

MINISTRY OF JUSTICE

To: All Ministers
The Attorney-General
The Financial Secretary
The Permanent Secretaries of all Ministries
The Director-General of the Planning Institute of Jamaica
The Director of Legal Reform
The Secretary to the Cabinet
The Clerk to the Houses
Heads of Departments
The Government Printer

PREPARATION AND PRESENTATION OF LEGISLATION

1. It is considered timely to issue, once more, a circular on the subject of the procedure for the preparation of legislation and the settling of the Legislation Programme.

The entire procedure involves seven main stages –

- A. Approval of Annual Legislation Programme.
- B. Approval of Policy by Cabinet.
- C. Issue of drafting instructions.
- D. Preparation and Circulation of Bills.
- E. Approval of Bills by the Legislation Committee.
- F. Approval of Bills by the Cabinet.
- G. Introduction of Bills in Parliament.

A. The Annual Legislation Programme.

2. It is assumed that the sessions of Parliament will begin in or about March of each year and it is essential that the Programme for a session should be decided well in advance of the beginning of the session. Ministries are therefore required to prepare and forward to the Secretary of the Legislation Committee, early in each year, preferably by the 15th day of January, a Provisional Legislation Programme for the ensuing session.

3. In submitting the Programme the Ministry should set out –

- (a) the scope and purpose of each proposal;
- (b) the Ministry's idea as to whether it will require a Bill of long, short or medium length;
- (c) the urgency of the matter in relation to the work of the Ministry and indicating, by numerical sequence where possible, its priority rating compared with other matters of the Ministry;
- (d) whether the proposals for legislation have yet been approved in principle by the Cabinet;
- (e) whether drafting instructions have been issued to the Chief Parliamentary Counsel and, where a draft Bill has been produced, an indication as to whether the draft is in the process of being settled as between the relevant Ministry and the Office of the Parliamentary Counsel or is in circulation for comment prior to submission to the Legislation Committee;
- (f) any other remarks which may enable the Legislation Committee to determine its priority rating in regard to the Programme as a whole.

It is specially requested that only such matters as are likely to be ready for introduction in Parliament within the legislative year concerned (i.e. the period beginning with the commencement of the Parliamentary session) be included in the Programme.

4. The Legislation Committee, a sub-committee of the Cabinet, will review the proposals put forward by Ministries, consulting, where necessary, with the Ministries concerned and finally draw up a full Legislation Programme arranged on a priority basis according to the anticipated sittings of Parliament

during the session. This Programme will be recommended for acceptance by the Cabinet.

5. The Programme approved by the Cabinet will be announced in Parliament early in the new session, and thereafter copies of the full Programme will be sent by the Secretary of the Legislation Committee to –

- (a) all Ministers;
- (b) the Attorney-General;
- (c) the Financial Secretary;
- (d) the Permanent Secretaries of all Ministries;
- (e) the Chief Parliamentary Counsel;
- (f) the Director-General of the Planning Institute of Jamaica;
- (g) the Director of Legal Reform;
- (h) the Secretary to the Cabinet;
- (i) the Clerk to the Houses;
- (j) Heads of Departments.

B. Approval of Policy by Cabinet. 6. As soon as possible after the Programme is announced, Ministries will proceed to prepare Cabinet Submissions (where that has not already been done) seeking approval for the drafting of the relevant Bills. By constitutional convention no proposals for substantive legislation (Acts of Parliament) are formally dealt with until approved by the Cabinet. Each Submission should be preceded by an examination of the major issues involved, including the legal issues. The Attorney-General should, where necessary, be consulted and if other Ministries are affected their views should be obtained. Additionally, Submissions proposing substantive reforms to the law (i.e. significant changes in legal principle or procedure)

should be sent to the Legal Reform Department for examination and comments. The Chief Parliamentary Counsel should normally be consulted before the Submission is put forward in order to ensure that the Submission adequately covers the main principles which will form the basis for more detailed drafting instructions.

7. When a Cabinet Decision for the preparation of legislation has been made, the Secretary to the Cabinet will cause a copy of the Decision and the Submission on which it is based to be forwarded to the Attorney-General and to the Chief Parliamentary Counsel for information. The Legal Reform Department should also be furnished with a copy in matters having substantive law reform content.

C. Drafting Instructions. 8. The Ministry concerned will be responsible for giving the Chief Parliamentary Counsel drafting instructions and, during the drafting stage, the Ministry will deal directly with the Chief Parliamentary Counsel. The instructions should be in accordance with the guidelines set out in the Appendix. The relevant Ministry file or at the minimum, all relevant documents on the Ministry file should normally be sent to the Chief Parliamentary Counsel with the drafting instructions. Where drafting instructions do not accord with the guidelines, the CPC will so notify the Ministry and, where appropriate, the Cabinet Office, that the matter will not be processed for drafting in the Office of the Parliamentary Counsel unless adequate instructions are supplied.

