



Making new legislation

A guide to instructing the drafter

Revised: November 2023





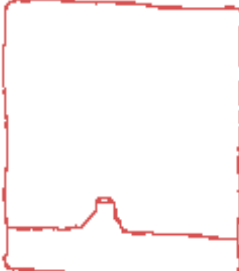

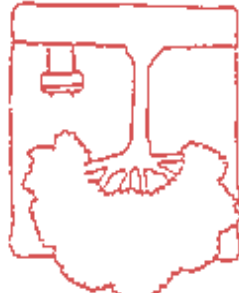


| | | |
|---|---|---|
|  |  |  |
| As lodged <i>au Greffe</i> | As suggested by Scrutiny | As Amended in the States |
|  |  |  |
| As Enacted | As Funded | As Implemented by the Department |
|  |  |  |
| As Reported by the JEP | As Understood by the Public | What Was Actually Needed |

Table of Contents

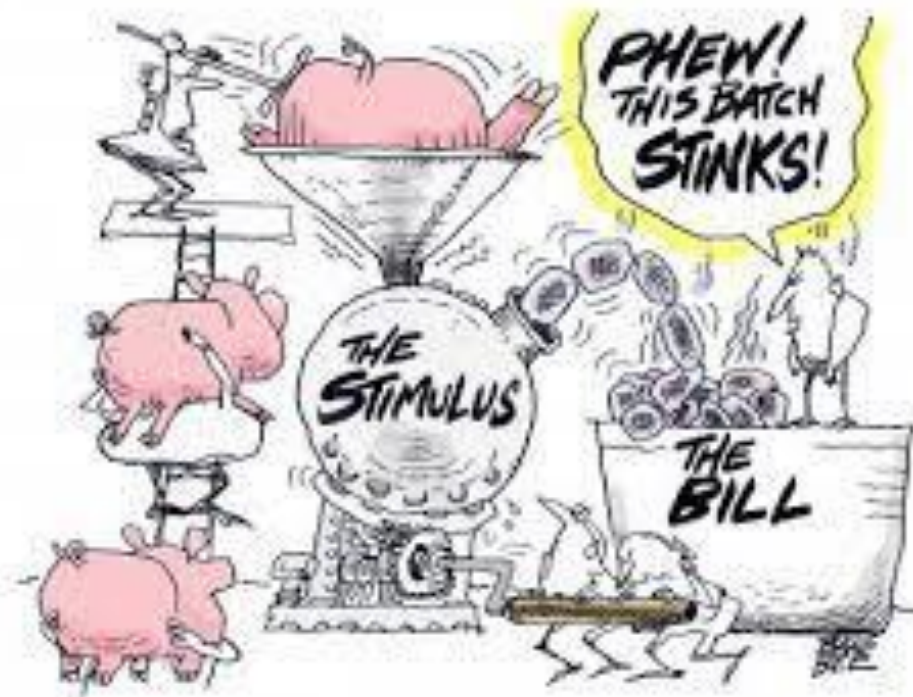
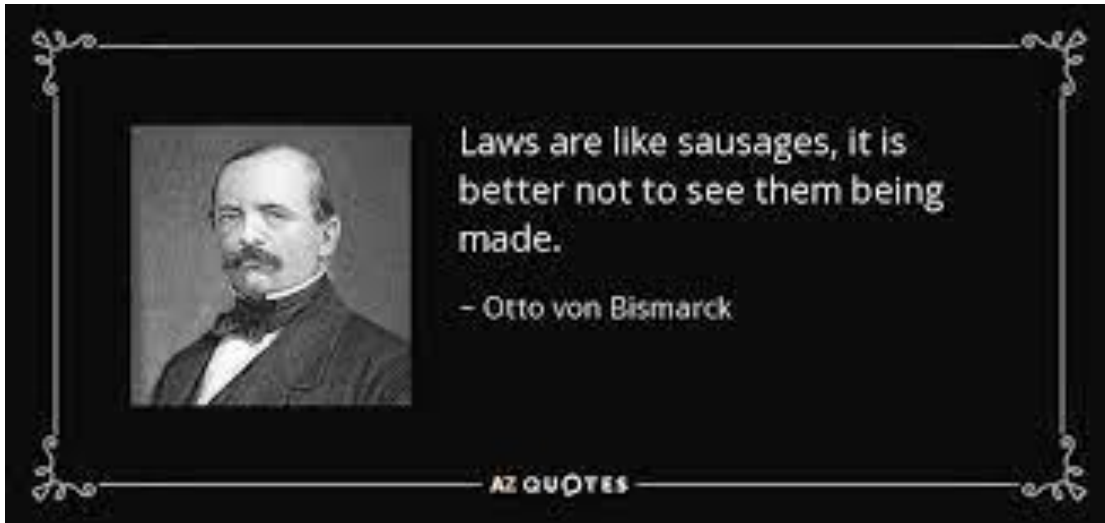
| | | |
|-----------|--|-----------|
| 1 | Introduction | 4 |
| | <i>What is this guide about? Who is it for? Who gets involved in drafting laws?</i> | |
| 2 | Before writing your instructions | 6 |
| | <i>How are laws prioritised? What do I do first? What types of law are there? What type do I need?</i> | |
| 3 | Writing drafting instructions | 9 |
| | <i>What do I need before I start? What are the do's and don'ts? How should I structure my instructions? Why shouldn't I draft it myself?</i> | |
| 4 | Submitting your instructions | 15 |
| | <i>Where do I submit my instructions? What happens then?</i> | |
| 5 | The drafting process | 17 |
| | <i>What should I take into account when reviewing a draft? What if I need to add other matters to the draft?</i> | |
| 6 | Consultation | 19 |
| | <i>How do I go about consultation within Government? What about outside Government? What about legislation that impacts on data protection rights?</i> | |
| 7 | I'm happy with the draft – now what? | 22 |
| | <i>What checks does the draft need to go through? Who is involved? What needs to be attached to the projet? How is it lodged?</i> | |
| 8 | Passage through the States Assembly | 25 |
| | <i>What happens after lodging? How does a projet pass through the States Assembly? What happens if it's amended? If it's a Law, what happens afterwards?</i> | |
| 9 | Royal Assent and coming into force | 28 |
| | <i>How does an adopted projet de loi become law? How do I bring my legislation into force?</i> | |
| 10 | Appendices | 30 |
| 11 | Useful references and contacts | 40 |

