

**PART IV**

**PREPARATION AND ENACTMENT OF LEGISLATION**

**1. Introduction**

1. The following procedure is a detailed expansion of Part III (7) Consultation with Law Officers, and is set out for the guidance of those concerned in the preparation of Bills for Parliament and for the final stages of bringing an Act or Subsidiary Legislation into operation.

2. Throughout these notes on procedure the reference to the law officers will always be to the Attorney General. The Attorney General is responsible for the final form of the draft.

3. Matters arise from time to time in Ministries or in the Attorney General's Chambers which indicate the desirability of having new legislation or making improvements to existing legislation. When such a situation arises there are two main courses of action, viz, the Normal Method and the Alternative Method.

**II. Approval for the Introduction of a Bill**

**A Normal Method**

4. On the instructions of the Minister the Permanent Secretary in the Ministry responsible for the subject prepares a memorandum setting out the main points on which legislation is proposed and seeking approval for a Bill to be drafted. The Minister, when satisfied with the terms of the draft, initials the memorandum and the Permanent Secretary sends it to the Secretary to the Cabinet for action under the approved procedure for putting a subject to Cabinet.

5. Cabinet considers the memorandum and decides upon policy. If it authorises the preparation of a Bill and if there is much other legislation being prepared the Conclusions indicate the degree of priority to be accorded to the drafting. The Secretary to the Cabinet sends extracts from the Conclusions to the Ministry for action and to the Attorney General for information. The next step lies with the Ministry.

6. The Minister concerned will arrange for drafting instructions to be conveyed by the Permanent Secretary to the Director of Legal Affairs in pursuance

of Cabinet decisions. These instructions should be as full as can be, setting out in ordinary language the points and principles on which legislation is required.

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7. If a subject is very complicated, the Prime Minister or Cabinet may appoint a Cabinet Committee to consider the matter so that details can be thoroughly discussed before Cabinet is invited to make policy decisions or drafting instructions are conveyed to the Director of Legal Affairs.

8. The Director of Legal Affairs sends the draft Bill with draft Objects and Reasons to the Permanent Secretary of the Ministry.

9. Any Ministerial amendments to the draft are settled in consultation with the Director of Legal Affairs.

10. When the Minister is satisfied with the draft, the Permanent Secretary sends it to the Director of Legal Affairs for production of the necessary Cabinet copies.

11. The Director of Legal Affairs sends the fair copies to the Ministry. One copy will be initialled by the Director of Legal Affairs and will be retained in the Ministry file on the subject.

12. The Minister responsible will put the Bill to Cabinet under cover of a Memorandum explaining and commenting on it. In doing this, the Permanent Secretary in the Ministry sends the draft Cabinet Memorandum to the Secretary to the Cabinet with copies of the Bill for circulation.

13. If a Bill is very important, or lengthy, Cabinet may refer it to a Committee of Cabinet for careful scrutiny. In such a case,

- (a) the Committee examines the Bill in detail and makes its recommendations; and
- (b) the Minister responsible puts the Bill back to Cabinet with the observations of the Committee and, when appropriate, with amendments drafted by the Director of Legal Affairs.

14. If Cabinet decides that the Bill or its Objects and Reasons should be amended, the Secretary to the Cabinet will send an extract from the Conclusions to the Ministry and the Director of Legal Affairs. The Permanent Secretary of the Ministry concerned will be responsible for conveying full drafting instructions to the Director of Legal Affairs. When the amendments have been settled between the Ministry and the Director of Legal Affairs, the Minister will put the subject back to Cabinet according to the procedure outlined above. Although sometimes in cases of urgency, the Director of Legal Affairs would proceed with the amendments upon receipt of the Conclusion, the Ministry should still convey full drafting instructions to the Director of Legal Affairs.

15. If the amendments are not of major importance the Bill would not be

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put back to Cabinet. The Conclusion in such a case would normally give authority to proceed with the Bill without further reference to Cabinet.

