



THE ROLE OF THE LEGISLATIVE DRAFTING DEPARTMENT

July 1, 2025

TABLE OF CONTENTS

1. THE FIRST LEGISLATIVE COUNSEL AND THE LEGISLATIVE DRAFTING DEPARTMENT	3
1.1. STAFF	3
1.2. THE ACTIVITIES OF THE LEGISLATIVE DRAFTING DEPARTMENT	3
1.3. DORMANT LEGISLATIVE PROPOSALS	4
2. CONTACTING THE LEGISLATIVE DRAFTING DEPARTMENT	5
2.1. CONSULTATION	5
2.2. CIRCUMSTANCES IN WHICH THE LEGISLATIVE DRAFTING DEPARTMENT MUST BE CONTACTED	5
2.3. HOW TO CONTACT THE LEGISLATIVE DRAFTING DEPARTMENT	5
2.4. CONTENTS OF COMMUNICATION	5
2.5. WHO SHOULD SEND WRITTEN COMMUNICATION TO THE LEGISLATIVE DRAFTING DEPARTMENT	6
2.6. TO WHOM SHOULD WRITTEN COMMUNICATION BE SENT IN THE LEGISLATIVE DRAFTING DEPARTMENT	6
2.7. ROLE OF THE LEGISLATIVE DRAFTING DEPARTMENT AFTER RECEIVING INSTRUCTIONS	6
2.8. CABINET PAPERS	7
3. PREPARING INSTRUCTIONS FOR LEGISLATIVE PROPOSALS	8
3.1. CABINET APPROVAL OF DRAFTING INSTRUCTIONS	8
3.2. COORDINATION OF INSTRUCTIONS	8
3.3. CONSULTATION	8
3.4. MEETINGS	8
3.5. GENERAL CONTENT OF DRAFTING INSTRUCTIONS	9
3.6. BACKGROUND INFORMATION	9
3.7. PRINCIPAL OBJECTS	9
3.8. FULL INFORMATION	10
3.9. REFERENCES TO ALL KNOWN IMPLICATIONS AND DIFFICULTIES	10
3.10. INSTRUCTIONS FOR LEGISLATION MUST NOT BE GIVEN SOLELY IN THE FORM OF A DRAFT OF LEGISLATION	10
3.11. CONSULTANTS' DRAFTS	11
4. SUBMISSION OF LEGISLATION TO CABINET	12
5. PUBLICATION IN THE LEGISLATION GAZETTE	12
6. SPEAKING NOTES	12
7. COMMITTEE STAGE AMENDMENTS	13
8. EXPECTATIONS	13

8.1. WHAT THE LEGISLATIVE DRAFTING DEPARTMENT EXPECTS FROM PORTFOLIOS AND MINISTRIES	13
8.2. WHAT PORTFOLIOS AND MINISTRIES CAN EXPECT FROM THE LEGISLATIVE DRAFTING DEPARTMENT	14
9. <u>GETTING THE BEST OUT OF THE LEGISLATIVE DRAFTING DEPARTMENT</u>	16

1. THE FIRST LEGISLATIVE COUNSEL AND THE LEGISLATIVE DRAFTING DEPARTMENT

1.1. Staff

The First Legislative Counsel is responsible to the Attorney General, and through him to the Governor, for the provision of an efficient legislative drafting service including related legislative advice for the Government of the Cayman Islands. The Legislative Drafting Department enables the First Legislative Counsel to fulfil these functions.

The Department consists of the First Legislative Counsel, two Senior Legislative Counsel and four Legislative Counsel, who are all qualified lawyers experienced in legislative drafting. They are supported by an Administrative Assistant.

The names of the staff are as follows-

- Ms. Cheryl Neblett, Cert. Hon., First Legislative Counsel;
- Ms. Maureen Benjamin, Senior Legislative Counsel;
- Ms. Dharlene Glidden, Senior Legislative Counsel;
- Ms. Bethea Christian, Legislative Counsel;
- Ms. Thea Alexander, Legislative Counsel; and
- Ms. Natoya Boyd, Legislative Counsel.