Foreword

This 4th edition has been given a facelift thanks largely to trainee drafter Jackie Harris. We hope that the changes make it more fun and easier to read.

We hope it is a useful guide for instructing officers at all levels of experience and anyone who wishes to know more about how legislation is made in Jersey.

Lucy Marsh-Smith
Principal Legislative Drafter
September 2023



1 Introduction

What is this guide about? Who is it for? Who gets involved in drafting laws?

This guide accompanies the Instructing the Drafter course and is addressed at anyone who instructs the Legislative Drafting Office (LDO). It is for:

- Policy professionals leading large or small drafting projects
- Officers of the States Greffe engaged in Scrutiny, or amendments to lodged legislation
- Law Officers engaged to advise on instructions or laws

But it may be of interest to anyone wanting to know how legislation is made in Jersey.

This guide will explain the law-making process from initial policy idea to becoming law. It focuses on your part in the process and your relationship with the LDO. The guide will tell you:

- How to get approval to draft new legislation
- How to communicate your policy to the drafter
- How best to work with the drafter during the drafting process
- How to get your draft legislation ready for making

Who is involved in making legislation?

Instructing officers turn detailed policy ideas developed in response to a politician's policy into a detailed brief for the drafter. They check to see if the policy needs new legislation, or if existing powers can be used. In Jersey instructing officers are often also responsible for developing and refining the policy before they turn these ideas into drafting instructions. The instructions need to state what the policy is and how it should be implemented and explain the intended effect of everything the policy proposes.

The drafter drafts the legislation to give effect to the policy. Drafters handle the words used and the form and legal effect of the legislation. Drafters draft legislation that is legally effective, understandable and that implements the intended policy. They also ensure that the legislation does not produce any unintended consequences.

The LOD Advice Team facilitate the law-making process in Jersey. They:

- advise and assist the instructing Department on the preparation and content of drafting instructions for proposed legislation;
- give legal advice to the instructing Department and the LDO on issues that may arise during the drafting process (for example, on customary law);
- carry out penalty reviews for the Attorney General and in the case of Laws prepare a human rights memorandum of advice so that the Minister can give a compatibility statement under Article 16 of the Human Rights (Jersey) Law 2000;
- brief and support the Law Officers who advise the Minister and Assembly members on legal issues during the debate; and
- prepare a Royal Assent memorandum after a Law is adopted by the States Assembly and liaise with the Ministry of Justice to obtain Royal Assent.