16. When Cabinet approves the Bill, with or without amendments, it will authorise the Minister to introduce it into Parliament. Once a Bill has been approved arrangements should be made for it to be photo copied as quickly as possible so that copies can be made available to Members of Parliament when the Bill is introduced.

17 The Secretary to the Cabinet then sends copies of the Bill, as approved by Cabinet, to the Minister and Clerk of the House of Assembly for printing after introduction by way of First Reading in Parliament and subject to 25 hereof and ensures that a copy is available for the Minister concerned on the date of introduction in the House of Assembly. The Minister will sign that copy of the Bill. If for any reason he is not present another Member of Cabinet may do so.

### **B Alternative Method**

18. The above lengthy procedure can sometimes be abbreviated, firstly, if the proposed Bill is short and raises no issue of policy, and secondly, if Cabinet has decided on its own initiative that legislation is desirable. Action in such cases may proceed as set out in subsequent sections.

19.. If the proposed Bill is short and raises no important issues of policy, or if it is in pursuance of accepted Government policy, the Minister concerned may, before consulting Cabinet, invite the Director of Legal Affairs to prepare a draft Bill. If he sees no difficulty in following this course he will prepare a draft Bill with Objects and Reasons and the Minister responsible will present the Bill to Cabinet with a Memorandum explaining the need for legislation and showing how the draft meets it. Action will then continue as from paragraph 12- 17 above.

20. Cabinet may decide on its own initiative in the course of business that legislation on a certain matter is desirable and a Conclusion would be recorded accordingly. Action will continue as above.

### **111. Action Sheet**

21. The Notices of Motions prepared by the House of Assembly sets out the Agenda for a meeting of the House of Assembly as provided by notice given to the House of Assembly and continuation of business already commenced.

22. The Action Sheet is prepared by the Cabinet Office before each meeting of the House of Assembly as a supplement to the Notices of Motions and to assist members of Cabinet in their responsibilities for putting matters before the Parliament.

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All items which have been approved for introduction after the previous meeting of the House of Assembly are placed on the Action Sheet.

23. Each item is set out under the appropriate Minister's name and copies are handed to the Prime Minister and each Minister concerned before 10:00 a.m. on the day the House of Assembly meets. Items on the Action Sheet are listed as follows:

- (a) Any Subsidiary Legislation (Statutory Instruments) i.e. Orders, Regulations, Rules, Bye-Laws, Appointed Day Notices etc. (The Cabinet Office is usually aware of such legislation because it would have been to Cabinet, but some Orders are made by Ministers without reference to Cabinet. Ten (10) copies of such subsidiary legislation should be forwarded to the Cabinet Office by the Ministry concerned for publication in the Official Gazette prior to introduction into the House of Assembly. The Editor of the Gazette prepares the copies for the Action Sheet).
  
- (b)
  - (i) Annual Reports
  - (ii) Quarterly Statements of transactions in Crown Lands
  - (iii) Financial Statements on the issue of Special Warrants
  - (iv) Copies of Agreements between Government and other parties
  - (v) Other communications and prepared statements by Ministers

(Copies of documents (i) to (v) are forwarded to the Cabinet Office and prepared accordingly).
  
- (c) Answers to Questions, after they have been approved by Cabinet
  
- (d) Bills which have been approved by Cabinet and prepared for introduction into the House of Assembly
  
- (e) Amendments to Bills before the House of Assembly which have been approved by Cabinet (or by discussion between Ministers)
  
- (f) Motions by Government for Resolutions

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24. For uniformity and to ensure that action is promptly taken on Cabinet decisions, fair copies of Answers to Questions, Communications and Resolutions are prepared in the Cabinet Office.

### **IV. Passage Through the Parliament**

25. Following on paragraph 17, if the Speaker authorises printing in advance of introduction or if the House authorises printing on introduction, the Clerk of the House of Assembly obtains the first proof from the printer which he sends direct to the Director of Legal Affairs for checking.

