



# Current Drafting Practice

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## 1 What is current drafting practice?

Current drafting practice is the extensive and specialised set of knowledge and principles used by the Jersey Legislative Drafting Office (LDO) to prepare and maintain modern and clear legislation. Current drafting practice is changing all the time as needs change and as new ways are found to improve the legal clarity, cohesion and readability of the statute book (the collection of all current legislation).

Current drafting practice is the current drafting practice for the time being adopted by the Legislative Drafting Office. See Article 1 of the [Legislation \(Jersey\) Law 2021](#) (the ‘Legislation Law’).

This document is a summary of some key elements of that practice. The nature and detail of drafting practice means this document cannot cover everything, and different parts of the statute book may require different approaches.

Because of these considerations, this document only summarises key principles and provides examples.

The principles outlined in this document apply only to draft legislation currently being prepared and to consolidated legislation (as defined in the Legislation Law). Previously enacted legislation and other collections (such as the former Revised Edition) are historical and reflect the drafting practice at the time they were drafted or prepared, and do not necessarily follow the current practice set out here. This document is also only an outline of the usual practice followed by the LDO. In some cases, a legislative drafting project may require a variation of a usual drafting practice, particularly when amending older legislation.

## 2 What is current drafting practice used for?

Current drafting practice guides:

- day-to-day decisions by drafters in the LDO about the best approach and wording when writing new legislation,
- decisions by the Principal Legislative Drafter about formatting and presentational changes to legislation under Article 14(3) of the Legislation Law so that current drafting practice is followed,
- changes to legislation made by the Law Revision Board under Schedule 1 to the Legislation Law.

It is the role of the LDO to follow current drafting practice in the development and updating of legislation to ensure that legislation is legally clear and readily understood.

Legislation that does not use appropriate and Jersey-specific drafting practice may not achieve its objectives, and if it does not adapt to changing requirements may not, over time, meet the needs of government or society.

### Exceptions

It is the nature of drafting that almost any rule or guideline will have exceptions – circumstances where it should not be applied. The personal preferences of the department, Minister, policy officer,

drafter or anyone else are not relevant for determining an exception – but the legal needs and coherence of the statute book are.

### 3 Authority

This document is published by the Principal Legislative Drafter under Article 20(f) of the Legislation Law.

This document will be amended from time to time. The latest version will be available at <https://www.gov.je/Government/NonexecLegal/StatesGreffepages/legislativedraftingoffice.aspx>. However, this document is only a summary guide and the nature and application of current drafting practice in any particular case is always as determined by the LDO.

### 4 About the Jersey Legislative Drafting Office

The LDO is named under and has the functions stated in the Legislation Law, and is a continuation of the former Law Draftsman's Office.

The LDO does not propose, and is not responsible for, the policy contained in legislation. The LDO drafts (that is, writes) legislation on the instructions of government Ministers and their departments and occasionally other persons or bodies (such as Scrutiny Panels or individual Members of the States Assembly who may also request amendments). As part of this process, the LDO may provide advice to those parties to ensure the proposed legislation meets the requirements and standards of Jersey legislation and current drafting practice.

Legislative drafting is a highly specialised field. The LDO comprises legally-trained professional legislative drafters with extensive drafting experience (often across multiple jurisdictions) and a small team of editorial support staff. It is headed by the Principal Legislative Drafter. The LDO has, over many years, developed drafting practices and precedents that it uses to ensure that legislation is drafted in a consistent and logical way. Policy officers and departments who instruct the LDO rely on this expert and experienced drafting service (including its drafting practices) to produce legally effective, consistent and coherent legislation. Laws and other legislation are enacted or made on this understanding. This current drafting practice is a guide to some of the principles used to make decisions about that drafting process.

Administratively the LDO is part of the States Greffe, Jersey's parliamentary office.

### 5 What the LDO drafts

The legislation drafted by the LDO mainly consists of:

- Laws (passed by the Assembly and approved by His Majesty in Council),
- Subordinate instruments:
  - Regulations (passed by the Assembly), including Triennial Regulations which expire after 3 years,
  - general Orders (made by Ministers),
  - legislative Acts (passed by the Assembly), which are mostly Commencement Acts (a way of bringing Laws into force),
  - commencement Orders,
  - some Bye-laws and other instruments,
  - some Rules of Court,

- amendments to legislative propositions in the Assembly (that is, amendments proposed by Members to draft Laws, Regulations and Acts).