**DAY 1 AS
AN
INSTRUCTING OFFICER**



**HAS EXPERIENCE
OF WRITING
INSTRUCTIONS**



**TOOK THE
'INSTRUCTING THE
DRAFTER' COURSE**



**AFTER THE
COURSE, REFERS TO
THE MANUAL REGULARLY**



imgflip.com

2 Before writing your instructions

How are laws prioritised? What do I do first? What types of law are there? What type do I need?

Government Legislative Programme

The Government Plan sets out the projects and expenditure of the government for the forthcoming financial year. It also sets out an outline plan for the following 3 years.

The Government Legislative Programme (GLP) is put together in draft by the policy team in the Cabinet Office on the basis of bids by the various Departments. It sets out the legislation needed:

- for the Government Plan
- to meet international obligations
- as a result of a proposition agreed by the States Assembly

The Council of Ministers (COM) reviews and decides on the GLP every year as part of its review of the Government Plan for the following year. COM also considers urgent and unforeseen matters that may need to be added during the year of the GLP.

The GLP covers those policy projects that will need significant legislative drafting – these are commonly referred to as “programme items”. It does not cover so-called “minor and routine” matters that a drafter reckons will not take more than a day or so to draft.

The policy team displays the GLP on Perform, an online project management tool which shows the progress of each drafting matter and is updated regularly by departments. It is reviewed and updated monthly in conjunction with the Principal Legislative Drafter and the head of the advice team in LOD on the basis of the current state of play on each programme item in the GLP for the current year. Perform enables the LDO to have sight as to what work is coming in when which assists with management of resources.

Perform enables the policy team to report on progress to COM so that priorities may be adjusted as necessary.

All projects – programme items and minor and routine items – need a Ministerial Decision (MD).

Allocation of a drafter

The instructing officer must email any new request for drafting together with the MD to the Principal Legislative Drafter (PLD). If it is on the GLP (i.e. is a programme item) the Perform number must be quoted; otherwise it will be assessed as to whether it can be accepted as a minor and routine matter (non-programme item). The instructions will also be assessed to decide whether they are of an appropriate quality to assign to a drafter. If requested, the PLD will give you a rough estimate of when you might expect to receive a first draft and/or how long it might take for the drafting process to be completed. Once allocated, the drafter will work on your project according to any agreed timetable. It is important you respond to a draft or queries from the assigned drafter as soon as you can or you risk the drafter moving onto another matter in the meantime. This is why, sometimes, less urgent work is completed before matters that are more urgent.

Before you write your drafting instructions – useful tips

Talk to the Principal Legislative Drafter to discuss:

- drafting matters that may impact on policy issues;
- possible legislative or other means of implementing the proposals;
- issues that may be contentious or complex;
- resolving any legal difficulties;
- a general idea of timescale;
- any hard implementation dates (e.g. to fit in with international treaties); or
- any implementation date proposed by/agreed with the Minister.

Please note when setting any timescales yourself:

- The PLD will not normally give any indication of how long drafting will take without seeing the instructions and it would be very unwise for the Minister publicly to announce when legislation might be ready without this indication.
- If instructions arrive later than the date given in Perform or there is a delay.
- In responding to drafts, the lodging date will need to be put back. You cannot delay projects and expect the draft legislation still to be ready at the original target date.

Talk to the LOD Advice Team to discuss:

- compliance with the European Convention on Human Rights; or
- general legal advice on matters other than drafting.

What can affect your drafting timescale?

- Higher priority instruction submitted to LDO
- Late delivery of instructions
- Time taken to respond to queries or drafts

[Appendix 1](#) sets out the steps in the preparation of legislation up to the time of finalising the draft. Try working through it backwards adding timings, with advice from the drafter if you need it. You will see just how long it takes, even just for the drafting process.

Types of legislation

Legislation in Jersey is divided into primary legislation – Laws – and secondary legislation, the most common kinds of which are Regulations and Orders.

Laws

- The most important type of legislation
- 6 weeks' lodging time
- Debated and adopted by the States
- Sanctioned by the King in Council
- Come into force on a set day, or via a separate commencement Order or Act

Making new legislation – A guide to instructing the drafter

- No constraint on what they contain – as long as they don't breach human rights or international treaties

If your policy is a major new innovation or scheme, it will probably need a new Law.

Regulations

- The most formal kind of secondary legislation
- 6 weeks' lodging time
- Debated and passed by the States
- Usually come into force on day stated within the Regulations
- The power to make regulations is set out in the relevant Law – the “parent law”
- Must not extend beyond powers given in the parent law, or could be struck down by the court (as being “ultra vires”)

Regulations contain the most important secondary legislation matters, including where power is given to amend Laws – a “Henry VIII” power. This is less controversial than in some other jurisdictions as the States Assembly is Jersey's legislature and therefore much less objectionable than if the power were given to a Minister.