26. The Director of Legal Affairs, when satisfied, authorises printing and sends the approved printer's proof back to the Clerk of the House of Assembly.

27. The Bill is taken through its various stages in the House of Assembly and the Senate following the Rules of the respective legislative Houses.

28. Should occasion arise for an amendment to the Bill during the Committee stage it may be settled by informal discussion between members of the Government Bench, referring to the Director of Legal Affairs as may be necessary, or by postponing action on the Bill until a formal decision of Cabinet can be obtained in the usual way.

### **V. Register of Bills**

29. The Secretary to the Cabinet keeps a Register of Bills which shows the progress of a Bill from inception as a subject for legislation until the Act is brought into force.

30. The Clerk of the House of Assembly also keeps a register of all Bills from the time the House of Assembly is first notified, showing the stages through which it passes in both Houses until it has received assent and has been published.

31. The Permanent Secretary of the Ministry responsible for a Bill should take care to keep track of the progress of the Bill, referring to the Secretary to the Cabinet or the Clerk of the House of Assembly as may be necessary.

32. The Secretary to the Cabinet should arrange for a list of Pending Legislation to be put before Cabinet from time to time so that a general review of the state of progress of legislation can be held and priorities for drafting be allocated.

### **VI Assent**

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33. When a Bill has been passed by both Houses the original copy signed by the President of the Senate, the Speaker and the Chief Clerks of both Houses is sent by the Speaker to the Secretary to the Cabinet.

34. Having been passed by the House of Assembly, a copy of the Bill certified by the Clerk of the House is sent to the Cabinet Office and put on the relevant Act file.

35. Having been passed by the Senate, a copy of the Bill certified by the Clerk of the Senate is sent to the Cabinet Office; this is also placed on the relevant Act file.

36. When a Bill is passed only by the House of Assembly under the terms of Articles 60 or 61 of the Constitution, the Speaker sends a copy with the necessary additional Certificate signed by himself and the Chief Clerk of the House of Assembly to the Secretary to the Cabinet, together with two authenticated copies.

37. The file with the two certified copies thereon is then sent to the Director of Legal Affairs with a request for the Assent Certificate of the Attorney General.

38. The Clerk of the House of Assembly will meanwhile send six copies of the Bill to the Cabinet Office:

- (a) the original (with the green ribbon)
- (b) two authenticated copies (with a Certificate signed by both himself and the Clerk of the Senate)
- (c) three other copies

39. A large red Seal is placed on the top right hand corner of the two authenticated copies and the word "GOVERNOR-GENERAL" is written above the Seal. UNDER NO CIRCUMSTANCES SHOULD ONE PLACE THE SEAL ON OR WRITE ON THE ORIGINAL.

40. Having received the Assent Certificate from the Attorney General, the original Bill, the two authenticated copies and the Assent Certificate are placed on the file and sent to the Governor-General with a minute from the Secretary to the Cabinet conveying Cabinet's advice that the Governor-General should assent to the Bill.

41. The words of enactment are set out in Section 9 (2) of the Interpretation and General Clauses Act. The restrictions and limitations placed upon the powers of the Senate as stated in Articles 60 and 61 of the Constitution should be carefully noted.

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42. The Governor-General generally acts on the advice of Cabinet or of a Minister acting under the general authority of Cabinet (Article 79 of the Constitution). This general authority has been given by Cabinet to the Prime Minister in this matter. The Secretary to the Cabinet is normally the official responsible for "conveying the decision of Cabinet to the appropriate person or authority"; it is therefore the Secretary to the Cabinet who should convey Cabinet's advice to the Governor-General that he should assent to a Bill. This advice would not be given until after the Attorney General has signed an Assent Certificate saying that from the legal point of view it would be proper for the Governor-General to assent to the Bill.

43. The Secretary to the Cabinet obtains the Prime Minister's advice to the Governor-General, or in certain circumstances the advice of Cabinet, regarding the granting or withholding of assent and passes that advice together with the original Bill, the two authenticated copies and the Attorney General's Assent Certificate to the Governor-General.

