

DRAFTING PRACTICE MANUAL
LEGISLATIVE DRAFTING OFFICE
JERSEY

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CONTENTS

1.	Introduction	2
2.	Structure of Drafts	3
2.1.	Explanatory Note.....	3
2.1.1.	Nature and contents of Explanatory Note.....	3
2.1.2.	Explanation of penalties for offences	4
2.1.3.	Fee increases.....	4
2.2.	Arrangement	4
2.3.	Long title (Laws only)	4
2.4.	Preambles	4
2.5.	Enacting words	4
2.6.	Interpretation	5
2.6.1.	Positioned at start.....	5
2.6.2.	Nature and purpose of definitions	5
2.6.3.	Particular principles on which we do and do not rely in definitions	5
2.7.	Divisions.....	6
2.8.	Conjunctions and punctuation in broken out lists.....	7
2.9.	Cross-references	8
2.9.1.	Cross-references to our legislation	8
2.9.2.	Cross-references to UK legislation.....	8
2.9.3.	Cross-references to EU legislation	9
2.10.	Repeals and amendments.....	9
2.10.1.	Repeals	9
2.10.2.	Amendments.....	10
2.11.	Citation and commencement	11
2.11.1.	Citation	11
2.11.2.	Commencement	11
2.12.	Schedules.....	12
3.	General	13
3.1.	“Must/is” rather than “shall”	13
3.2.	Offences, aiding and abetting, corporate criminal liability	13
3.2.1.	Standard offence wording.....	13
3.2.2.	Aid, abet, etc.....	13
3.2.3.	Corporate and partnership liability	14
3.3.	Gender neutrality	14
3.4.	Miscellaneous points	15
3.4.1.	“Person”.....	15
3.4.2.	“Amend”.....	15
3.4.3.	“By” and “under”.....	15
3.4.4.	“Contravene” and “act”	15
3.4.5.	Singular and plural.....	15
3.4.6.	Numerals.....	15
3.4.7.	“Jersey”.....	15
3.4.8.	French.....	16
3.4.9.	Spelling “-ise” rather than “-ize”	16
3.4.10.	Parentheses	16
3.4.11.	Spacing	16

1. INTRODUCTION

In the Legislative Drafting Office in Jersey we follow generally accepted good modern drafting practice, as used in Commonwealth legislative drafting offices. That involves practices such as –

- using the same word for the same thing;
- using different words for different things;
- using short sentences, with standard conjunctions and paragraphing;
- preferring singular to plural and active to passive;
- being careful with “any”;
- avoiding archaic or unnecessarily legalistic language like “herein”; and
- limiting use of deeming provisions.

Our drafting practice tailors Commonwealth drafting practice to the particular features of the Jersey legal system, and to the principles set out in the Interpretation (Jersey) Law 1954, Revised Edition number [15.360](#) (the “Interpretation Law”). That is then further supplemented by elements of local style.

This Practice Manual sets out the practices that we follow in Jersey. It generally leaves normal drafting principles to the relevant text books, such as the “Commonwealth Legislative Drafting Manual” by Roger Rose, “Thornton’s Legislative Drafting” by Helen Xanthaki, and “Legal and Legislative Drafting” by Paul Salembier, among others.

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

- The starting point for interpretation of expressions used in a draft is the interpretation provision included in that draft (usually as the first provision – see below at 2.6.1).
- If the draft is to be made under a provision of another Law or Regulations, then the next port of call should be the interpretation provision in that Law or Regulations (as definitions flow through – see below at 2.6.3).
- The most important, but commonly overlooked, general statutory guide to interpretation is the Interpretation Law. We rely on its provisions except where this manual states otherwise.
- Other important general statutory provisions on interpretation are found in the [Human Rights \(Jersey\) Law 2000](#), while more specific provisions are found in Laws such as the [European Union Legislation \(Implementation\) \(Jersey\) Law 2014](#) and the [Electronic Communications \(Jersey\) Law 2000](#).

The legislation drafted by this Office mainly consists of Laws (passed by the Assembly and approved by Her Majesty in Council), Regulations (passed by the Assembly) and Orders (made by Ministers). A small number of the Regulations are Triennial Regulations, which expire after 3 years. We also draft legislative Acts (passed by the Assembly), which are mostly Appointed Day Acts (a way of bringing Laws into force - but Commencement Orders are also sometimes used). We draft some Bye-Laws and other subsidiary instruments, but we do not currently draft Rules of Court, other than the new rules to be made under the Criminal Procedure (Jersey) Law 2018. Nor do we draft Orders in Council (extending UK legislation to Jersey and modifying it).

This manual will be updated as and when required. It describes current practice, and does not attempt to document all past practice (but revisions are listed in the Annex). It is likely that changes in our practice will result from the work currently under way to review the template, the system for publishing legislation as amended, the Interpretation Law and the types of instrument that we draft.

This manual does not currently describe our practice in relation to amendments to lodged Propositions, which follow a different style.

