LEGISLATION OR NOTICE

The contact person of the Instructing Office, Ministry or Agency must –

- hand-deliver the certified copy, as signed by the designated functionary, for publication to:

Gazette Office, Ministry of Justice,
Justitia Building, 2nd floor,
Independence Avenue, Windhoek.

- proofread the text if requested to do so by the *Gazette* Office.

12. COMMENCEMENT OF SUBSIDIARY LEGISLATION OR NOTICE

Subsidiary legislation comes into operation on the date of its publication in the *Gazette* or on the date specified in the legislation or notice, but this depends on the wording of the primary/principal legislation (*Act of Parliament*).