Current drafting practice applies to all these types of legislation.

The LDO does not draft Orders in Council, which extend UK legislation to Jersey and modify it. The Law Officers' Department generally manages the Jersey elements of those Orders. LDO's current drafting practice does not apply to the text of Orders in Council applied to Jersey, which follow the practices of the UK. However, layout and presentational styles are applied to those instruments to assist access and readability.

Under the Legislation Law, the LDO:

- makes minor modifications to legislation, and
- prepares proposed revisions to legislation for approval by the Law Revision Board.

Current drafting practice informs and determines how those modifications and revisions are assessed and prepared.

Official consolidated legislation is prepared and maintained by staff at the LDO as an intrinsic part of the drafting work and as required by the Legislation Law, and is also affected by the application of current drafting practice.

## 6 General principles of legislative drafting

The LDO follows modern drafting practice as used in Commonwealth legislative drafting offices. That includes practices such as –

- plain language drafting (see the 'Plain language' section), including use of consistent structure and gender-silent language,
- using precedents from existing legislation or the legislation of other jurisdictions only if they are modified to operate effectively with other Jersey legislation and within the Jersey legal system, and are fit for the purpose of the new legislation,
- supporting the use of technology and reading or analysis of legislation by computers.

LDO current drafting practice tailors Commonwealth drafting practice:

- to the particular features of the Jersey legal system, which include customary law considerations, and a statute book that is centuries old and partly in English and partly in French, and
- to the principles set out in the [Interpretation \(Jersey\) Law 1954](#) (the "Interpretation Law"), and other significant governing laws, and
- to elements of local style and context.

The building blocks of modern drafting practice are covered extensively in other sources including (but not exhaustively):

- "Commonwealth Legislative Drafting Manual" by Roger Rose
- "Thornton's Legislative Drafting" by Helen Xanthaki
- "Legal and Legislative Drafting" by Paul Salembier.

Legislative drafting is guided by the principles of statutory interpretation. There are several statutory aids to interpretation of legislation in Jersey, including:

- The interpretation provision included in that legislation.
- If the legislation is made under a provision of another Law or Regulations, the interpretation provision in that Law or Regulations (because definitions flow through).
- The Interpretation Law, which is a commonly overlooked but important guide to statutory interpretation. The provisions of that Law provide uniformity of interpretation across the statute book, avoid unnecessary repetition and are relied on except in some specific areas.
- Other important general statutory provisions on interpretation found in the [Human Rights \(Jersey\) Law 2000](#), and more specific provisions found in Laws such as the [European Union Legislation \(Implementation\) \(Jersey\) Law 2014](#) and the [Electronic Communications \(Jersey\) Law 2000](#).

## 7 Layout and presentation

Jersey legislation uses standard page layouts, fonts, indenting and other features to create a consistent statute book, to improve navigation, readability and accessibility and to support functions on the [jerseylaw.je](#) website or other needs such as use in multiple formats (for example, PDF and HTML).

Some heading and similar styles are specifically used because they help the reader understand what provisions they are looking at, and also aid in locating provisions by supporting navigation features (eg generated lists of contents).

Style and layout are revised from time to time by the LDO to meet changing needs. These changes may be applied to future legislation and to consolidated legislation, but are not applied to already enacted legislation.

Any proposed non-standard styles or layouts are changed to meet these needs, to make the legislation usable and to support future updating.

## 8 Parts of legislation

Legislation at proposed, enacted and consolidated stages has standard parts in the following order:

- Covers (Assembly and consolidated versions). Covers provide information about the legislation, but are not part of it.
- Report:
  - a departmental overview of the policy reason for the proposed legislation
  - included in propositions in the Assembly for draft Laws, Regulations and Acts
  - included in the Ministerial Decision for Orders (in the form of reasons for the decision)
  - part of the Assembly process rather than the legislation.
- Explanatory note:
  - pre-enactment versions only
  - part of the Assembly or enactment process rather than the legislation.
- Table of Contents (if needed). The Contents is a navigation aid only and not part of the legislation.
- Long title (Laws only). A summary of the purpose of a Law.
- Preamble (if any, rare).
- Enacting words. A statement of the authority for making the legislation.
- Main provisions. A set of numbered provisions, usually in the following order:

- Interpretation provision (if any). See section [12.1](#).
- Substantive provisions
- Transitional provisions, repeals, amendments (if any)
- Citation (also called the short title) and commencement (ie when the instrument comes into force)
- Schedules (if any).
- Endnotes – notes about references and amendments, if any. The Endnotes are not part of the legislation.