Orders

- Made by Ministers, by signing and attaching their seal
- Not automatically debated by the States
- Laid before the States – any Member may bring a proposition within 3 sittings to annul the Order (even if it is already in force)
- The States cannot amend an Order, only annul it
- Like Regulations, Orders must not extend past the powers given in the parent law

Orders contain routine, administrative or uncontroversial matters. They're also used for things that need to be amended frequently, such as fees. They can be made and amended quickly as there is no lodging period.

Have you checked your existing Laws?

You might find that existing legislation gives you the powers to implement your policy. Check that first, seeking legal advice on the extent of the powers if necessary.

The type of secondary legislation that may be made is set out in the Law empowering that legislation. If there are any other procedural requirements, including anyone who needs to be consulted, these will be in the law too.

[Appendix 2](#) sets out the structure of a piece of legislation and what each provision is called. The only exception is the term “Article” – in Regulations this level of the legislation is called a “Regulation”.

[Appendix 3](#) sets out the procedure for making the 3 main types of legislation.

3 Writing drafting instructions

What do I need before I start? What are the do's and don'ts? How should I structure my instructions? Why shouldn't I draft it myself?

Starting off

Before you start, you will need:

- a clear policy that needs implementing in legislation; and
- a clear mandate to instruct the drafter from your Minister.

Think of yourself as an architect. The politicians are the clients that come up with the design concept, and the drafters are the builders. Without knowing what sort of building is required you can't draw up the plans. Make sure the policy is clear: if you are stuck, the chances are it is not, and someone needs to develop it further.

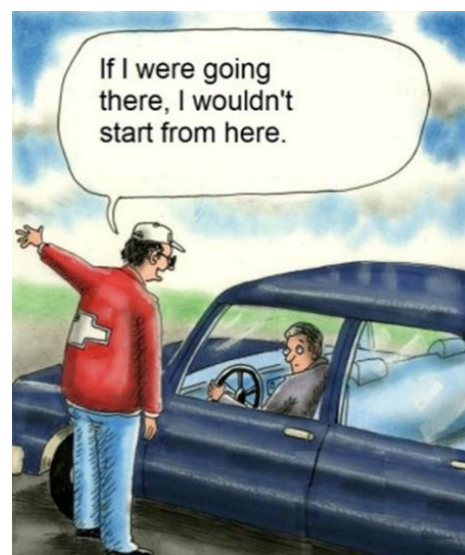
Some sources that may help you develop your policy

- Other parts of government
- Anyone who will later be consulted about the legislation
- The UK government department responsible for the same policy area
- Guernsey, the Isle of Man or the overseas territories
- The Common Legislative Solutions:
 - <https://gov.wales/common-legislative-solutions-a-guide-to-tackling-recurring-policy-issues-in-legislation>
 - these show policy makers how commonly occurring matters have been dealt with in the UK