2. STRUCTURE OF DRAFTS

The structure, and order, of the legislation we draft is –

- Explanatory notes
- Preamble (if any)
- Enacting words
- Main provisions - a set of numbered Articles in a Law, Order or Act, or a set of numbered Regulations (we use a capital “R” in Regulations) - in the following order –
 - Interpretation provision (if any)
 - Substantive provisions
 - Repeals, amendments (if any)
 - Citation
 - Commencement
- Schedules (if any)

2.1. Explanatory Note

2.1.1. *Nature and contents of Explanatory Note*

The purpose of the Explanatory Note is to give information about the legal meaning of the draft. It is drawn up by the legislative drafter, whereas the policy justification is given in a separate Report produced by the instructing officers. In the body of the draft we generally do not use purpose provisions or contents provisions (which conflict with the principle that each provision should have some legal effect), so all explanatory material should be placed in the Explanatory Note.

The Explanatory Note does not form part of the legislation, and is separated from the draft as enacted. The Explanatory Note for a Law, Act or Regulations is published on the Assembly website, in the [Proposition](#) (which also contains the policy Report) that was lodged to pass that Law or Act or those Regulations. The Explanatory Note for an Order is published on the Assembly website, in the [Order Paper](#) for the next meeting of the Assembly after the making of the Order (but the policy Report for the Order is published on the government website, in the [Ministerial Decision](#) to make the Order).

- We draft amendments to a lodged legislative Proposition for a Law, Act or Regulations, for debate with that Proposition. But those amendments are not accompanied by an Explanatory Note, and we do not amend the original Explanatory Note (so it will not reflect the enactment as passed, if the Assembly adopts any amendments in debate).
- When we draft new legislation that amends existing legislation, we draft an Explanatory Note for the amending legislation. But the Revised Edition only consolidates the legislation, so there are no consolidated Explanatory Notes.

The Explanatory Note should start with a short summary of what the draft does, which can be used to draw up the notice that will be published in the [Gazette](#) once the draft has been enacted. It can also be used in drawing up the summaries of legislation, published in the [Jersey and Guernsey Law Review](#).

The Explanatory Note should be written with a view to its purpose in being read before the draft is enacted. For a Law (or Regulations), it might include something along the lines of “if brought into force, this Law would do the following”, but then subsequent paragraphs can say “this provision does ...” (rather than “would do”). For an Order, the Explanatory Note will also be read by the Assembly after the Order has been made by the Minister, and the Order may or may not have come into force before it is tabled for the Assembly, so it is generally easier to express the Explanatory Note as “does” rather than “would”.

The Jersey italic format is used for references in the Explanatory Note to Articles or Regulations of the draft concerned. But references to Articles or Regulations in other Jersey legislation (including an enactment that is being amended by the draft) are not in italic.

2.1.2. Explanation of penalties for offences

If the draft includes a criminal offence, the Explanatory Note should set out the penalty, ensuring the effect of Article 13 of the Interpretation Law is clear. Under that Article prison terms and fine levels are to be read as maximum rather than mandatory, a fine without more is unlimited, and penalties joined by “and” can be alternative or cumulative. So if the penalty provision is “and is liable to imprisonment for a term of 3 years and to a fine”, the Explanatory Note should say something like “an offence carrying imprisonment for up to 3 years, an unlimited fine, or both”.

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 drafter should state the amount of a fine at that level, and consider whether more information on the standard scale is needed (and, if so, where it should be placed in the Explanatory Note, such as at the first offence in the draft, at each of the offences, or at the end).

2.1.3. Fee increases

The drafter should choose the appropriate means to show the size of the increase, which might be by giving a percentage, or by stating the existing fee, or some other means that is not misleading. The Explanatory Note should also state 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, should cover any issues about whether the increase exceeds inflation and whether Treasury approval has been obtained.

2.2. Arrangement

The template asks whether this (effectively a table of contents) is wanted in a particular draft. It should generally be included unless the draft is very short (and will probably remain that way, despite any likely amendments in future). It is less likely to be important in a short amending draft, which will not appear in the next Revised Edition.

2.3. Long title (Laws only)

The long title does not have the same significance in Jersey for the Assembly’s procedure on tabling amendments as it would in the United Kingdom. But it should still be checked for coverage of the whole Law, and the drafter should re-check both the long and short titles after making changes to the draft. In Jersey a long title itself can be amended when a subsequent amendment adds material that is outside of the scope of the original Law.

If the Law contains a power, with no express limitation, to amend its provisions by Regulations (or by Order), then the long title does have role in interpreting the scope of that power. But we now try to avoid including such powers without any amendment, because it is generally safer to specify what the amendment can be for, as in “The States may by Regulations amend paragraph (4) to make alternative provision as to the conditions under which an application may be granted.”.

2.4. Preambles

We do not generally use preambles. See the States of Jersey Law 2005 for an example of an exception.

2.5. Enacting words

The template provides wording which includes “in pursuance of”, whereas we would normally use “under”. The drafter should leave the template wording as it is, until the template can be updated.

If the parent legislation requires the consent of a particular person for the making of an Order (or more rarely for Regulations), the enacting words should state that the Order is made with the consent of that person. A similar approach should be taken to requirements for consultation. But if the power requires the Minister to consult persons appearing to the Minister to have an interest, or uses some other similar broad description, then the drafter should not attempt to include reference to that unless it can be done simply, perhaps by saying the Minister has consulted “under Article [X]”. For any other preconditions the drafter should assess the particular case. The policy Report should address how preconditions have been met.