The following sections contain more detail about some of these elements.

## 9 Explanatory note and Report

### 9.1 Nature and contents

The Explanatory note gives information about the legal effect of the proposed legislation. It is not about the policy or political justification for the legislation, but is a description of what the legislation does. It is written by the LDO. Its purpose is to assist States Assembly members and other readers of legislation to understand the legislation.

The Report gives the policy justification for the legislation and is produced by the instructing officer.

### 9.2 General structure

All Articles (or Regulations) are referred to and explained in the Explanatory note, either individually or collectively, except if the instrument is very simple and a statement of the main purpose covers the detail of the instrument.

Some specific standard elements of Explanatory notes are described below, as these are important for the transparency of legislation.

### 9.3 Penalties for offences

If the legislation includes a criminal offence, specific detail is provided about the penalty in the Explanatory note, ensuring the effect of Article 13 of the Interpretation Law is clear to readers. Under that Article:

- prison terms and fine levels are maximums rather than mandatory
- if a fine is imposed but the level is not specified, the fine is of an unlimited amount penalties joined by “and” can be alternative or cumulative.

If the penalty is a fine at a level on the standard scale under the [Criminal Justice \(Standard Scale of Fines\) \(Jersey\) Law 1993](#), the amount of a fine at that level is stated in the Explanatory note, and more information on the standard scale given if needed.

### 9.4 Fee increases

If legislation includes fee increases, the size of the increase is stated in the Explanatory note, for example by giving a percentage, by stating the existing fee, or by some other means that is not misleading. If it is not a routine increase (eg in terms of the time since the last increase or the amount of the increase), the Explanatory note may also state extra information about the context of the fee change, such as when the fee was last increased (or when it was originally set, if this is the first increase). The policy Report, rather than the Explanatory note, may cover issues relating to whether an increase exceeds the target rate set by the government in its [anti-inflation](#) strategy and whether Treasury approval has been obtained.

## 10 Enacting words

The enacting words are a standard description of who is making the legislation and, in the case of subordinate legislation, under what power of the enabling Law or Regulations it is made (often called vires).

To show the reader appropriate processes have been followed, and to make sure key stages are not overlooked, if the enabling legislation requires the consent of, or consultation with, a particular person for the making of the legislation, that requirement is stated in the enacting words. However, general consultation with interested persons is generally not mentioned in detail. The policy Report, rather than the enacting words, addresses how preconditions have been met.

## 11 Main provisions

The logical and consistent physical structure of legislation is essential to support navigation, readability and comprehension of provisions and the relationships between them, to provide consistency across legislation to support understanding of how it operates, and to support cross-referencing and avoid confusion and conflicts in references and future updates.

### 11.1 Articles, Regulations etc

The main provision of legislation always has the same structure but depending on the instrument may have a different name eg Article, Regulation, Rule or Bye-law. In Schedules, the equivalent provision is called a paragraph.

Standard provision numbering and references:

<b>2</b>	<b>[Article heading]</b>
(1)	[Paragraph] –
(a)	[sub-paragraph] –
(i)	[clause] –
(A)	[sub-clause], and
(B)	[sub-clause], or
(ii)	[clause]; and
(b)	[sub-paragraph].
(2)	[Paragraph].
<b>3</b>	<b>[Article heading]</b>
	[Text before] –
(a)	[sub-paragraph] –
(i)	[clause] –
(A)	[sub-clause], and
(B)	[sub-clause], or
(ii)	[clause]; and
(b)	[sub-paragraph].

**2**      **[(Schedule) Paragraph heading]**  
    (1)      [Sub-paragraph] –  
            (a)      [clause] –  
                    (i)      [sub-clause] –  
                            (A)      [head], ...

Paragraphs are always a complete sentence, and only one sentence. Each paragraph expresses a discrete idea or matter. This helps keep provisions short and easy for readers to follow.

