



**ATTORNEY-GENERAL'S CHAMBERS
BERMUDA**

LEGISLATIVE DRAFTING PROTOCOLS

2025 Edition – Revision 1

**ISSUED BY
THE
ATTORNEY-GENERAL
OF
BERMUDA**

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INTRODUCTION

The Legislative Drafting Section of the Attorney-General's Chambers provides an important service to the Government and people of Bermuda. Our work has socio-economic and international impact to our citizens and those who enjoy working here or visiting the island.

The Parliamentary Counsel of this Section are all qualified attorneys who specialize in legislative drafting.

Fashioned after comparable Commonwealth Legislative Drafting Offices, we provide our protocols for working with Parliamentary Counsel. These protocols are meant to inform those who interact with the Legislative Drafting Section on the procedures to be adopted when moving Government initiatives from policy to law.

These protocols reiterate the practices that have existed for quite some time and provide details on what is required during the legislative drafting process, the time periods required for the completion of legislative matters, and the roles and responsibilities of the various individuals involved in the legislative drafting process.

Dated this day of 2025

Attorney-General of Bermuda

A. PROTOCOL REGARDING THE RECEIPT AND REVIEW OF CABINET MEMORANDA

1. This Protocol is intended to guide the process by which Cabinet Memoranda, *relating to legislation*, will be received, and reviewed by the Attorney-General's Chambers to make a determination on whether there are any legal objections to the proposed legislation.
2. For Parliamentary Counsel in the Attorney-General's Chambers to determine whether any legal or constitutional impediments arise in respect of a proposed policy for legislative change, the following protocols are established:
 - a) Cabinet Memoranda in draft form¹ must be sent and addressed to the Chief Parliamentary Counsel (CPC). The CPC will assign, within 5 working days, a Parliamentary Counsel to review the draft Cabinet Memoranda, advise and progress.
 - b) Parliamentary Counsel will, within 10 working days from the date of assignment, advise the sponsoring Ministry via the Permanent Secretary (PS) of any legal or constitutional objections or other deficiencies².
 - c) Where legal or constitutional objections or deficiencies arise, Parliamentary Counsel will inform the sponsoring Ministry, return the Cabinet Memoranda, and advise of next steps (the Attorney-General (A-G) and CPC will be copied for information).
 - d) Where no legal or constitutional objections or deficiencies arise, the PS of the sponsoring Ministry will be notified by Parliamentary Counsel and final Cabinet Memoranda³ will be requested to be sent addressed to the A-G and copied to the CPC. Assigned Parliamentary Counsel will, within 5 working days, conduct a final review and will submit to the A-G for approval and sign-off.
 - e) Subject to any queries or comments that the A-G may have (which will need to be first addressed), the A-G may sign off on the Cabinet Memoranda within 5 working days. Once the A-G has signed-off and the Cabinet Memoranda is returned to Parliamentary Counsel, the sponsoring Ministry will, within 2 working days, be notified to collect and advised of next steps following Cabinet approval.

¹ Draft Cabinet Memoranda must be in electronic form and should meet the established standards required as determined by the 'Drafting Cabinet Memorandum' course facilitated by the Department of Employee and Organizational Development (i.e. formatting, policy sufficiently settled and articulated, affected Ministries identified and consultation undertaken) but need not have Ministerial sign-off.

² Deficiencies include Cabinet Memoranda not satisfying established standards, lack of clarity around the policy, etc.

³ Final form Cabinet Memoranda must be in electronic and hardcopy form, have a covering letter dated and signed by the PS of the sponsoring Ministry and the Cabinet Memoranda must be signed by the sponsoring Minister and be initialed by all Ministers with whom consultation is stated therein to have been had.