1.2. The activities of the Legislative Drafting Department

The Legislative Drafting Department undertakes the following main categories of work —

- (a) drafting primary legislation - Acts;
- (b) drafting subordinate legislation - Regulations, Orders, Directions, Rules, Notices etc.; and
- (c) advising on proposals for legislation and statutory interpretation.

1.3. Dormant legislative proposals

Every year the First Legislative Counsel submits to the Attorney General a legislative drafting programme for approval by Cabinet. It is important for the First Legislative Counsel to know when proposals have been abandoned and, therefore, where proposed legislation is no longer being pursued, the relevant Portfolio or Ministry must inform the First Legislative Counsel so that these proposals can be removed from the programme.

2. CONTACTING THE LEGISLATIVE DRAFTING DEPARTMENT

2.1. Consultation

The Legislative Drafting Department is always available for consultation and welcomes the opportunity to discuss any problems where members of the Cabinet or other Government officials think that this is required. The Department should always be consulted whenever any proposal for legislation arises, or whenever the possibility of any proposal for legislation is envisaged.

2.2. Circumstances in which the Legislative Drafting Department must be contacted

The Legislative Drafting Department must be contacted after a Cabinet paper has been approved by the Cabinet and legislation is required.

2.3. How to contact the Legislative Drafting Department

Legislative Counsel are able to provide the best drafting and related services if they are fully informed regarding the details of legislative proposals. Officials may contact the First Legislative Counsel by a telephone call, or make an appointment for a short initial meeting, as the quickest way of engaging the Department on a matter referred to in 2.2 above. The First Legislative Counsel can then say whether additional information and documents are needed to consider the matter.

2.4. Contents of communication

Any communication in writing to the Legislative Drafting Department should be self-contained, with supporting documentation attached. The communication should give a short summary of the facts and state clearly the point on which advice is sought or the reason why the proposed legislation is required.

Officials who are giving instructions may be more familiar with the relevant legislation than the Legislative Counsel. Therefore, it is always essential when providing information about a new problem, to give the Legislative Drafting Department all known details about the matter - for example, full references to Acts, regulations, etc., and all available information about the Ministry and departmental policy and practice in relation to the relevant matter.

2.5. Who should send written communication to the Legislative Drafting Department

The official who sends written communication to the Legislative Drafting Department should be of the rank of Deputy Chief Officer (or equivalent) or above. The Head of the official's Department and the relevant Chief Officer must be informed of the contact being made with the Legislative Drafting Department.

2.6. To whom should written communication be sent in the Legislative Drafting Department

Initial communication in respect of any new legislative proposal should first be directed to the First Legislative Counsel.

After a matter is assigned by the First Legislative Counsel to Legislative Counsel or Senior Legislative Counsel, the Senior Legislative Counsel supervising that matter or First Legislative Counsel, where the First Legislative Counsel is the supervising officer in that matter, should be copied on all further correspondence in relation to that matter.

2.7. Role of the Legislative Drafting Department after receiving instructions

It should not be assumed that simply sending written instructions to the Legislative Drafting Department will ensure that the Department will approve all the details of the instructions. Legislative Counsel will read documents that are sent to the Department and may draw attention to any difficulty that they envisage, but they are not obliged to do so unless full instructions are given as prescribed in this document.

The First Legislative Counsel is obliged, understanding instructions from the Attorney General, to keep the Attorney General informed of major legal questions likely to become the subject of legislative or constitutional difficulty. In accordance with these standing instructions, the First Legislative Counsel (or, in the First Legislative Counsel's absence, the relevant Senior Legislative Counsel) will inform the Attorney General of any matter relating to legislation or a proposal for legislation which is or may be legally or constitutionally improper. In such a case, if, despite legal advice, the instructing official indicates that the Ministry or other Government body still intends to pursue the particular course of action or proposal for legislation, the Attorney General is, by virtue of his office, obliged

to refer the matter to the Governor.

As a general rule, the Legislative Drafting Department does not prepare “redline”/“blackline” versions or consolidations of primary and subsidiary legislation to reflect amendments being made by amendment legislation.