If the vires are contained in a particular paragraph, the drafter should consider whether it is better to specify that paragraph in the enacting words, or merely refer to the Article/Regulation without specifying the paragraph (and whether it is safe to specify some and not others in the same provision).

2.6. Interpretation

2.6.1. *Positioned at start*

The general interpretation provision (if any) always forms the first provision. But that does not mean there has to be an interpretation provision.

In an amending draft, the drafter should check whether there is any better alternative before using a single sentence interpretation Article (or Regulation) defining the amended Law/ Regulations/ Order as the “principal Law/ Regulations/ Order”. Alternatives include “The X Regulations are amended as follows” and “In this Order, a reference to an Article by number only, and unless otherwise indicated, is to the Article of the same number in the X Law”.

We now try to avoid using “unless the context otherwise requires”, as we should be checking for cases where the context does require a different interpretation and seeing whether express provision is needed.

2.6.2. *Nature and purpose of definitions*

The instructing officers provide information to the drafter about the key concepts behind the policy, but the drafter does not necessarily include definitions for those concepts in the interpretation provision. We generally do not define an expression unless it is used more than once in the draft, and then only if those occurrences are outside of the interpretation provision.

We generally use later paragraphs of the interpretation Article/Regulation for definitions of expressions that are used only in that Article/Regulation.

The interpretation provision is therefore likely to change significantly over successive drafts, and the drafter will check over the near final draft to ensure that all the defined expressions are still used in the draft (in ways that justify having a definition) and still relate efficiently to each other.

2.6.3. *Particular principles on which we do and do not rely in definitions*

We follow the normal modern drafting practice of using “means” for a comprehensive definition, and “includes” for a definition that is non-exclusive. We generally avoid adding “in particular”, or “without limitation” to a provision that uses “includes”, because this principle renders them redundant.

We do not rely on Article 2(a) of the Interpretation Law, as we follow modern principles of gender neutral drafting (see notes below at 3.3).

We rely on Article 2(c) of the Interpretation Law, so we generally do not expressly provide for grammatical variations of defined expressions.

We rely on Article 10 of the Interpretation Law, so we generally do not define again expressions that are already defined in the Law (or Regulations) that contains the power to enact the draft.

We generally use “as defined in the X Law” where the term has a definition in the main interpretation provision of that Law (normally Article 1), and “within the meaning of the Y Law” where the term is used in the Y Law without a definition. If the term is defined in the other Law, but not in the main interpretation provision, the drafter should consider carefully whether to quote the Article/Regulation number for the definition, given the risk of the cross-reference not being caught if that Article/Regulation is later re-numbered.

We do not rely on the general definition “the Minister”, in Article 32 of the States of Jersey Law 2005 (and the reference to it in Part 2 of the Schedule to the Interpretation Law), as meaning “the Minister for the time being assigned responsibility for the functions of the Minister in the enactment in which the expression appears”. Instead we specify the particular Minister, and include a definition of “Minister” in the interpretation provision if the term is used more than once (to limit the need for amendments if the function is later transferred to a different Minister). Part 4 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018 has not yet been brought into force, and does not repeal the definition “the Minister”, but does provide for functions to be exercised by Ministers collectively as the “Government of Jersey”. So drafting practice on this point will be reviewed when Part 4 is brought into force.

2.7. Divisions

We use Parts to divide long drafts, and we generally try to avoid sub-dividing Parts.

- We now sometimes use numbered Divisions of Parts. We no longer call them “chapters”, as that term is used for chapters of the Revised Edition (subjects under which legislation is grouped).
- We now make less use than previously of unnumbered cross-headings within Parts (as they do not create units that can be cross-referenced).

We use Arabic numerals for Parts and Schedules, not Roman numerals (and we use “Schedule 2” rather than “Second Schedule”).

In Laws, Orders and Acts our numbering systems, and the names of subdivisions are –

- “2 [Article heading]**
- (1) [Paragraph (the words before sub-paragraph (a) / the introductory words)] –
- (a) [sub-paragraph (before/intro)] –
- (i) [clause (before/intro)] –
- (A) [sub-clause], and
- (B) [sub-clause], or
- (ii) [clause]; and
- (b) [sub-paragraph].
- (2) [Paragraph].
- 3 [Article heading]**
- [Text (the words before paragraph (a) / the introductory words)] –
- (a) [paragraph (before/intro)] –
- (i) [sub-paragraph (before/intro)] –
- (A) [clause], and
- (B) [clause], or
- (ii) [sub-paragraph]; and
- (b) [paragraph].”

For Regulations the numbering and names are the same, except that it is a “Regulation” (always upper-case R) instead of an “Article”.

In a Schedule the first unit is a “paragraph”, so the numbering and names become –

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

Whether in a Schedule or elsewhere, we generally follow modern Commonwealth drafting practice in trying to avoid excessive sub-division, so the “(A)” level should rarely be appropriate.

When an amendment inserts a numbered provision inside a set of numbered provisions, we use “A1” before “1” and “1A” after it.