B. PROTOCOL REGARDING THE DRAFTING PROCESS

1. This Protocol is intended to guide the process by which the drafting of legislation will commence and be progressed by the Attorney-General's Chambers, from the articulation of the policy via drafting instructions to its translation into draft legislation.
2. For Parliamentary Counsel in the Attorney General's Chambers to adequately translate policy into legislation, the following protocols are established:
 - a) The Cabinet Conclusion is sent directly to the CPC by the Cabinet Secretary in soft copy and hard copy to follow.
 - b) The PS of the sponsoring Ministry must provide detailed and comprehensive drafting instructions⁴ to the assigned Parliamentary Counsel (copying in the CPC).
 - c) Drafting will commence **only** after the receipt of the Cabinet Conclusion and such detailed and comprehensive drafting instructions.
 - d) Parliamentary Counsel will, within 10 working days from the date of receipt of the Cabinet Conclusion and accompanying drafting instructions, make a determination as to whether drafting can proceed on the basis of the drafting instructions or will provide correspondence explaining the deficiencies in the drafting instructions.
 - e) In the event of deficient drafting instructions, Parliamentary Counsel will copy the CPC on correspondence to the sponsoring Ministry explaining the deficiencies.
 - f) In the event that the drafting instructions are sufficient, the Parliamentary Counsel will begin to draft the legislation, noting that consideration must be provided for the number of items previously assigned to the Parliamentary Counsel.⁵ Parliamentary Counsel will update the Ministry via the Legislative Agenda regarding the status of their legislation.
 - g) Where a variation or additional drafting instructions are submitted during the drafting process, those drafting instructions must also be detailed and comprehensive and must be communicated in writing by the PS of the sponsoring Ministry or such policy analyst or other technical person as directed by the PS of that sponsoring Ministry.

⁴ The drafting instructions template can be provided and should be completed in its entirety, which will require the Ministry's policy to have been sufficiently developed and settled.

⁵ As legislative initiatives are continuously sought, as can be seen from the Legislative Agenda, Ministries must be mindful that their initiative will be added to the desks of Parliamentary Counsel who are already working on other legislative matters.

- h) Where there is a team of persons responsible for providing feedback and/or further drafting instructions or where there are meetings where feedback or further drafting instructions are generated, that feedback and/or further drafting instructions must be compiled, consolidated and communicated in writing by the PS of the sponsoring Ministry, the policy analyst or other technical person as directed by the PS of that sponsoring Ministry to Parliamentary Counsel.
- i) If during the drafting process issues arise which, in the opinion of Parliamentary Counsel, could create the potential for legal exposure for the Government, the sponsoring Ministry will be advised to seek legal advice from the Ministry's representative counsel in the Civil Advisory Section of Chambers, via the Solicitor General or the Crown Counsel responsible for that Ministry, copying in the relevant PC and CPC.
- j) If, during the drafting process, there are policy or legal issues that cannot be resolved, a meeting with the A-G, CPC, Ministry representatives, along with the relevant Parliamentary Counsel can be scheduled with a view to resolving issues.

C. PROTOCOL REGARDING THE ATTORNEY-GENERAL'S LEGISLATION COMMITTEE (LEGCO)

1. This Protocol is intended to guide the process immediately prior to, during and after LegCo.
2. For Parliamentary Counsel in the Attorney-General's Chambers to finalize draft legislation for Cabinet's approval to Table or lay before the Legislature, the following protocols are established:
 - a) Once the sponsoring Ministry has indicated that the draft legislation satisfies the proposed policy intent and all policy matters are settled and sufficiently provided for in the draft, the assigned Parliamentary Counsel will submit the draft for Chambers' internal due diligence process, including a review by the Legislative Editor. The time required for these internal due diligence processes⁶ will vary depending on the following:
 - (i) priority legislation as determined by Cabinet will be reviewed first;
 - (ii) date of Ministry approval (in relation to the anticipated Tabling date/term);
 - (iii) size and complexity of the draft legislation;
 - (iv) the volume of legislative matters that are submitted for the internal due diligence process.
 - b) Once the draft legislation has been subjected to the internal due diligence process and the necessary changes made, the draft legislation will be placed on the agenda for the next available LegCo date.
 - c) Should any substantial changes be required as a result of the internal due diligence process, the Ministry will be notified by the assigned Parliamentary Counsel, and Ministry approval will be sought on the revised draft legislation prior to the draft legislation being placed on the LegCo agenda.
 - d) No fewer than 10 working days prior to the desired date for Tabling or making, Parliamentary Counsel will submit to the A-G the draft legislation to be reviewed by LegCo.
 - e) The A-G chairs and is responsible for the convening of LegCo.

⁶ This process will include CPC and/or other peer review and review by the Legislative Editor.