2.8. Cabinet Papers

The Legislative Drafting Department may be contacted for general advice or guidance on Cabinet Papers, however the Legislative Drafting Department does not prepare Cabinet Papers unless the Cabinet papers relate to the work of the Attorney General.

3. PREPARING INSTRUCTIONS FOR LEGISLATIVE PROPOSALS

3.1. Cabinet approval of drafting instructions

As a general rule, the Cabinet should give instructions for drafting legislative amendments. Proposals for legislative amendments must be submitted to Cabinet, before drafting commences, by means of a Cabinet Paper outlining the policy objectives for consideration by Cabinet.

Drafting instructions may only be issued to the Attorney General following Cabinet's approval of the proposed legislation, and no drafting will commence before the First Legislative Counsel has received a copy of the Cabinet Extract.

It should be noted that following general elections and the appointment of a new Cabinet, the Cabinet instructions of a former administration fall away. It is therefore necessary for instructing officers to seek the approval of the newly appointed Cabinet before continuing to progress any legislation based on former instructions approved by the previous Cabinet. The Legislative Drafting Department should be notified of any decision taken by the Cabinet in relation to former instructions.

3.2. Coordination of instructions

The formal giving of instructions, or further instructions, on draft legislation must come through, and be coordinated by, the relevant Portfolio or Ministry. The Portfolio or Ministry must synthesize the comments rather than merely pass on various sets of comments to First Legislative Counsel.

3.3. Consultation

To ensure a smooth process, the Portfolio or Ministry must ensure that all relevant institutions are consulted and are given an opportunity to react to each other's and the Portfolio's or Ministry's comments throughout the process, right up to the finalization of a draft.

3.4. Meetings

Meetings are a necessary part of the instructing process; however, as a general rule, Legislative Counsel do not attend meetings for the purpose of formulating policy.

The First Legislative Counsel should be notified by the Portfolio or Ministry of any meetings that the relevant Portfolio or Ministry requires Legislative Counsel to attend.

3.5. General content of drafting instructions

Instructions for legislation must —

- (a) contain sufficient background information to enable the Legislative Drafting Department to understand the issues which the legislative proposal is intended to solve;
- (b) state clearly and fully the principal objects of the proposed legislation;
- (c) provide full information as to how the principal objects of the legislation are to be achieved;
- (d) refer to all known implications and difficulties - whether political, legal, administrative, financial or otherwise;
- (e) provide legislative models to be considered; and
- (f) not be given solely in the form of a draft of legislation.

3.6. Background information

The instructions for drafting legislation must include all available details about the history of the proposals, for example, any earlier attempts at introducing similar legislation should be fully documented; any informal political or public consultation should be evidenced, and relevant existing legislation in other jurisdictions should be described and documented; any relevant court cases and earlier advice from the Attorney General's Chambers or any other lawyer must be copied and provided; and all technicalities of the subject matter relating to the issues must be fully explained.

3.7. Principal objects

The Legislative Drafting Department must be informed of all the fundamentals of the proposals for legislation so that the proposals may be comprehensively assessed. It is vital for Legislative Counsel to know the objectives of the proposed

legislation. Without thorough and complete drafting instructions, the Legislative Drafting Department cannot draft legislation that will necessarily provide Government with the legislative solution to the matter concerned.

3.8. Full information

The instructions for legislation must provide Legislative Counsel with complete information as to how the proposed legislation will be administered, financed and operated in practice. The budgetary, administrative and operational issues and procedures envisaged, and also the powers and duties necessary for achieving and implementing those issues and procedures, must be described in detail. If a power to make regulations is envisaged as being required to give detailed effect to a proposed Act, the instructions for the Act should identify the matters with respect to which power to make regulations is proposed.

3.9. References to all known implications and difficulties

It is the responsibility of the Legislative Drafting Department to be satisfied of, and give appropriate advice about, all the foreseeable legislative implications and difficulties of a proposal for legislation. In order to discharge this responsibility effectively for the benefit of the public service of the Islands, the instructions must contain full and complete references to all implications and difficulties known to the official who prepares the instructions.