Do's and Don'ts of drafting instructions

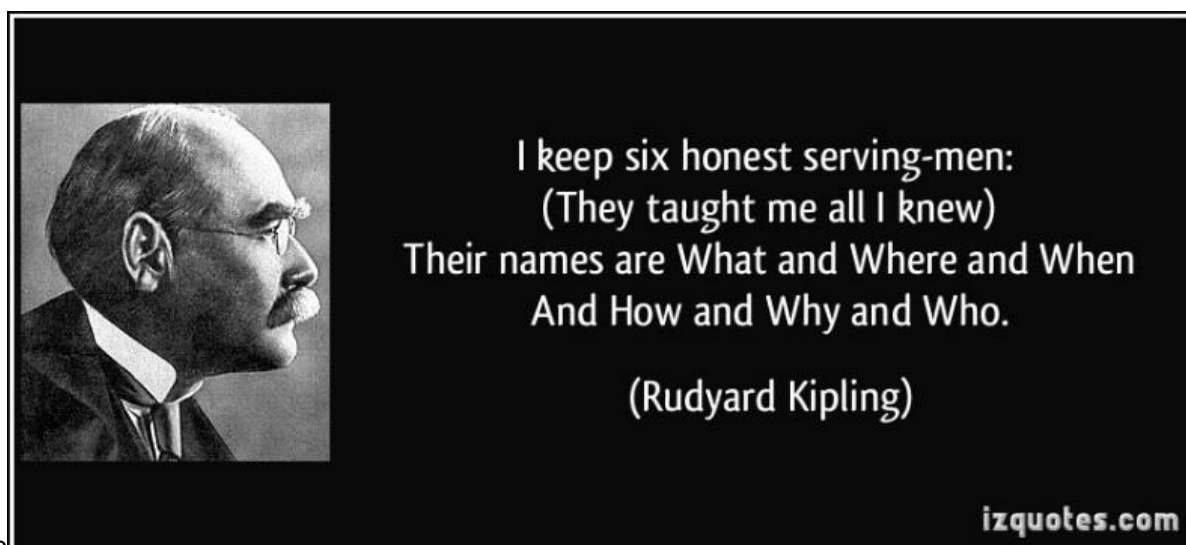
- You **don't** need to be a lawyer to write good drafting instructions.
- You **don't** need to write in some special legal language.
- You **do** need to express yourself as simply and clearly as possible. Be consistent. If you use a term for one thing keep to that one term.
- **Don't** expect the drafter to know anything about the subject matter.
- **Do** avoid jargon, abbreviations or technical terminology if possible. But if you need to use these terms, do explain what they mean. A glossary is always helpful. If it helps use diagrams, flowcharts or tables.
- **Do** work out in detail what you want. Start from the current state of the law, then set out one by one all the changes needed. The best instructions just describe the policy objectives and how to achieve them.
- **Don't** be too brief in writing instructions – they should usually longer than the resulting law. For a small matter, there might be 5 pages of instructions for every page of law. The larger the matter the smaller this ratio will be. This is because you will need to explain what you are trying to do before you set out each aspect of your instructions.

- **Do** try to cover as much of your policy as you can. We know that sometimes you only see the holes when you see a draft, and sometimes new matters crop up. It might seem like a small change but if we'd known about it at the start it might have been a small matter. But if we find out about it too late, it might lead to a lot of redrafting. But don't worry if you cannot think of everything, just get as much down as possible. The drafter may very well come back to you asking, "what about...?", but having as much down as possible at the start will save time.
- Don't anticipate future law changes, and **don't** instruct us as though an upcoming Law is already in effect. The later Law should make consequential amendments to earlier legislation. But **do** tell us if you know a new Law is coming up.



The more detail you give us the less chance there is that we will draft something that doesn't work from you and have to spend a lot of time either recasting a lot of the draft or even starting again.

How to structure drafting instructions



Remember the honest serving men when you are formulating your instructions. A similar aid is the **WHIB** checklist. In the context of a regulatory Law the sorts of questions to be answered and points to be spelt out in the instructions are:

- **What** is to be regulated?
- By **Whom**?
- **Who** is to be regulated? (e.g. should there be exemption from the regime?)
- **When** are they to be regulated?
- **What** coercive powers is the regulator to have to obtain information, enter premises, inspect documents and so on?
- **How** is the regulatory regime to operate?

Making new legislation – A guide to instructing the drafter

- **How** is fitness to hold a licence assessed?
- **How** are licence holders to prove compliance?
- **If** a licensing regime is involved how are those required to hold them to go about applying for a licence?
- **If** they comply what happens?
- **If** they do not comply what sanctions are to be available?
- **But** (every regime has exceptions).

See also at the end of this chapter, a check list setting out the sort of questions you will need to ask yourself if you want to set up a licensing scheme.

Start with a general statement of your aims (and then go into detail further on). Your general statement should be an introduction to the policy, explaining the background to it and providing an overview. You might wish to cover the answers to the following questions:

- Why is legislation needed?
- What effect is the legislation to have?
- How will it achieve that effect?
- How will it affect existing law and practice?

Continue with the detail of the instructions. If you know of any legal or practical difficulties that might affect the proposals, mention them here. For example, existing provisions may have been the subject of an unexpected judicial decision or adverse comment in court.

The detailed instructions should provide a complete narrative of the matters to be included in the legislation. Work through each stage in logical order, considering each aspect in detail.

Finish with any documents in support of your instructions – for example:

- Policy papers relating to the Ministerial decision to proceed with the legislation
- Consultation documents on the topic
- Papers that have been lodged or debated by the States Assembly on the matter
- A decision of the courts that has given rise to the need for legislation
- Legal advice (there is no difficulty in sharing LOD advice with the LDO)
- EU or international documents that the legislation is to implement

Don't use background material as a substitute for your own analysis – it doesn't help us unless you explain its relevance. It helps if you provide a copy or a link to any other legislation. Please cite it clearly and fully, preferably including the chapter or SI number or equivalent if possible.