- f) LegCo must be attended by the A-G, CPC, Parliamentary Counsel, the sponsoring Minister, PS of the sponsoring Ministry, policy analyst and any technical person responsible for policy development or providing drafting instructions. Where other Ministries may be affected by the proposed legislation, those Ministries should also be represented⁷ at LegCo.
- g) Where LegCo approval is not given, the CPC will advise the sponsoring Ministry of the reasons and Parliamentary Counsel will advise of next steps, which may include going through protocols (a) to (e) listed above again.
- h) Where LegCo approval⁸ is given, the CPC will notify the sponsoring Ministry, and the assigned Parliamentary Counsel will advise of next steps.
- i) In the case of minor or straightforward legislation and with the agreement of the sponsoring Ministry, the A-G may be invited to give electronic approval without the need for a formal LegCo meeting.

⁷ In such cases, the PS, policy analyst or other technical person assigned by the PS must attend.

⁸ This includes any approval given by the A-G electronically as a substitute for a formal LegCo meeting.

D. PROTOCOL REGARDING THE ROLE OF PARLIAMENTARY COUNSEL AND LEGISLATION BEFORE THE LEGISLATURE

1. This Protocol is intended to guide the process immediately prior to, during and after legislation is debated before the Legislature.
2. For Parliamentary Counsel to provide assistance to sponsoring Ministries in respect of legislation to be debated in the Legislature, the following protocols are established:

For legislation subject to the affirmative resolution procedure—

- a) Once LegCo approval has been given, the PS of the sponsoring Ministry will submit to Cabinet a Cabinet Memorandum (attaching the draft legislation) seeking approval to Table the legislation, which is subject to the affirmative resolution procedure, in the Legislature.
- b) Should Cabinet approve the Tabling of the legislation, the PS of the sponsoring Ministry will notify the Parliamentary Counsel of the approval, and then request electronic copies (e-copies) of the legislation for Tabling.
- c) The sponsoring Ministry's request for e-copies for Tabling must be made at least 5 working days prior to the desired Tabling date and will be sent to the Ministry (either by the Parliamentary Counsel or one of the Legislative Drafting Section's administrative staff), along with information as to next steps, within this period.
- d) It is the sponsoring Ministry's responsibility to provide the Tabling version of the legislation to the Legislature by 5pm the workday before the relevant House or Senate sitting.⁹ The email to be used is: tabling@parliament.bm.
- e) Draft Ministerial Briefs in respect of legislation to be debated in the Legislature must be submitted for review by Parliamentary Counsel, to ensure that the Brief properly accords with the Tabled legislation, at least 7 working days prior to the legislative debate, and Parliamentary Counsel will within that period advise as to any concerns with that Brief that are contrary to the legislation.

⁹See the Office of the Legislature Bermuda's "House/Senate in-Chamber Protocols + Tabling Procedures for PSE and Technical Officers".

- f) Parliamentary Counsel will provide remote assistance to the Minister via the PS or other technical person assigned by the PS during the legislative debate in the House of Assembly and the Senate.
- g) Where a Parliamentary Counsel is requested by the Minister to be present in the Chamber during legislative debate for detailed or complex legislation, advanced notice (5 working days prior to the legislative debate) should be provided by the PS of the sponsoring Ministry to the Parliamentary Counsel.
- h) In the event of any changes to the Legislature's Order Paper, the CPC and Parliamentary Counsel must be notified as soon as possible.

For legislation subject to the negative resolution procedure—

- i) Once LegCo approval has been given, Parliamentary Counsel will provide a clean e-copy for the making/publishing of such legislation.
- j) The Minister must sign the legislation, and the Ministry will send an e-copy of the signed legislation to the Parliamentary Counsel (for publication purposes). The Ministry will also send to the attention of the assigned Parliamentary Counsel the original signed copy of the legislation.
- k) After the legislation has been published, the Ministry is responsible for ensuring that it is laid in both Houses as soon as is practicable after it has been made, in accordance with section 8 of the Statutory Instruments Act 1977.