3.10. Instructions for legislation must not be given solely in the form of a draft of legislation

Instructions for the preparation of legislation must not be given solely in the form of a draft of legislation. Instructions for the preparation of legislation must be given in the form of a clear account, in plain ordinary English, of all the matters prescribed in this document as being necessary. The mere copying of an existing Act of this or any other jurisdiction, does not automatically or necessarily transfer any relevant information to the Legislative Drafting Department. It is a fundamental obligation of the official preparing instructions for legislation to explain in plain language the official's understanding of the issues that may need to be dealt with in the proposed legislation.

3.11. Consultants' drafts

In dealing with a consultant's draft, it is important to remember that it is the duty of the Legislative Drafting Department to prepare legislation for the Government of the Cayman Islands. A consultant's draft is a proposal to help the Legislative Drafting Department perform its functions.

If a consultant is engaged to prepare draft legislation, it is important to put the consultant in touch with the First Legislative Counsel before the consultant begins to draft the legislation. The First Legislative Counsel will advise the consultant as to Departmental practice and procedure.

Once the consultant has prepared the draft, the Portfolio or Ministry must examine the draft carefully to ensure that it complies with Government policy on the matter. When the draft is conveyed to the First Legislative Counsel, it must be accompanied by full instructions prepared in the same manner as in cases where there is no accompanying draft. It is desirable that the consultant be available when Legislative Counsel is working on the draft. This process can be lengthy and a drafter may ask many questions and make drastic changes to the draft. It must not be assumed that because there is a draft prepared by a consultant, the draft will be finalized quickly by the Legislative Drafting Department.

The consultative process sometimes requires that a draft be made available for public comment after stakeholders have been consulted. The consultant's draft should not however be made available for public comment before the Legislative Drafting Department has prepared a draft based on the consultant's draft.

4. SUBMISSION OF LEGISLATION TO CABINET

Once agreement has been reached in respect of a draft and the Ministry has indicated that it intends to forward the draft to Cabinet, the draft will be reviewed and proofread by one or more other members of the Department before it is forwarded to the Ministry for submission to Cabinet.

Legislative Counsel will notify the relevant Portfolio or Ministry when the draft has been finalised for submission to Cabinet and will forward a draft for Cabinet which will contain the words “Cabinet Submission” in the footer of the draft. Draft legislation must not be submitted to Cabinet until that draft has been received.

Draft legislation that is sent to a Portfolio or Ministry for discussion will contain words on the face of the draft indicating that it is a Discussion Draft and that it is not to be submitted to Cabinet.

5. PUBLICATION IN THE LEGISLATION GAZETTE

The Legislative Drafting Department is responsible for finalizing legislation for publication in the Legislation Gazette by the Chief Information Officer. Legislation is only finalized for publication after the Department receives instructions to proceed with publication from —

- (a) the Clerk of the Parliament in relation to Bills; or
- (b) the Clerk of the Cabinet in relation to subsidiary legislation.

6. SPEAKING NOTES

The relevant Legislative Counsel may be consulted, if necessary, to clarify any particular points arising in relation to Speaking Notes prepared by a Portfolio or Ministry.

7. COMMITTEE STAGE AMENDMENTS

Where the Ministry or Portfolio decides that an amendment should be proposed in respect of a Bill that is to be dealt with at an upcoming sitting of the Parliament, the Chief Officer should write to the Legislative Drafting Department, instructing on the proposed amendment.

It should be noted that while amendments are permissible, it is important that the proposed amendments do not fundamentally alter the Bill.

Also in accordance with Standing Order 70(2) of the Parliament Standing Orders, 2025, *“Notice of any amendment, new clause or new Schedule proposed to be moved to the Bill shall be given in writing not later than two days before that on which the Bill is to be considered in committee; and, except with leave of the Presiding Officer, no amendment of which notice has not been given may be moved.”*

When instructions are received on the proposed amendment, the Legislative Counsel will then prepare a draft Notice of Committee Stage amendments and submit same to the Chief Officer for onward transmission to the relevant Minister, for the Minister’s consideration.