We do not start a paragraph with a sub-paragraph, nor a sub-paragraph with a clause, and so on (in a Schedule this rule applies to sub-paragraphs and below). So we use –

- “2 This that**
(1) The other –
(a) something; ...”

rather than –

- “2 This that**
(1)(a) The other something;[/.]
(b) what [/What].”

2.8. Conjunctions and punctuation in broken out lists

We do not use conjunctions in lists of amendments (so no “and”).

- “(1) In Article 3 –
(a) in paragraph (2) for ‘X’ substitute ‘Y’;
(b) in paragraph (4) after ‘A’ insert ‘B’;
(c) in paragraph (6) ‘CDE’ is deleted.”

Otherwise we generally follow normal Commonwealth drafting practice in having only one conjunction per level of sub-divided provisions in a broken out list; in placing it after the penultimate item at each level (not after all the items, and certainly not after just some); and in using only “and” or “or” (never “and/or”). We do sometimes use “but” as a list conjunction – usually where “and” would read oddly because of a contrast – it functions in the same way as “and” (so, for example, it has to be the only conjunction in the level, with “and” being implied across all the rest of the same level).

Inside an Article or Regulation (or paragraph of a Schedule), our first level subdivisions (sub-paragraphs in the body of the instrument, clauses in a Schedule) always end (before the conjunction, if any) with a semi-colon (except the last one). Our second level and subsequent subdivisions (clauses in the body of the instrument, sub-clauses in a Schedule) always end with a comma instead.

- “(1) Xxxx –
(a) xxxx;
(b) xxxx –
(i) xxxx,
(ii) xxxx –
(A) xxxx,
(B) xxxx, and
(C) xxxx,
(iii) xxxx, or
(iv) xxxx;
(c) xxxx; and
(d) xxxx.”

Generally we try to avoid full-out or sandwich provisions (which can be difficult to refer to in later amendments, can lead to mistakes in levels of indenting, and can be difficult for readers to follow). If we do use one then it is an exception to the punctuation rule, as there will always be a comma at the end of the division before the full-out, as in –

- “A person who –
(a) does this; or
(b) does that,
commits an offence.”

or -

- “(1) A person who –
(a) negligently –
(i) does this, and
(ii) does that; or
(b) intentionally does the other,
commits an offence.”

2.9. Cross-references

2.9.1. Cross-references to our legislation

We do rely on Article 9(1), (2) and (4) of the Interpretation Law for items in same draft, so we do not normally need to refer to an item as being “above/below”, or as “of this Law/Article/paragraph”, and so on.

A common exception is that we may use “of this Law/Article/paragraph” in an item in a list, where one item in that list includes a reference to a different Law/Article/paragraph and needs to be placed before a later item that then refers back to the current Law/Article/paragraph, as in –

“under Article 4 of the XYZ Law or under Article 3 of this Law”.

In that case there would need to be some reason for not listing the reference to Article 3 first and using paragraphing to mark the difference, as in –

- “(a) under Article 3; or
- (b) under Article 4 of the XYZ Law.”.

But even then we might be wary of causing unnecessary confusion to the reader, and instead use –

- “(a) under Article 3 of this Law; or
- (b) under Article 4 of the XYZ Law.”.

We refer to a provision by the name of the highest level included in a numbered reference, such as “paragraph (3)(d)(iv)” or “Article 3(4)”. But in subsequent further references we can refer to the same provision by the name of the level it occupies, such as “... in Article 1(1)(a) ... by that sub-paragraph”.

When we refer to a provision that contains sub-divisions, we generally assume that reference will be read as including all of those sub-divisions, not just the introductory words of that provision before the sub-divisions. Taking as an example –

- “(1) A person commits an offence if the person –
 - (a) negligently –
 - (i) does this, and
 - (ii) does that; or
 - (b) intentionally does the other.”

A reference elsewhere in that Article to “paragraph (1)(a)” includes (1)(a)(i) and (1)(a)(ii), but not (1)(b), and is not limited just to the word “negligently” as the introductory part of (1)(a). If we need to refer just to the part before the sub-divisions, we will normally say so expressly, such as “the introductory words in paragraph (1)(a)” or “the words in paragraph (1)(a) before clause (i)”.

When amending a table the drafter should consider the nature and layout of the table, but we would normally refer to a column by that name, to a row as an “item”, and to a cell as an “entry”.

2.9.2. Cross-references to UK legislation

In references to United Kingdom legislation we do not give chapter numbers for Acts, but we do give Statutory Instrument numbers, as in –

- “section X of the Xyz Act 2000 of the United Kingdom”
- “regulation X of the Xyz Regulations 2000 of the United Kingdom (S.I. 2000/1234)”

Now that “Acts” are passed by all the devolved legislatures, and now that the Scottish legislature is a “Parliament”, we no longer assume that “Act” or “Parliament” alone can safely be used to indicate the United Kingdom’s Acts or Parliament. For example –

- “section X of the Xyz (Scotland) Act 20XX of the Scottish Parliament”
- “regulation X of the Xyz (Scotland) Regulations 20XX (S.S.I. 20XX/1234)”
- “section X of the Xyz (Wales) Act 20XX of the National Assembly for Wales”
- “regulation X of the Xyz (Wales) Regulations 20XX (S.I. 20XX/1234, W. 567)”
- “section X of the Xyz Act (Northern Ireland) 20XX of the Northern Ireland Assembly”
- “regulation X of the Xyz Regulations (Northern Ireland) 20XX (N.I. S.R. 20XX No. 123)”

The drafter needs to take care with references to enactments by previous bodies in the history of UK devolution, following the general principle that they should be referred to under their own terms, but that their primary legislation does not need the equivalent of a chapter number.