Sandwich provisions, that is, the use of trailing text after sub-paragraphs and other list structures, are avoided where possible because:

- They do not support plain language use because they keep the reader in suspense about the main effect of the provision, and make it likely that the meaning will not be understood because of the complex structure.
- They rely on formatting (usually an indent) to retain meaning and this can be difficult to guarantee in electronic legislation processing environments across multiple platforms (including those not controlled by LDO).

Excessive subdivision of provisions is avoided. The “(A)” and below levels are very rare. Use of these deep level lists makes working out the meaning and effect of multiple related phrases difficult.

If an amendment inserts a numbered provision into a set of numbered provisions, the provision is numbered “A1”, “A2” etc if it is before “1” and “1A”, “1B” etc if it is after “1”. This consistent numbering approach makes it easier for readers to locate provisions and understand their relationship to each other, and also reduces the risk of duplicate numbering.

There is always introductory text before sub-paragraphs, clauses, and other list structures.

There is a standard style for managing conjunctions and punctuation at the end of list structures, which guides the reader through the provisions by making grammatical connections. In particular, “and” and “or” are not mixed in the same level of a list, and the conjunction is always found after the penultimate item in a list.

## 11.2 Parts, Schedules etc

Parts are used to divide long legislation or to group related provisions.

- Numbered Divisions are used when Parts need to be divided, but this level of subdivision is avoided if possible.
- Divisions are used instead of the previously used unnumbered cross-headings (which cannot be cross-referenced), unless the Part already uses cross-headings.
- If Parts, Divisions etc. are used, all provisions must be included in a Part (or a Division within a Part where they are used) to maintain the logical grouping.



To aid navigation, Parts, Divisions and Schedules always have a number and a heading that briefly states the topic covered. For the same reason, Articles and similar provisions also always have a number and a heading.

Schedules are used where there is discrete material that is separate from the main body provisions or where content that might otherwise be included in the main provisions is long or complex. For example, a series of provisions outlining the functions of a board or long sets of amendments, extensive tables of fees and lists of names etc. The text of forms was previously included in Schedules but is now avoided where possible because it limits the department's options for using and updating the forms. This is an example of previous practice no longer being in use. The LDO determines on a case by case basis what works best for individual instruments and what structure any Schedules take.

Schedules are substantive parts of the text. However, all Schedules have a referring provision in the main body of the instrument to aid navigation.

## 12 Common provisions

Standard provisions in standard locations are used to help create consistency across the statute book and guide readers around legislation.

### 12.1 Interpretation

The opening provisions set the context of the provisions that follow.

In amending legislation, the first provision may be a statement identifying the instrument being amended.

In principal legislation (ie legislation with provisions other than amendments), the general interpretation provision is always the first provision.

Techniques for whether and how definitions are used in legislation include:

- providing definitions based on how often a word or expression is used
- locating significant or complex concepts in their logical place in the legislation and using signpost definitions to point to where they are defined or explained elsewhere in the legislation
- using consistent terminology as the basis for definitions, for example:
  - “means” is used for a comprehensive definition (eg “local competent authority” means any of the following...)
  - “includes” is used for a definition that is non-exhaustive (eg “arrangement” includes an agreement, scheme...)
  - specific wording for conceptual or calculated definitions (eg “construed in accordance with” a provision)
- not duplicating definitions that exist elsewhere in legislation (eg “has the same meaning as in the XYZ Law”)
- relying on definitions in the Interpretation Law to provide for standard and predictable meanings for common things, and not re-stating definitions and not using the same terms to mean other things
- relying on definitions in a Law (or Regulations) for subordinate legislation made under the Law (or Regulations) and not defining the terms again or defining them to mean other things

- relying on Article 2(c) of the Interpretation Law to provide for grammatical variations of defined expressions, so these are not included in definitions.

## 12.2 Repeals and amendments

Any repeals and amendments to other legislation form the penultimate provisions in the body of legislation, with the citation and commencement coming last. Repeal and amendment provisions are often consequential or ancillary, and consolidated versions will usually have the repeals and amendments removed as spent under the Legislation Law. Placing these provisions towards the end keeps the substantive and ongoing provisions grouped at the front of the instrument.