Importing provisions of legislation from elsewhere doesn't always work because:

- it might not produce the same result locally; and
- it might be designed for a much larger jurisdiction with multiple tiers of government.

For example, a Secretary of State may want regulation-making powers to direct the action of local authorities in England and Wales, but a Minister in Jersey who also has the same powers as a local authority won't need a power to make an Order telling himself or herself what to do.

Making new legislation – A guide to instructing the drafter

It's quite common in Jersey to follow UK legislation with adaptations where there are valid reasons for mirroring UK law. We are pleased to be referred to legislation from elsewhere. But taking that legislation and merely indicating how you want to adapt it is risky, especially if you are not a lawyer. It's always better to state what you want in narrative form, having considered what is appropriate for Jersey.

If your instructions are to update fees there is an application to help you: [Legislative Drafting Office, Jersey - Instructions for Fees Orders application \(flinders.edu.au\)](https://flinders.edu.au). Please ask the LDO if you cannot access it.

Why are instructions in the form of draft legislation such a bad thing?

Many people think that trying to draft the legislation themselves will save the drafter time. The opposite is true.

If a drafter receives a draft, they don't know if it correctly expresses your policy. They have to start by converting it back into narrative and then asking you if that is what you meant, which wastes everyone's time.

Try sending someone a completed crossword and getting them to work out what the clues were – they're bound to be different to the original ones. Think of a doctor being told by a patient that they need a certain drug rather than being told what the patient's symptoms are. Drafting legislation for a drafter could be just as dangerous!

The drafter is better at working out what you need if you tell them the problem, rather than what you think the solution is.



Checklist: Setting up a new licensing scheme

Some of the questions you will need to consider are:

1. Who exactly do I want to regulate – everyone who does this activity or only those who do so on a commercial basis?
2. How do I define those whom I wish the new legislation to cover?
3. What exemptions should there be, if any, from the licensing requirement?
4. Who qualifies to apply for a licence?
5. How do people apply for a licence?
6. Who grants the licence?
7. How long does it last?
8. Is there a licence fee?
9. What criteria determine whether or not the licence is granted?
10. What representations can applicants make?
11. Can other people object to a licence being granted – if so, how?
12. What time limits are there?
13. Does the licence have to be displayed?
14. What happens if it is lost or destroyed?
15. What happens when a licence is refused – what reasons must be given?
16. What about appeals against the refusal of a licence?
17. Who hears the appeals?
18. Within what time limit?
19. What happens while an appeal is pending: can the person continue to operate?
20. Is there to be a system of third-party appeals?
21. Is there a further appeal to a court or tribunal?
22. Which one?
23. Is this a new body?
24. If so, how is it constituted?
25. Who are the members?
26. Who appoints them?
27. What are their qualifications for appointment?
28. Their terms of service?
29. Remuneration?
30. What happens if someone carries on the activity without a licence?
31. Is this to be a criminal offence?
32. What court has jurisdiction?
33. What is the maximum penalty for the offence?
34. Is there an offence of making a false representation in order to obtain a licence? Or one of displaying a false licence?
35. What about people lawfully carrying on the activity before the legislation is passed?
36. Can they carry on without a licence? For how long?
37. What consequences are there for the existing law?

38. Do I know of other legislation that might need amending in consequence of the new proposals?
39. What powers do I need the drafter to include to enable the details of some of these matters to go in Regulations or Orders?
40. Which is more appropriate: Regulations or Orders?
41. Are the proposals based on an existing licensing system elsewhere or should I look and see what happens in the UK? In Guernsey? Elsewhere?
42. What legislation is in existence elsewhere that might assist me with the policy or the drafter in producing the legislation?
43. When do I want my new legislation to come into force? Does anything need to happen first (e.g. Regulations may need to be drafted under a Law, administrative procedures changed, new people appointed, training given)?
44. Do I want a facility to bring the Law into operation at a later date when all the necessary things have been done?
45. Do I want to be able to bring some provisions of the Law in earlier than others?

These are the sort of things that will come up in general with a new licensing scheme. Depending on the type of project, there will be other, more specific things to think about, But already you should be able to see that instructing the drafter to make provision for a licencing scheme, whether it be in the field of financial services, fisheries or food premises, would not give the sort of detail needed.

Considering transitional issues

Suppose a licensing scheme is replaced by a completely new licensing scheme (but the purpose of the scheme is essentially the same). What transitional issues should be considered?