2.9.3. Cross-references to EU legislation

In references to EU legislation we use the names and references used by the EU, even where those are not compatible with our normal practice. So –

“Commission Implementing Regulation (EU) 2018/1218 of 6 September 2018 amending Council Regulation (EC) No 1210/2003 concerning ...”

is left as it stands, instead of being rendered with “6th” and “No.” in our style, as –

“*Commission Implementing Regulation (EU) 2018/1218 of 6th September 2018 (OJ L 226, 7.9.2018, p. 3) amending Council Regulation (EC) No. 1210/2003 concerning ...*”.

We usually include the Official Journal reference at the end of the name. But where the full name of the EU instrument includes reference to another instrument that it is amending, or ends with “and repealing Regulation 123/456” or the like, the drafter will usually move the Official Journal reference to a point earlier in the name, or omit the “and repealing” element. So –

“Commission Implementing Regulation (EU) 2018/1218 of 6 September 2018 amending Council Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq (OJ L 226, 7.9.2018, p. 3)”

becomes –

“Commission Implementing Regulation (EU) 2018/1218 of 6 September 2018 (OJ L 226, 7.9.2018, p. 3) amending Council Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq”,

while –

“Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, ..., and repealing Regulations (EC) No 552/2004 and ... Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1)”

becomes –

“Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (OJ L 212, 22.8.2018, p. 1)”

or –

“Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ L 212, 22.8.2018, p. 1) on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, ..., and repealing Regulations (EC) No 552/2004 and ... Council Regulation (EEC) No 3922/91”.

2.10. Repeals and amendments

To assist in the Revised Edition process, repeals and amendments of other legislation will normally form the penultimate provisions (as the citation and commencement will come last). That is because the Revised Edition will remove the repeals and amendments (and absorb them into the amended enactments), so placing them towards the end will reduce the extent of renumbering caused by their removal.

2.10.1. Repeals

We now use “is repealed” for a whole Law, Regulations or Order, and “is deleted” for any lesser provision.

When we repeal an enactment, we rely on Article 6(3) of the Interpretation Law and do not expressly repeal other enactments that amended that enactment (largely because the Revised Edition process will have absorbed those amendments).

If the repealed enactment includes a power under which subsidiary enactments have been made, we rely on the general principle that the subsidiary enactments fall away, rather than expressly repealing them.

We also rely on the other provisions of Articles 6 and 17 of the Interpretation Law. So we do not, for instance, make express provision to save the previous operation of the repealed enactment.

2.10.2. Amendments

The heading to each amending Article/Regulation should normally include the title of the amended Article/Regulation, as in –

“2 Article 27 (service of process) amended/substituted/repealed/inserted”

We normally set out amendments in a sequence that follows the order of the amended provisions in the amended legislation. But sometimes the drafter will consider marshalling groups of amendment, out of order, to enable their subject and effect to be more readily appreciated.

We do not use directive words for the amending provision, and we therefore use the present indicative to mark the fact that the amendment takes effect by operation of law (see notes on “must”, “is” and “shall” below at 3.1). So we say –

for “X” there is substituted “Y”

rather than –

for “X” substitute “Y”.

We direct the reader to the existing provision before stating the amendment. So we say –

after “xxx”, insert “yyy”,

rather than –

insert “yyy” after “xxx”.

We used to identify whether the text being amended, and the new text, was a paragraph or words (we rely on the Interpretation Law that “word” includes number, figure or punctuation) and so on. We now no longer say –

for the word “xyz” there are substituted the words “abc and dce”

or –

for paragraph (2)(d) there are substituted the following sub-paragraphs –

“(d) ...
(da) ...”.

Now we merely say –

for “xyz” there is substituted “abc and dce”

or –

for paragraph (2)(d) there is substituted –

“(d) ...
(da) ...”

We treat the substituted element as a single whole within its one set of double quotation marks. So we use “is substituted” rather than “are substituted” even when, as in these examples, a single sub-paragraph is being replaced by more than one sub-paragraph.

We no longer use single quotation marks for quotation within the amended or new text. So we say –

... for “the person driving must” there is substituted “the person driving (the “driver”) must”

rather than the previous form with single quotation marks for ‘driver’ –

... for “the person driving must” there is substituted “the person driving (the ‘driver’) must”.

We do not have strict rules on only quoting the text that changes. So we can include unchanged text where that is helpful for any reason, such as to flag the effect better, or to avoid having to say “in the second place it occurs”, and so on. For example, depending on the circumstances, it may be acceptable to use –

for “the Minister may, after consulting the Commission, grant the licence” there is substituted “the Minister may, after informing the Commission and consulting the Agency, grant the licence”

instead of –

after “Commission” there is inserted “and consulting the Agency” .

We no longer use “add” for an insertion at the end of a provision, so we use “insert” in all cases.