For repeals:

- If subordinate instruments have been made under a repealed enactment or provision, those instruments are impliedly repealed without further action, unless specifically continued, which sometimes happens before new ones are made under a new Law. However, to assist readers and the maintenance of legislation on the [jerseylaw.je](http://jerseylaw.je) website, those otherwise impliedly repealed subordinate instruments are explicitly repealed where possible.
- Articles 5 and 6 of the Legislation Law provide a standard saving of the previous operation of repealed enactments or provisions.
- Any extra savings or transitional provisions needed as a result of the repeal are included in the replacement legislation or as amendments to the legislation they relate to, and are not created as standalone instruments.

To guide readers through amendments and to make sure information is easy to locate:

- The heading to each amending Article/Regulation generally includes the heading of the amended Article/Regulation and the nature of the amendment (eg amended, deleted).
- Amendments are usually set out in the order of the provisions in the legislation they are amending. But sometimes amendments may be grouped out of order to enable their subject and effect to be more readily understood, or to group miscellaneous or unrelated matters.
- Standard amendment wording is used to make amendments easy to prepare and understand.
- Legislation that is primarily amending does not contain standalone provisions such as transitional or savings provisions, which are instead inserted into the legislation being amended.
- Provisions are not renumbered by amendments or under revision powers unless it is absolutely necessary to make legislation work. Renumbering of provisions can cause cross-referencing issues across the statute book and in external judicial or administrative documents, create an extra burden for practitioners and can make it hard for readers to research and understand provisions across time.
- Provision numbers (especially at Article level) left empty by deletions are reused only with care for provisions that cover a different topic, as this can cause referencing problems.

It is up to the LDO to determine if an amendment is needed or appropriate and to ensure that all necessary amendments are made in order to maintain a correct and reliable statute book.

Except in critical circumstances, modifications are not used. Modifications describe a change to the text of legislation without amending it. For example “for the purposes of X [or for a time period], in Article 4(1) of the ABC Law 2023 ‘DEF’ is taken to read ‘GHI’ “. To narrow the effect of the modification, only text changes like this are made, and entire provisions are not inserted, deleted or

replaced. Modifications make it very difficult for the reader to understand the operation of a provision or instrument and can cause updating and currency issues over time.

### 12.3 Citation and commencement

The last provision (other than any Schedules) is always the citation and commencement provision.

Citations (also called short titles) are neutral and consistent formal ways of identifying instruments across the statute book, and follow standard patterns that help readers locate the legislation they are looking for. To support this function:

- Citations must be unique to enable legislation to be unambiguously referenced.
- Citations must not contain political or policy statements or slogans.
- Solely amending instruments are clearly identified.

To improve alphabetical listing and help group related legislation, wherever possible the short title of subordinate legislation starts with the same words as the short title of the legislation it is made under.

If a specific date or a commencement Act or Order is not needed, it is standard practice for legislation to commence 7 days after it is made (or registered) as this provides time so that:

- the public and others have a chance to hear about and prepare for any changes, and
- the Jerseylaw.je website can be updated so it shows the current law.

For urgent legislation (and only for truly urgent legislation), the day after making can be used. Commencement on the day an instrument is made is specifically avoided because of potential issues with retrospective application under Article 3(2) of the Legislation Law.

Standard words are used for describing the coming into force of instruments to make the way legislation operates clear and consistent.

## 13 Plain language

### 13.1 General

The LDO is committed to following modern principles of plain language drafting.

Plain language drafting covers word choice, sentence structure and other similar elements that help avoid legal ambiguity and enable the reader to understand legislation as readily and completely as possible.

Examples of plain language drafting include:

- giving words their meaning in everyday language where possible
- using the same word for the same thing
- using different words for different things
- expressing requirements as simply as the circumstances allow
- using short sentences, with standard conjunctions and paragraphing
- avoiding the use of semi-colons to join independent clauses in one sentence (these separate ideas are instead standalone sentences/provisions/list elements)
- structural choices like:
  - a provision starting with general or main concepts and progressing to the specific and exceptions

- avoiding breaking up provisions into complex numbering hierarchies
- limiting the use of sandwich provisions
- preferring singular to plural and active to passive
- avoiding archaic or unnecessarily legalistic language like “herein” and “mutatis mutandis”
- using “must” instead of “shall” (see below)
- using gender-silent language (see below).