- Should a licence granted under the old scheme continue to have effect after the new scheme comes into existence?
- If yes, should it have effect under the old scheme (with the old scheme preserved or “saved” for that purpose)?
- Or should the licence have effect as if it were granted under the new scheme?
- If an application for a licence under the old scheme is still being considered when the new scheme commences, should the consideration of the application go ahead after that commencement?
- Or should the applicant have to make a new application under the new scheme?
- If consideration of the application should go ahead, should it go ahead under a preserved version of the old scheme? Should it be translated into an equivalent application under the new scheme?
- The old scheme and the new scheme both provide for regulations to specify licence conditions. Should the regulations made for this purpose under the old scheme have effect as if they were Regulations made for the same purpose under the new scheme? Or will a completely new set of Regulations be needed for the new scheme?
- Bear in mind that new Regulations should be made before the new scheme comes into operation.

4 Submitting your instructions

Where do I submit my instructions? What happens then?

Send the Principal Legislative Drafter:

- your completed instructions;
- the MD giving authority for the drafting of the new legislation; and
- an indication of your preferred timescale or level of urgency.

The Principal Legislative Drafter will:

- check the instructions to see the size of the task involved, and either
 - allocate to a drafter, or
 - tell you how long it will be before it is allocated; and
- ask for further details if the instructions are not sufficient to allow drafting to start.

If you don't hear from the PLD within 2 working days you should check that your request has been received just in case something has gone wrong.

The allocated drafter will work with you until the project is finished. The two of you need to work as a team to deliver the project.

The drafter who receives your instructions will:

- make a careful and critical review;
- if the matter is complex or raises many issues, seek clarifications of the instructions if necessary;
- say whether they need more from you before preparing a first draft;
- question your policy to test how thoroughly you have thought it out;
- ask questions to clarify the intention for the purposes of drafting the legislation;
- point out any inconsistencies/conflicts that you need to address before the first draft;
- consider alternatives (on the understanding that you are free to disregard them); and
- tell you if there is a different approach to implementing the policy if the drafter thinks legislation is not necessary

The drafter may comment on, or require further information about:

- the form of the instructions;
- whether the instructions provide enough information to prepare a first draft;
- whether the proposals raise issues of law, justice, equity or fairness which may require further consultation, information, consideration or clarification;
- how the proposals fit with existing law and what that interrelationship should be (if relevant);
- whether the proposed scheme could be simplified;
- whether other legislation will require amendment to accommodate the new proposal;
- when the new legislation will come into force, and any transitional or savings issues;
- whether, in the case of a Law new secondary legislation will be needed or whether existing provisions need to be preserved or amended;

Making new legislation – A guide to instructing the drafter

- the scope of any intended secondary legislation so that appropriate and adequate powers can be included in the draft Law;
- whether or not other relevant departments or bodies have been consulted; and
- the timetable for delivery

Because each drafter has their own way of working, sometimes you will just get an email back with a number of questions or just a request to arrange a meeting. Sometimes you will hear back with a first draft. If it's a matter of any substance there are bound to be queries. This is part of the normal process and you shouldn't feel you have done anything wrong. New law is made by stress-testing your instructions to their limits.

The drafter will then plan the legislative scheme – this sets out a structure for the legislation in a logical order. It is important for the integrity of the scheme that your initial instructions include all your policy proposals. The drafter will also be thinking about how your proposals will work in practice and whether there are any ambiguities or inconsistencies in the policy.



5 The drafting process

What should I take into account when reviewing a draft? What if I need to add other matters to the draft?

First draft

The drafter prepares a first draft of the legislation. They will send a separate memo or letter if they want to make any comments or to draw matters to your attention. The drafter might instead choose to mark these on the draft itself. The drafter may need to explain where it has not been possible to give effect to part of your instructions and why.

Reviewing the draft – do's and don'ts

Do study it carefully.

Do let the drafter have your comments as soon as you can.

Do keep a record of what decisions are made and for what reasons.

Do take an active role in progressing the legislation – the drafter can't continue until you've addressed any questions and given your thoughts.

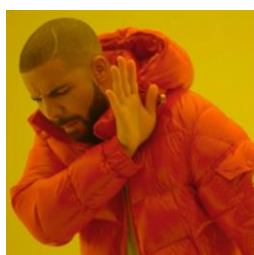
Don't leave unnecessary gaps before you respond, or the drafter may be reassigned to other work, delaying the project.