D. Preparation of Bills and circulation 9. The Chief Parliamentary Counsel is responsible for drafting legislation and for advising Ministries on legal questions arising during the preparation of legislation. It will be his duty to

thereof. prepare a Bill which accords with the Cabinet Decision and which, subject thereto, is a Bill which the **Minister is prepared to recommend** to the Legislation Committee for introduction in Parliament. Where a Bill amends existing legislation it will have 'left hand pages' appended, these are a reproduction of the provisions being amended.

10. As soon as the Bill is finally settled between the Chief Parliamentary Counsel and the Ministry concerned, the Permanent Secretary of the Ministry should arrange for copies of the Bill to be prepared for circulation to all other Ministries and Departments, the relevant Parliamentary Committees and to the Attorney-General, and the Legal Reform Department in law reform matters, inviting comments to be made within a specified period, which should not exceed two weeks. If, for any reason the Ministry intends to circulate copies in typescript, the Ministry will be responsible for supplying the requisite number of copies for this purpose.

The Attorney-General would wish to have the relevant files of the Ministry concerned sent along with the Bill and, whenever this is convenient, and particularly when the Bill is of any complexity, such files should be sent. At minimum, all relevant background information (including copies of the Cabinet Submission, Cabinet Decision and the drafting instructions) should be sent along with the Bill. **The Ministry should not proceed to submit the Bill to the Legislation Committee unless the Attorney-General's Department has indicated that it has no objection to the Bill being so submitted.**

11. The points raised in any comment, and any proposed

amendments to the Bill, should be settled in consultation with Parliamentary Counsel **before** the Bill is submitted to the Legislation Committee. Once those matters are settled, the Office of the Parliamentary Counsel will release a copy of the Bill, together with the left hand pages, to the Ministry for submission to the Legislation Committee. If a Bill is submitted to the Legislation Committee in advance of settlement with and release by the Office of the Parliamentary Counsel, the Office will notify the Legislation Committee accordingly. The relevant Ministry should forward copies of the Bill and left hand pages to the Secretary of the Legislation Committee, under cover of a Submission in terms of paragraph 12.

- E. Consideration by Legislation Committee.
12. After the Chief Parliamentary Counsel releases copies of a Bill for submission to the Legislation Committee, a Submission should be prepared in respect of the Bill by the Ministry concerned asking the Legislation Committee to recommend to the Cabinet that the Bill be approved for introduction to the Houses of Parliament. The Submission should set out, *inter alia* –
- (a) the purpose of the Bill;
 - (b) when Cabinet approval was given in principle and when drafting instructions were issued;
 - (c) whether the Bill was circulated to other Ministries for comments;
 - (d) reference to all unresolved points raised.

13. The Permanent Secretary or other responsible officer of the Ministry which is in charge of the Bill should, as a matter of routine, attend the meeting of the Legislation Committee at which the Bill is being considered and, subject to paragraph

12(d) above, be prepared to explain and defend detailed provisions of the Bill. It is desirable that the Minister, if he is not a member of the Committee, attend if any issue of importance is likely to be raised. The Chief Parliamentary Counsel and the draftsman who prepared the Bill would also be in attendance at the meeting, as should a representative of the Attorney General. The Legal Reform Department should also be represented in connection with law reform Bills.

14. The Legislation Committee gives detailed examination to the Bill and makes, or recommends the making of, further changes to the Bill. If further changes are recommended by the Legislation Committee, the Office of the Parliamentary Counsel will furnish to the relevant Ministry a revised draft of the Bill, incorporating the changes recommended by the Legislation Committee.

15. The decision of the Legislation Committee is conveyed by the Secretary of the Legislation Committee to the Permanent Secretary of the relevant Ministry who will arrange for prints of the Bill, as passed by the Legislation Committee, to be furnished, for submission to the Cabinet.

If circumstances so warrant, the Ministry may proceed on the basis of such records as the Secretary of the Legislation Committee may make available in advance of formal Minutes of the relevant Committee meetings.

These prints should also be sent to the Office of the Parliamentary Counsel for checking before the Bills are so submitted.

F. Approval
of Bill by

16. On receipt of the recommendation of the Legislation Committee the Ministry concerned will proceed to prepare a Cabinet

Cabinet. Submission seeking approval for the Bill, as passed by the Legislation Committee, to be introduced in Parliament.