We generally avoid making a separate positive amendment if it ought instead to be dealt with entirely by the Revised Edition process, unless there is a clear correction of a substantive error, as opposed to an element of

style. So for example there is no need to make special provision to amend a number from figures to words (or the other way around), if it was done the wrong way in the original legislation, as long as it is the correct number either way. Instead that sort of point should be noted for correction in the next Revised Edition.

Amendments to lodged Propositions follow a different style, which is not currently described in this manual.

2.11. Citation and commencement

The last provision (other than any Schedules) is always the citation and commencement provision. Usually, to assist in the Revised Edition process, these will run into one sentence. That is because the Revised Edition will remove the commencement provision and leave the citation, and that is a more cumbersome process if it involves replacing 2 numbered paragraphs with one un-numbered paragraph. But the drafter should consider whether it is better to separate them in a particular case.

2.11.1. Citation

The citation provision should appear at the end in the Revised Edition. So it should be the last provision in the draft, or the penultimate provision if there is a separate provision for commencement. If it is not combined with the commencement it is in the form –

“10 Citation

This Order may be cited as the XYZ (Jersey) Order 201-.”

We now generally start the short title of subsidiary legislation with the main element of the short title of the parent legislation. We particularly try to start with the same word, to help in alphabetical lists.

In short titles of Amendment drafts we number consecutively through the whole life of the amended enactment, not year by year (and not using “No. 1” even when we know a second is inevitable). For example we could have –

“XYZ Order 2014”,

“XYZ (Amendment) Order 2015”,

“XYZ (Amendment No. 2) Order 2015”,

“XYZ (Amendment No. 3) Order 2016”.

2.11.2. Commencement

For the operative words, we use “comes into force”, rather than “is to / shall / will come into force” (see the notes on “shall” and “must/is” below at 3.1).

In the subsequent Revised Edition the commencement provision will be removed as spent (so it will not form a permanent part of the statute book). It should therefore come after the citation where it will be less likely to affect the numbering in the Revised Edition process. It can be in the same sentence as the citation, as in –

“10 Citation and commencement

This Order may be cited as the XYZ (Jersey) Order 201- and comes into force on”

If the commencement provision is more complex it can be placed in a separate Article/Regulation immediately following the citation Article/Regulation. It can also be placed in a separate subsequent paragraph in the same Article/Regulation as the citation, which will be in paragraph (1), but the drafter should bear in mind that this will involve the Revised Edition turning the numbered paragraph (1) into an unnumbered unindented paragraph (in a different style on the template), which may be more inconvenient than merely removing words or a whole Article/Regulation.

In the past we used to try to tie the commencement to a specified date (or a date to be subsequently specified by Act of the States – see below), rather than a date calculated by reference to the date on which the enactment is made. But that is no longer a concern following the introduction of the Revised Edition. [For provisions that do not specify an actual date, we use expressions along the lines of –

“comes into force the day after it is made”

“comes into force 7 days after it is made”

“comes into force 14 days after its registration” (Laws only)

“comes into force on the commencement of the XYZ Law 2018”

The wording of these provisions will be considered in the review of the Interpretation Law. In the meantime drafters may use the longer versions such as “comes into force on the day that is 7 days after the day on which it is made”.]

Where Laws are to be brought into force at an undetermined later point, the commencement dates have traditionally been set by a legislative Act of the States Assembly (as subsidiary legislation), known as an “Appointed Day Act” (under vires expressed in the past as “such day or days as the States may by Act appoint”). But provision can be made instead for a Minister to set the commencement date by Order. The first case was the United Nations Financial Sanctions (Jersey) Law 2017, brought into force by the United Nations Financial Sanctions (Jersey) Law 2017 (Appointed Day) (Jersey) Order 2017. The second was the European Union (Repeal and Amendment) (Jersey) Law 2018, brought partially into force by the European Union (Repeal and Amendment) (Jersey) Law 2018 (Commencement) Order 2018. The vires should now be expressed with “specify” rather than “appoint”, and the short title of the Act or Order should use “(Commencement)” rather than “(Specified [/Appointed] Day)”. We used to use “day or days”, to make clear that parts of a Law can be brought into force on different dates (possibly by different Acts/Orders), rather than relying on Articles 2(b) and 11 of the Interpretation Law. But now we rely on those provisions to use “day” alone to have the same effect. So the choice now is between expressions along the lines of –

“comes into force on a day to be specified by the States by Act”

“comes into force on a day to be specified by the Minister by Order”.

2.12. Schedules

A Schedule must be introduced in a provision in the main body of the draft, and the sub-heading of the Schedule must specify that provision. But the Schedule automatically has effect as part of the Law, Regulations or Order, so there is no requirement to provide expressly that a Schedule has effect. For example, a Schedule can be introduced by a definition, such as –

“domestic fish” means an animal listed in Schedule 1

In a Schedule the equivalent of an Article or Regulation is called a paragraph, and the equivalent of a sub-paragraph is called a clause, and so on. But the sub-paragraphs of a Schedule are formatted and punctuated in the same way as a paragraph of an Article, and so on.