When the draft Notice is approved by the Minister, it will be finalised and resubmitted to the Ministry. The Minister must then sign three (3) hard copies of the Notice. One signed hard copy is for the Minister’s records, one signed hard copy must be presented to the Clerk of the Parliament, and one signed hard copy must be presented to the Honourable Attorney General for his records.

In addition to the signed hard copy, the relevant Ministry official must submit to the Clerk of the Parliament a scanned or electronic copy of the approved and signed Notice. Copied on that email should be the AG, the FLC and any other Legislative Counsel involved in the drafting of the legislation.

8. EXPECTATIONS

8.1. What the Legislative Drafting Department expects from Portfolios and Ministries

The Legislative Drafting Department expects from Portfolios and Ministries the following:

- (a) that the instructions are conceptually sound and thoroughly considered well-thought-out. Contacting First Legislative Counsel with a broad legislative proposal in the hope that the Legislative Counsel will flesh it out will delay

- the assignment as detailed instructions will still be required by Legislative Counsel;
- (b) that the Portfolio or Ministry will be ready and willing to discuss, explain, clarify, re-consider and, if necessary, revise the instructions, in the light of the observations of Legislative Counsel;
 - (c) that the Portfolio or Ministry will allocate enough human resources, time and attention to the proposed legislation commensurate with its urgency and importance. It is important that once the first draft has been prepared, comments be received as soon as practicable. The same goes for subsequent revisions of the first draft;
 - (d) that the instructing official is sufficiently senior to make most decisions as and when they arise in the instructing process without having to postpone a response or refer it to a higher authority;
 - (e) that the Portfolio or Ministry will maintain sufficient communication with the Legislative Drafting Department. In particular, the First Legislative Counsel must be informed of any changes in the target dates for the legislation and plans to defer legislation or abandon it must be communicated to the First Legislative Counsel as soon as possible;
 - (f) that the Portfolio or Ministry will allow Legislative Counsel to determine the wording and other matters relating to the form of the legislation; and
 - (g) that the instructing official will attend sittings of the Parliament when Bills that the instructing officer has provided instructions for are being debated and assist Legislative Counsel with any technical queries that may arise in the course of parliamentary debate or in Committee Stage.

8.2. What Portfolios and Ministries can expect from the Legislative Drafting Department

A Portfolio or Ministry can expect the following from the Legislative Drafting Department:

- (a) that once written instructions are received by the First Legislative Counsel, they will be acknowledged;

- (b) that the First Legislative Counsel will assign matters to a Senior Legislative Counsel or a Legislative Counsel, who will give them priority in accordance with the legislative drafting programme approved by Cabinet;
- (c) that the Senior Legislative Counsel or Legislative Counsel will bring to the attention of First Legislative Counsel any problems affecting legislative priorities, with a view to resolution;
- (d) that the Senior Legislative Counsel or Legislative Counsel, if requested, will explain why provisions are drafted in a certain way;
- (e) that the Senior Legislative Counsel or Legislative Counsel may explain drafting style without being requested if Legislative Counsel thinks that the particular issue justifies it;
- (f) that as soon as reasonably practicable the Senior Legislative Counsel or Legislative Counsel will draw the attention of the Portfolio or Ministry to anything that the Senior Legislative Counsel or Legislative Counsel is required to include in the legislation but which does not have policy authority;
- (g) that the Senior Legislative Counsel or Legislative Counsel will update the Portfolio or Ministry on the progress of the assignment; and
- (h) that Senior Legislative Counsel or Legislative Counsel will attend sittings of the Parliament and assist Ministries and Portfolios with Bills during debate and draft committee-stage amendments as instructed by the Minister or instructing official.

9. GETTING THE BEST OUT OF THE LEGISLATIVE DRAFTING DEPARTMENT

The Legislative Drafting Department exists for the benefit, protection and implementation of Government policy. The First Legislative Counsel, Senior Legislative Counsel, Legislative Counsel and Administrative Assistant of the Department are pleased to provide an efficient legislative drafting and related advisory service to the Government of the Cayman Islands. With cooperation, the Department can continue to effectively provide the highest possible standard of service.

July 1, 2025