- G. Introduction in Parliament. 17. When the Bill is approved by the Cabinet, the Secretary to the Cabinet should send the relevant Cabinet Decision to the Secretary of the Legislation Committee, the relevant portfolio Ministry, the Chief Parliamentary Counsel, the Attorney-General and to the Legal Reform Department with respect to law reform Bills. A copy of the Bill should be forwarded under cover of a memorandum by the Chief Parliamentary Counsel to the Government Printer for a copy to be printed and returned for proof-reading **before** the final copies are printed and laid on the Table of the House or the Senate, as the case may be. The Government Printer is responsible for sending the final copies to the Clerk to the Houses who shall notify the relevant Ministry and the Office of the Parliamentary Counsel when this has been done.
18. The Clerk to the Houses submits to the Cabinet Office on a quarterly basis a status report on the progress of Bills.
19. Parliamentary Counsel will attend the House or the Senate whenever his presence is requested by the responsible Ministry. It is also expected that the instructing officials of the Ministry will also be in attendance.
20. The Ministry will be required to inform the Secretary to the Cabinet and the Clerk to the Houses when the Bill comes into operation.

GENERAL

21. In cases where proposals for urgent legislation arise after the Legislation Programme has been settled, the Ministry concerned should prepare a Cabinet Submission seeking approval in principle for the proposed legislation and also for its inclusion in the Programme for the current legislative year. The Bill will then follow the usual procedure. The Chief Parliamentary Counsel must be given an opportunity to say whether the inclusion of the Bill in the Programme for the year will interfere with the Programme as a whole.

22. All Bills are **Confidential** documents – some are **Secret** documents. Until a Bill is introduced in Parliament its actual text may be disclosed only to Ministries and Central Government Departments and to such agencies as are intimately concerned with the legislation. As a general rule, the actual text of a Bill must not be disclosed to bodies such as local authorities (K.S.A.C. and Parish Councils), Municipal Councils, statutory boards, corporations and authorities and other quasi-government bodies, unless in a particular case, they are directly involved in the preparation of the legislation. In special circumstances where the Bill deals with very technical matters, the text may, with the express permission of the relevant Minister, be disclosed to a special interest group having specialized knowledge of the subject matter of the legislation.

However, the fact that the actual text of a Bill is reserved for disclosure in Parliament does not preclude, where appropriate, disclosure of broad proposals for public information or the discussion of particular details with bodies or persons especially

interested in the subject matter of the Bill.

23. All correspondence regarding the preparation and presentation of Bills should also be treated as confidential documents.

24. Every effort should be made to ensure that officers who are involved in the preparation or presentation of Bills are made aware of the procedure outlined above.

25. Finally, it should be noted that, following upon any change of Government, Cabinet Decisions of the outgoing (or any other former) administration may need to be reviewed by the Cabinet of the new administration. Such a review may have an effect on Bills in preparation at the time of the change over.

**Office of the Parliamentary Counsel
April, 2011**

POINTS ON DRAFTING INSTRUCTIONS**PRELIMINARY**

The following administrative points relating to the preparation of legislation may be used as guidelines in the formulation of drafting instructions.

Whether proposals for legislation are initiated by a Ministry official or by a department for which portfolio responsibility is assigned under that Ministry, instructions and policy are the responsibility of the Ministry concerned.

If the Ministry considers that new or amending legislation by Act of Parliament is necessary, interested persons and bodies should be consulted if possible, and a Cabinet Submission setting out matters of principle and policy and seeking approval must be submitted to Cabinet.

DRAFTING INSTRUCTIONS

Ordinarily, instructions for the drafting of a bill must not be given unless Cabinet approval in principle has been obtained.

Drafting instructions should contain the following —

- (a) full, details of the policy intended to be carried into effect by the bill;
- (b) references to the enactments proposed to be repealed or amended.
- (c) an indication of the priority of the bill as determined by Cabinet.

The instructions should be accompanied by any materials, which may be useful to Parliamentary Counsel such as relevant memoranda, reports of committees, etc.

The sponsoring Department or Ministry should clearly conceptualize at an early stage

- (a) the aim of the bill;
- (b) the administrative structure required to achieve that aim;
- (c) the manner in which existing laws will be affected;
- (d) the extent to which existing laws should be altered; and
- (e) all other details necessary for furnishing instructions to the draftsman.

These details should be fully thought out before attempting to instruct Parliamentary Counsel.

Additionally, any such instructions to the draftsman should not be in the form of a draft bill but should set out, clearly and fully, the aim to be achieved and, therefore, it is advisable to spell out the proposals in as much detail as possible and the means by which it is suggested that the aims be achieved.

MATTERS OF POLICY

The sponsoring department and not the draftsman is responsible for the policy expressed in a bill. However, there are some matters of policy on which the draftsman will often take a firm stand, viz: matters affecting constitutionality, the maintenance of the Rule of Law, evidentiary provisions and the conferring of jurisdiction on courts. As such, the draftsman may query certain directions of the Ministry, where he thinks appropriate.