

Appendix A

Legislative Procedure and Preparation

A typical Government directive applicable to a small Commonwealth jurisdiction

References are made below to the Prime Minister, but they apply equally to the President or Head of Government however styled.

Part I Bills

Proposals for legislation

1(1) Where proposals for legislation are initiated within a Ministry they are the responsibility of the Minister holding the portfolio. Where they are initiated within a special Department they are the responsibility of the Minister to whom responsibility for that Department is assigned by the Prime Minister, who must be approached by the Head of Department with a view to obtaining his or her decision about whether the legislation is necessary.

(2) Where a Minister considers that new or amending legislation by Act of Parliament is necessary, interested persons and bodies should be consulted wherever possible, and a Cabinet Memorandum asking for approval in principle must be submitted by the Minister to the Cabinet.

(3) The Cabinet Memorandum must set out the principles of the policy intended to be carried into effect by the proposed Bill, and the reasons why it is considered necessary, but it should not go into detail as to changes in existing law that will be needed. It must also state the classification of the proposed Bill. The classifications are:

URGENT – to be introduced at the current meeting of Parliament;

PRIORITY A – to be introduced at the next meeting;

PRIORITY B – to be introduced at the next meeting but one;

PRIORITY C – to be introduced at some later time.

(4) Wherever possible a draft of the Cabinet Memorandum should be sent in advance to the Law Officers so that they may advise on whether an Act of Parliament is in fact necessary in order to achieve the objects desired, and on other legal aspects of the proposal.

Approval in principle

- 2(1) The Secretary to the Cabinet will as soon as possible notify the Department concerned and the Law Officers of the Cabinet's decision on an application for approval in principle.
- (2) Where approval in principle is given, the head of the Ministry concerned will send Drafting Instructions to the Law Officers for the drafting of the Bill.
- (3) Except in cases of extreme urgency, or for other exceptional reasons, instructions for the drafting of a Bill must not be given unless Cabinet's approval in principle has been obtained.

Drafting instructions

- 3(1) Drafting instructions must contain:
- full details of the policy intended to be carried into effect by the Bill
 - references to the enactments proposed to be repealed or amended
 - an indication of the priority of the Bill as determined by the Cabinet
- (2) Drafting Instructions should be accompanied by the relevant memoranda, reports of committees, and any other material which may be useful to legislative counsel. *Draft Bills should not be sent as Drafting Instructions, but may, in exceptional cases (such as where the subject matter of the intended legislation is of a highly technical nature), be included.*

Legislative programme

- 4(1) About two months before each meeting of Parliament, the Prime Minister's Office will circulate a request for a list of the Bills proposed to be introduced during that meeting and at subsequent meetings by each Minister. The returns from Ministries will be consolidated and submitted to the Cabinet Legislation Committee, which will prepare for Cabinet approval a programme for the forthcoming meeting and subsequent meetings. The order of priority for each Bill is decided by the Cabinet.
- (2) With the approval of the Cabinet, legislation which is not included in the programme may be introduced during the meeting if the need should arise, but this should as far as possible be avoided, since in such cases there is seldom time for full consideration of the drafting of the Bill.

Hasty and ill-considered legislation is likely to contain errors which may interfere with its intended working and bring the law into disrepute.

Settlement of Draft Bills

5(1) After such discussions and clarification of the Drafting Instructions as legislative counsel may consider necessary, counsel will produce the first draft of the Bill. In the cases of long or complex Bills the first draft may be of only a particular segment of the Bill.

(2) Legislative counsel will send the first draft to the Ministry concerned and any other Departments which are interested in the subject matter of the Bill.

(3) All persons to whom a draft Bill or part of a Bill is sent should scrutinise the Bill with care to make sure that it gives effect to the policy desired. It should not be assumed that, because a Bill has been drafted by legislative counsel, it does not require scrutiny in this way. It may happen that there has been some misunderstanding over the legislative intent, or there may be other reasons for corrections in the draft. However, alterations to the text of the draft Bill must in no circumstance be made otherwise than by legislative counsel.

Memorandum to the Bill

6. The Standing Orders of Parliament require every Bill to be accompanied by a Memorandum to the Bill signed by the Minister introducing the Bill, explaining its main features. The Ministry concerned should settle the wording of the Memorandum to the Bill, but legislative counsel should be consulted to ensure that the Memorandum correctly describes its contents.

Cabinet approval of Draft Bill

7(1) When the form of the Bill has been agreed between the sponsoring Ministry and legislative counsel, the Minister responsible will submit it to the Cabinet for final approval and for permission to introduce the Bill in Parliament. The sponsoring Ministry must forward to the Secretary to the Cabinet a memorandum by the Minister seeking this approval and permission, together with the requisite number of copies of the draft Bill.

(2) The Secretary to the Cabinet will normally forward a copy of the Minister's memorandum and the Cabinet's decision on it to the Law Officers so that a record can be kept of the Bills which have been approved for introduction.

Publication of Draft Bill

8(1) Except where the Certificate of Urgency procedure is to be used, the sponsoring Ministry should arrange for the publication of the Bill as soon as possible after Cabinet permission has been given. The Standing Orders of Parliament require a certain interval to elapse between the publication and introduction of the draft Bill unless the Certificate of Urgency procedure is followed. Seven clear days must elapse between the day on which the sitting commences and the day on which the Bill is to be introduced. If a Bill is published before or during a meeting and is not introduced at a subsequent meeting within one month of the original publication, that Bill must be re-published.

(2) The Bill must be published as a supplement to the *Gazette*.

(3) Only one *Gazette* publication is necessary, but since it is essential that all Members of Parliament should have had as much opportunity as possible to study the text of a Bill before it is debated in Parliament, the notice prescribed by the Standing Orders is regarded as the minimum. Normally, considerably more notice should be given.