E. PROTOCOL REGARDING LEGISLATION NOT SUBJECT TO PARLIAMENTARY SCRUTINY

1. This Protocol is intended to guide the process by which legislation that is not subject to parliamentary scrutiny will be received and reviewed by the Attorney-General's Chambers.
2. For Parliamentary Counsel in the Attorney General's Chambers to adequately translate policy into legislation, the following protocols are established:
 - a) The PS of the sponsoring Ministry must provide detailed and comprehensive drafting instructions¹⁰ to the CPC.
 - b) The CPC will assign the matter to a Parliamentary Counsel.
 - c) Parliamentary Counsel will, within 10 working days from the receipt of the drafting instructions, make a determination as to whether drafting can proceed on the basis of the drafting instructions provided or will provide correspondence explaining the deficiencies in the drafting instructions.
 - d) In the event of deficient drafting instructions, Parliamentary Counsel will copy the CPC on correspondence to the sponsoring Ministry explaining the deficiencies.
 - e) In the event that the drafting instructions are sufficient, the Parliamentary Counsel will begin to draft the legislation, noting that consideration must be provided for the number of items previously assigned to the Parliamentary Counsel.¹¹ Parliamentary Counsel will update the sponsoring Ministry via email regarding the status of their legislation.
 - f) Once the sponsoring Ministry has indicated that the draft legislation satisfies the proposed policy intent and all policy matters are settled and sufficiently provided for in the draft, the assigned Parliamentary Counsel will submit the draft for Chambers' internal due diligence process, including a review by the Legislative Editor. The time required for these internal due diligence processes¹² will vary depending on the following:

¹⁰ The drafting instructions template can be provided, and should be completed in its entirety, which will require the Ministry's policy to have been sufficiently developed and settled.

¹¹ As legislative initiatives are continuously sought as can be seen from the Legislative Agenda, Ministries must be mindful that their initiative will be added to the desk of Parliamentary Counsel who are already working on other legislative matters.

¹² This process will include CPC and/or other peer review and review by the Legislative Editor.

- (i) priority legislation as determined by Cabinet will be reviewed first;
 - (ii) date of Ministry approval (in relation to the anticipated publication date);
 - (iii) size and complexity of the draft legislation;
 - (iv) the volume of legislative matters that are submitted for the internal due diligence process.
- g) Once the draft legislation has been subjected to the internal due diligence process and any necessary changes made, the draft legislation will be sent to the sponsoring Ministry either for:
 - (i) review (if any substantial changes were made during the internal due diligence processes) and approval;
 - (ii) signature by the relevant person (Minister, Director, etc.) as provided in the signature line of the legislation.
- h) When the requisite signature has been acquired, the Ministry will send an e-copy of the signed legislation to the Parliamentary Counsel (for publication purposes). The Ministry will also send to the attention of the assigned Parliamentary Counsel the original signed copy of the legislation.

F. PROTOCOL REGARDING THE OUTSOURCING OF LEGISLATIVE DRAFTING PROJECTS

THIS PROTOCOL IS ONLY TO BE USED FOR DRAFTING PROJECTS APPROVED BY THE ATTORNEY-GENERAL IN WRITING WHICH ARE COMPLEX AND REQUIRE TECHNICAL EXPERTISE IN A PARTICULAR AREA OF LAW.

1. This Protocol is intended to guide what explanatory material would be required where a Ministry determines, after consultation with and approval by the A-G, to outsource a complex and technical legislative drafting project.
2. For Parliamentary Counsel in the Attorney-General's Chambers to advise the A-G with regard to the draft legislation, any illustrative draft legislation must be accompanied by:
 - a) Detailed policy by way of drafting instructions.¹³
 - b) An explanatory memorandum to indicate how each provision in the illustrative draft legislation is intended to give effect to the Ministry's policy.
 - c) A memorandum setting out the constitutional and other legal issues specific to Bermuda that were considered during the drafting process, and any other relevant supporting documents/cases that were relied on in formulating the illustrative draft legislation.
 - d) A copy of all relevant case law relied upon.
 - e) A table of derivations to show, provision by provision, which laws from other jurisdictions were used as a model for the draft legislation, and a note specifying the jurisdiction(s) selected as a precedent and the rationale behind selecting the jurisdiction(s), as we will need to follow the development of any jurisprudence for the model and case law. A copy of relevant legislation and case law referred to in the table of derivations must also be provided.
 - f) Confirmation on whether the jurisdiction(s) selected as a precedent has a written constitution, Bill of Rights, or similar document. Provide a copy or a link.
 - g) A copy of all comments received during the consultation process and a note explaining how the comments have been considered, or reasons for not doing so.

¹³ Template can be provided.

- h) Copies of all previous legal advice given in relation to the legislative project.
- i) In the case of subordinate legislation, for each provision of the illustrative draft, the enabling provision of the Act from which authority is derived.