3. GENERAL

3.1. “Must/is” rather than “shall”

We have moved from allowing the drafter to choose between these approaches to adopting “must/is” as the general approach instead of “shall”.

A key advantage of using “must” is that it draws the drafter’s attention to where “is [to be]” (or other present tense expressions) should be used instead, whereas “shall” can be used indiscriminately.

- “Must” is appropriate for an obligation that is imposed on a person, who might contravene it. The draft should normally then spell out the consequences of a contravention, unless they are clearly enough implied (such as the consequences in administrative law if a decision-maker contravenes an express obligation to give one factor particular weight, or to ignore it).
- “Must” is inappropriate where the effect is achieved by operation of the statute, instead of by imposing an obligation on a person. In those cases the provision cannot be contravened, so nothing needs to be said about any consequences of contravening it. The commonest example is that definition provisions are now expressed using “means” or “includes”, rather than “shall mean” or “shall include”. Other common examples are “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” (though that can often be rendered as merely “is”), “is repealed/ amended/ deleted/ substituted/ inserted”, “comes into force” and so on.

It is not always straightforward to convert older “shall” legislation into “must/is”, so this will not be treated as a Law Revision issue, and the principle will not be applied retrospectively to past legislation.

- The drafter of an amendment therefore needs to consider whether any unnecessary doubt might be provoked by a particular case of inserting a “must” provision into an older enactment that uses “shall”. In such a case the inserted provision would use “shall” as well. (But that does not mean the operative text must follow the substituted/inserted text, so “...there *is* substituted “the Minister *shall* grant” ...”).
- However, where modern drafting would use the “is” form, rather than “must”, it is more likely to be sensible to use the modern form even when amending older “shall” legislation. There could still be an exception where any inconsistency would be too likely to risk being read as implying a difference. So if the old Law has definitions that all use “X shall mean abc”, and the amendment is inserting a new definition, that definition could be cast as “Y shall mean xyz”, instead of “Y means xyz”, unless there is some particular reason not to do so.

3.2. Offences, aiding and abetting, corporate criminal liability

3.2.1. *Standard offence wording*

The standard wording that we now use for an offence provision is –

“A person who [does X / contravenes paragraph (x)] commits an offence and is liable to imprisonment for a term of [] and to a fine [of [] on the standard scale].”

or –

“A person commits an offence, and is liable to imprisonment for a term of [] and to a fine [of [] on the standard scale], if the person – (a) ... (b)”.

But there may be reasons why the drafter should depart from this wording in a given draft. In particular it may be wise, when amending an older enactment and adding a new offence, to follow the wording used in offences elsewhere in that enactment. In other cases it may be preferable to use the form –

“It is an offence for a person to”.

3.2.2. *Aid, abet, etc.*

We rely on Article 1 of the Criminal Offences (Jersey) Law 2009 as it relates to statutory offences. So we do not include express provision as to aiding, abetting, counselling, procuring, conspiring, attempting or inciting the commission of an offence that we are drafting, unless there is some special reason to do so.

3.2.3. *Corporate and partnership liability*

We do not rely on Article 2 of the Criminal Offences (Jersey) Law 2009. So we do include express provision, where appropriate, as to corporate and related liability. That needs to be checked each time on 2 fronts –

- (a) for whether any new types of corporate or partnership entities have been created in Jersey legislation recently; and
- (b) for whether the relevant offences can be committed negligently.

Our current usual provisions for corporate liability are along the lines of –

“36 Offences by bodies corporate and others

(1) In this Regulation –

“relevant offence” means an offence under these Regulations that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;

“relevant person” means –

- (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
 - (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –
 - (i) a general partner, or
 - (ii) a limited partner who is participating in the management of the partnership;
 - (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
 - (i) a director, manager, secretary or other similar officer of the body corporate, and
 - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member’s functions of management; and
 - (d) a person purporting to act in any capacity described in sub-paragraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.
- (2) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) Paragraph (4) applies if a relevant offence –
- (a) is an offence that may be committed by neglect; and
 - (b) is proved to be attributable to any neglect on the part of a relevant person.
- (4) The relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.”

These provisions will be reviewed for compatibility with foundations and other corporate entities not mentioned so far, and will be revisited if action is taken to amend or repeal Article 2 of the Criminal Offences (Jersey) Law 2009.

3.3. **Gender neutrality**

We follow modern principles of gender neutral drafting, and we do not rely on Article 2(a) of the Interpretation Law (see notes above on definitions at 2.6).

We do not use the singular “they” (but the drafter should take care about consistent use of singular or plural in references to collective bodies, particularly “the States”). We do not use letters to stand for persons purely to achieve gender neutrality, but we do use letters where they are the best way to capture the parties in a provision (such as to avoid “the first defendant” and “the second defendant”, where there is no objective sense in which one is first and the other is second).

The drafter should think about whether to repeat elements (“if the Minister is not satisfied, the Minister may”) or use “she or he”, “he or she” (“if the Minister is not satisfied, she or he may”). Repetition may be cumbersome, but so may “he, she or it” (particularly where the expression needs to include legal persons). We never use “/”, so we do not use “s/he”.

We try to avoid artificiality (for example we do not look for a gender neutral term to replace the legal expression “landlord”), and the drafter will exercise discretion, subject to policy requirements. Instructing officers sometimes have reasons for feeling that “chairman” needs to be used instead of “chair”.