44. The Governor-General, after giving assent and affixing the Public Seal on the authenticated copies, returns the signed original and the authenticated copies to the Secretary to the Cabinet.

45. It is desirable to save confusion over numbering; therefore, whenever possible, all Bills passed by the Parliament in one year should be assented to before the end of the year.

46. The original is given a chronological number in the Register of Acts in the Cabinet Office and is sent by the Secretary to the Cabinet to the Registry of Records for safekeeping.

47. The number and the date of assent are written on the two authenticated copies which are then sent to the Governor-General.

48. At the same time the Secretary to the Cabinet arranges for the Act to be published in Supplement Part I of the Gazette at the earliest opportunity and will inform the Permanent Secretary of the Ministry concerned.

### **VII. Date of the Commencement of an Act**

49. An Act comes into operation on the date of assent (subject to the provisions of Section 15 of the Interpretation Act Chapter I regarding reserved Bills) unless it contains within itself provision for some other date of commencement. For example, some Acts come into force on a date to be notified in the Gazette; sometimes different parts of an Act come into force on a date to be notified in the Gazette; sometimes different parts of an Act come into force at different times. The Permanent Secretary in the Ministry responsible for a Bill is responsible for ensuring that the

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necessary order bringing a Bill into effect is made and published when one is required. There are times when reference to Cabinet may be necessary. The Registers kept by the Secretary to the Cabinet and by the Clerk of the House of Assembly should help as reminders of this.

50. The Clerk of the House of Assembly is responsible for inserting in the final printed copies of the Act the date of assent and also the date of commencement if that differs from the date of assent.

### **VIII. Private Bills**

51. Should a Representative of the House of Assembly introduce a Private Bill Cabinet will need to consider the policy to be adopted towards the Bill at an early stage, whether to oppose it or to permit its passage with or without amendments.

### **XI. Preparation and Making of Subsidiary Legislation**

52. Normally the same procedure for the drafting, consideration and approval by Cabinet of Bills would be followed in regard to the preparation of subsidiary legislation.

53. All subsidiary legislation should go through the Attorney General's Chambers and the fair copy of the draft be sent by the Attorney General to the Minister. When instructing the Attorney General's Chambers in regard to subsidiary legislation, the Permanent Secretary should state whether or not a sufficient number of copies for Cabinet is required.

54. Some Bills cannot be fully effective without the relevant Rules or Regulations and therefore in the course of progress of a Bill from the early stages up to enactment, Permanent Secretaries should keep in mind the need for drafting instructions to be given to the Attorney General's Chambers for such subsidiary legislation.

55. When subsidiary legislation has been prepared by the Attorney General's Chambers it is sent with all copies to the Ministry concerned whether the draft was for submission to Cabinet or for final signature and gazetting.

56. When the draft subsidiary legislation is to go to Cabinet the Permanent Secretary would send the additional copies to the Cabinet Office with the draft covering Cabinet memorandum.

57. The Director of Legal Affairs will arrange for the approved copy of the draft of an instrument of subsidiary legislation to be initialled. This copy will be retained for record on the Ministry's file on the subject.



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58. When the subsidiary legislation requires the Governor-General's signature the Permanent Secretary would submit the draft on the file direct to Government House and not send it through the Secretary to the Cabinet.

59. After signature the Permanent Secretary would keep the signed copy on the file and send the copies for the Gazette to the Cabinet Office on the file for publication in the Gazette and distribution to newspapers. When the instrument has been published, a copy of it taken from the Gazette should be placed in the file for record purposes.

60. The Secretary to the Cabinet would send to the Minister, the Prime Minister and the Leader for Government in the Senate copies of the signed Instrument to be laid on the Table of both Houses of the Legislature.

### **X. Date of Commencement of Subsidiary Legislation**

61. All rules or orders made under any Act shall, unless a contrary intention is expressed within the instrument itself, come into force on the date of publication in the Gazette.