(4) It is sometimes the case that a Bill prepared at the instance of one Ministry and designed for a particular purpose affects other Ministries, or is one to which an amendment could be moved to deal with minor points with which other Ministries are concerned. It is important therefore that all Ministries should study Bills published in the *Gazette*, as well as paying careful attention to the legislative programme generally.

(5) The Standing Orders of Parliament permit alterations to be made in the Bill as published if those are of a trivial or drafting character. The alterations are made when the blue copies of the Bill as introduced are printed. Since this procedure avoids the need for formal amendments in Parliament it should be used wherever necessary.

Certificate of Urgency Procedure

9(1) The Standing Orders provide that a Bill mentioned in a Certificate of Urgency, signed by the Prime Minister, may be introduced without publication or distribution to Members of Parliament, and may be taken through all its stages in one day.

(2) Where a Bill has to be introduced under a Certificate of Urgency, the Ministry concerned should make the necessary arrangements with the Secretary to the Cabinet, and should inform legislative counsel without delay. The Ministry should also inform the Prime Minister's Office of the date on which the Certificate has been sent to the Speaker.

(3) It is emphasised that this procedure for the introduction of a Bill is for use in emergency only and is to be avoided as much as possible. In order to achieve its purpose of giving effect to government policies, legislation needs to be prepared with care and due consideration. Legislation put through in haste and without adequate publicity is likely to prove defective.

Passage of Bill

10(1) The progress of a Bill in Parliament is governed by the Standing Orders of Parliament which provide for four main stages. The **First Reading**, which is purely formal, takes place when the Minister responsible for the Bill rises in place and bows to the Chair, and the clerk reads aloud the Long Title. The **Second Reading**, involves consideration of the principles and general merits of the Bill. The Bill then passes through the **Committee Stage** (also known as the **Consideration Stage**), at which the details of the Bill may be considered and amendments made. Normally two sitting days must elapse between **Second Reading** and **Consideration Stage**.

(2) The Bill is treated as having been passed when it receives the **Third Reading**, which normally cannot take place earlier than the next but one sitting day after the **Committee Stage**. The periods between stages prescribed by Standing Orders should be regarded as the minimum. Normally in a Bill of any length or one which is controversial there should be an interval of approximately a week between the **Second Reading Stage** and the **Committee Stage**, and all Government amendments should be put as early as possible.

(3) The sponsoring Ministry should take careful note of the progress of the Bill through Parliament, and a representative of the Ministry should be present at the **Second Reading Stage** and the **Committee Stage**. Legislative counsel should also attend. The Weekly Business Statement, which is normally given in Parliament on Fridays, will usually indicate when a particular stage of a Bill is to be taken. Reference may also be made to the agenda and provisional agenda of Parliament.

Assent

11(1) When a Bill has been passed by Parliament the Clerk of Parliament will follow the relevant procedures laid down and submit Presentation Copies to the Head of State for the Assent.

(2) Where the Assent has been given, it is the responsibility of the Clerk of Parliament to number the Presentation Copies. One copy is retained

by the Prime Minister's Office and the Prime Minister's Office should forward the remaining copies one each to the Chief Justice, the Speaker and the Archivist.

Publication

12. As soon as possible after Assent, the Act should be published in the *Gazette*. The avoidance of delay may be of particular importance where a Bill has been introduced under a Certificate of Urgency. Unless the Act otherwise provides, it comes into force at the commencement of the day following the day on which the Assent is signified, or as provided by the Constitution, or on the date of publication. The date of Assent will appear at the beginning of each Act. Where an Act provides that it should come into force on a date to be determined, the initiative for obtaining Cabinet approval for its date of commencement rests with the sponsoring Ministry.

Part II Subsidiary Legislation

Cabinet Approval

13. Where it is proposed to make subsidiary legislation, the Minister concerned should, subject to the directions given by the Prime Minister, decide whether Cabinet approval for the making of the instrument is necessary. Where Cabinet approval is considered necessary, a Cabinet Memorandum asking for this must be submitted by the Minister to the Cabinet.

Drafting

14(1) Subject to the directions given by the Cabinet or the Minister responsible, the Head of a Ministry should decide whether subsidiary legislation is to be drafted within the Ministry or by legislative counsel. Except in special cases, executive instruments will be drafted within the Ministry concerned, but with any necessary assistance of legislative counsel.

(2) Where an instrument is to be drafted by legislative counsel, Drafting Instructions must be sent to the Law Officers. These must contain full details of the policy intended to be carried into effect by the instrument and should be accompanied by the relevant memoranda and any other material which may be useful to legislative counsel. Subject to the necessary modifications, paragraph 5 relating to the settlement of draft Bills applies in relation to instruments drafted by legislative counsel.

- (3) Where subsidiary legislation has not been drafted by legislative counsel it must be submitted in draft to the Law Officers so that its validity and form may be checked before it is made.
- (4) All subsidiary legislation intended for publication must be in the form required by the relevant legislation.

Making of subsidiary legislation

15. Subsidiary legislation is made when it is signed by the Head of State or the Minister responsible. The procedure laid down by the relevant legislation should be followed.

Publication

- 16(1) All subsidiary legislation must be published in the *Gazette*. The Ministry concerned should send a copy of the instrument to the Government Printer for publication.
- (2) Where a legislative instrument or executive instrument is sent to the Government Printer for publication, the officer concerned must ensure that it is in the proper form and must indicate whether the instrument is a legislative instrument or an executive instrument.
 - (3) Unless the instrument otherwise provides, a legislative instrument comes into operation on the date of *Gazette* notification. This date is printed at the end of the instrument. An executive instrument comes into operation on the day on which it is made.