Some fundamental and common applications of these principles are described below as examples, but this section is not exhaustive.

### 13.2 “Must/is” instead of “shall”

“Must/is” is used for required or necessary actions or events, not “shall”. “Shall” is legally ambiguous and confusing, and is now becoming archaic in some circumstances.

“Must” is used for an obligation that is imposed on a person, who might contravene it. The consequences of a contravention are specified unless they are clearly implied (eg in administrative law, if a decision-maker contravenes an express obligation to give one factor particular weight).

If a provision cannot be contravened, then “must” is not used because there is no obligation. In these cases, “is” (or a similar word) is used. For example, “is guilty of/commits”, “is established”, “has effect to”, “is void”, “is of no effect”, “is to be construed as”, “is to be taken to be” (simplified to just “is” where possible), “is amended” etc.

It is not always straightforward to convert older “shall” legislation into “must/is”, so law revision powers under the Legislation Law are not used for these terms.

Amendments to existing legislation use “shall” if “must” could create unnecessary doubt because of the inconsistency with the rest of the legislation, but only if that doubt may arise.

### 13.3 Gender silent language and personal pronouns

The LDO follows modern principles of gender-silent drafting.

Article 2(a) of the Interpretation Law provides for how some gender-specific references are to be interpreted. It is a historical safety-net provision for any male-specific references still on the statute book, but is not relied on in any new legislation. All new legislation is prepared using gender-silent language as much as possible. The LDO uses a range of techniques and conventions in legislation to maintain clarity and inclusivity when preparing gender-silent legislation. These conventions include:

- Repeating elements to avoid unnecessary gender specification and to provide absolute clarity, especially if there is more than one person/party in the provision (“if the Minister is not satisfied, the Minister may”). Use of “he or she” (or any variations) is avoided wherever possible.
- Using the singular “they/them”, but only if there is no possibility of confusion (ie there is only one person in the provision).
- Artificial replacements are not used for generally accepted terms. For example, legal terms like “landlord” are not replaced unless a well-accepted alternative is available. However, a gendered term is not used when a well-accepted neutral option is available. Specifically, “chair” (common in Jersey legislation) or “chairperson” is used and not “chairman”. The gender of an incumbent or any previous practices are not reasons for using a gender-specific term.

The LDO and agencies must comply with modern practices aimed at avoiding discrimination and exclusion.

### 13.4 Interpretation Law terms

Some key common words and expressions are defined in the Interpretation Law. These terms include “person”, “amend”, “under”, “Jersey”, “contravene” and “act”. They are used to provide consistency in legal effect across the statute book.

The Interpretation Law also provides for the interpretation of singular and plural references, but the singular is usually used in legislation unless the context requires otherwise.

### 13.5 Other language style elements

Many decisions about word choice, form and spelling are made for each piece of legislation according to what best suits the context. All these choices are part of current drafting practice and reflect the need to modernise legislation and ensure it reflects the language of Jersey.

Examples include:

- Spelling:
  - To reflect modern British-based English usage, LDO regularly reviews and updates preferred spellings. For example, from 2019 “ise” is used for words with “ise” and “ize” alternative forms. eg “authorise” not “authorize”, “organise” not “organize” etc. Proper names and similar references always keep their original spelling.
  - For internal consistency and searchability, amendments to existing legislation often reflect the spelling in that existing legislation.
- Numerals:
  - To improve the readability of numbers in the text, “one” is a word when used for general purposes, eg “at least one nominated person”, but not for cross-references or units of measurement, eg Article 1, 1 kg.
  - Figures are used for numbers “2” and above, unless they appear at the start of a sentence or provision, or could otherwise cause confusion with the provision numbering or readability.
  - “First”, “second” and so on are used rather than “1st”, “2nd”, except in dates.
  - For dates, ordinal forms like “on 1st October 2014” are used (except in names of EU instruments and their official Journal references).
- Parentheses:
  - Parentheses are generally avoided, except for material that does not change the effect if it is left out. However, as a principle the text of legislation should contain only material that has a legal effect, so parentheses are not commonly used.
  - The most common exception is where clarification is needed to dispel a potentially wrong assumption, for example “(whether [the obvious case] or not)”.

These are just some examples of an extensive array of options and considerations used in developing drafts according to current drafting practice principles.