3.4. Miscellaneous points

3.4.1. “Person”

We rely on the definition of “person” in Part 1 of the Schedule to the Interpretation Law, to cover natural persons and bodies corporate (including corporations sole). But we do not generally rely on that definition to cover unincorporated bodies, and the drafter would normally seek to include some express provision where that would be useful. The drafter should also take care with offences, because it is unclear how this definition relates to Article 3 of the Interpretation Law, which provides that “person” in an offence includes a body corporate. That appears to imply that Article 3 displaces the Schedule definition’s inclusion of an unincorporated body.

3.4.2. “Amend”

We rely on the definition, in Part 1 of the Schedule to the Interpretation Law, of “amend” as including “add to”, “substitute”, “vary”, “repeal” and “revoke”.

3.4.3. “By” and “under”

We generally rely on the definition of “under”, in Part 1 of the Schedule to the Interpretation Law, as including “by”, “in accordance with”, “pursuant to” and “by virtue of”, when used in relation to enactments.

- But the drafter may need to distinguish between “by” and “under”. An example would be the case of a body established “by” a Law (such as a regulator) and a body established “under” a Law (such as a company or foundation).
- The expression “under this Law” will cover something done “by” an Order (or Regulations) made under that Law. It may also cover something done under, rather than by, such an Order (or Regulations). The drafter will have to judge whether there is a need to make express provision to avoid ambiguity in the particular case.

3.4.4. “Contravene” and “act”

We generally rely on the definitions, in Part 1 of the Schedule to the Interpretation Law, of an “act” as including an “omission”, and of “contravene” as including (in relation to requirements in/under enactments) failing to comply. But there may be a particular reason why a given draft needs to distinguish a failure to comply from a positive contravention, or an omission from a positive act, in which case the drafter should consider how to make that clear.

3.4.5. Singular and plural

We rely on Article 2(b) of the Interpretation Law, but generally only in one direction, in that we tend to prefer singular expressions to plural.

3.4.6. Numerals

We use “one”. But we use figures for “2” and above, unless they appear at the start of a sentence or paragraph, or could otherwise cause confusion with our numbering system.

We use “first”, “second” and so on, rather than “1st”, “2nd”, except in dates. We do not use superscript.

For dates, we use “on 1st October 2014”, rather than “on 1 October 2014” or “on the 1st October 2014” (but see note above at 2.9.3, on names of EU instruments and their Official Journal references).

3.4.7. “Jersey”

We rely on the definition of “Jersey”, in Part 1 of the Schedule to the Interpretation Law, as meaning the Island of Jersey and its dependencies. We tend to leave it implied that this includes the sea and airspace that come within Jersey’s jurisdiction, unless there is a reason to make express provision. We prefer to use “Jersey”, rather than relying on the alternative identical definitions of “Bailiwick” and “Island” (though there might be some exceptional need to use those expressions in a particular draft).

3.4.8. French

Where French terms need to be used in legislation that is written in English, those terms should be italicised with Jersey italic formatting – such as *cause*, *crime*, *autorisé* and *en désastre*.

When amending older Laws written in French, we use French for the content of any substituted or inserted provisions, and English for the directive words in consequential amendments.

For street names in French or Jèrriais the drafter should not assume that modern French styles should be used, particularly as to capitalisation. So we can have a road called “La Rue de Xyz” (rather than “la rue de Xyz”). The parishes keep records of the official names of roads. But the drafter should consider in a particular case, with the instructing officer, whether it is better to use the official name, the name as written on a sign on the actual road, the name given on Jersey Mapping, or the name used elsewhere in the same draft or in legislation that is being amended (or in related legislation).

When adding a street name to an un-numbered list of street names, the drafter should generally not merely say that the street name is to be inserted “in the appropriate alphabetical position”, and should instead say exactly where the new name should be inserted in the list. The problem, as with the naming conventions, is that there is no easy and consistently followed answer to whether “La Rue de Xyz” should be treated as starting with L, R or X, so the drafter needs to be sensitive to the context. It is generally desirable that there should be as much consistency as is practicable within each Order.

3.4.9. Spelling “-ise” rather than “-ize”

We previously used the Oxford spelling “authorize” rather than “authorise”, and so on, but we have now moved to “authorise”.

3.4.10. Parentheses

We follow common drafting practice in generally avoiding parentheses, except for material that does not change the effect if it is left out. There is a general principle that a draft should only contain material that does have a legal effect, so parentheses are not commonly used now. The commonest exception is where some explanatory matter is needed to dispel a wrong assumption that is otherwise likely to be made by the reader, as in “(whether [the obvious case] or not)”. The other main exception is for including the title of an amended Article or Regulation in the heading to the amending Article/Regulation (see 2.10.2 above).

3.4.11. Spacing

This manual does not generally deal with matters of formatting or our template. But it is worth noting that we use a hard space (that will not break across the end of a line) before a parenthesis, or a number expressed in figures, to avoid a new line starting in a way that could be confused with a new sub-division. We do not use a double space after a full stop.

Annex - Version history

Version number	Date issued
1	31/12/18