Don't hold back in your comments if something is wrong – it's only a first draft! Drafters won't be offended by being questioned.

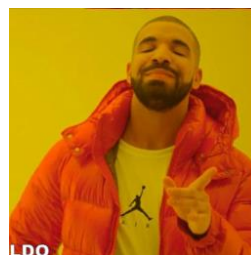
Don't think that because it looks like a law then it must be right!

Don't assume that the drafter has correctly interpreted what you want – if there's nothing to discuss, something has gone wrong.

Don't tell the drafter what words to use or what style to write in, but **do** say if you think a provision is not easily readable.



shall



must

Do check the [LDO current drafting practice](#) if you find it helpful.

Don't be afraid to think of new matters or change your policy slightly – it's quite normal not to get all the details right first time.

Do meet the drafter face to face if that is helpful – but don't be surprised if the drafter requests that you put something in writing first.

Do refer the draft to a technical adviser or other colleagues who may have comments of their own for you to relay to the drafter. If you need to bring anyone else from your department to a meeting, that is fine too.

Don't expect the drafter to attend meetings relating to development of policy or meet people other than those responsible for the policy. Drafters can't take instructions directly from an outside source, only an instructing officer engaged by Government.

Do give further instructions in writing and in narrative form.

Don't mark up the draft or re-draft the provisions. The drafter needs to know what the problem is to be solved. Re-read the end of Chapter 3 again!

Do confirm any oral instruction in writing – it's important to keep a full record of instructions.

After receiving your comments the drafter will produce a second draft for your review. This process of commenting and redrafting could continue over several more drafts over weeks or even months.

During this process it is important that you study each draft as critically as you can. Consider what effect the draft has and then check it against the effect that you wanted. Then tell us about anything that occurs to you. Meanwhile the drafter will also be analysing each draft and seeking issues that need further thought.

Adding new matters

If you find you need to add to the scope of the legislation:

- We can usually accommodate matters that don't take too long or radically alter the structure or scope of the legislation.
- We can't usually accommodate a radical new scheme or the drip-feeding of more and more provisions so we never reach a cut-off point.
- If your changes go outside the authority in the Ministerial Decision, you will need further approval from the relevant Minister.

Despite all this, do tell us about other matters you need. If we can accommodate a matter, it is wasteful for it to have to go in a separate piece of legislation. Always send additional instructions to the PLD. Copy in your existing drafter if you have one.

6 Consultation

How do I go about consultation within Government? What about outside Government? What about legislation that impacts on data protection rights?

Within Government

You need to ensure that all parts of Government affected by the policy change/new legislation are aware of it. Check whether to consult any person or body particularly affected by the legislation. In addition, be careful to check with:

- **External Relations** if there are any non-Jersey consequences of the legislation;
- **Treasury and Resources** if it is to result in new expenditures;
- **the Courts** if any court procedures are affected;
- **the Law Officers' Department** if any legal issues are raised;
- **the Public Appointments Commission** if you create any new public appointments, being careful to avoid a term of appointment or appointments that total more than 9 years;
- **the Children's Commissioner** – and consider whether your legislation may affect the Government's role in relation to children in care as their corporate parent (remember also the requirement that new legislation must have regard to the United Nations Convention on the Rights of the Child (UNCRC))¹;
- **the relevant Scrutiny Panel** if your draft legislation is something that is likely to attract the attention of Scrutiny, the earlier you engage with them the better.

Outside Government

When going to outside consultation the following points may be worth bearing in mind:

- Consult widely throughout the process, allowing several weeks for at least one written consultation during the development of the legislation or policy.
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure your consultation is clear, concise and widely accessible.
- Give feedback on the responses received and how the consultation influenced your policy.
- Ensure your consultation follows best practice.

Your drafter can give advice if you are unsure about who you need to consult (sometimes it is a legislative requirement), who you might benefit from consulting, or if you are unsure about timing.

¹ At the time of publishing this guide, it is expected that a Commencement Act will be lodged in respect of the Children (Convention Rights) (Jersey) Law 2022 (the "Law"). If lodged and passed, persons described as "duty-bearers" under Article 4 of the Law will be required to have due regard to the requirements of Part 1 of the UNCRC and 2 of its Optional Protocols whenever they are to make certain decisions that may have a direct or indirect impact on children. It is proposed that from 1 January 2024, all duty-bearers, apart from public authority duty-bearers as defined in Article 5 and Schedule 1 to the Law, will be required to prepare Children's Rights Impact Assessments (CRIAs). Accordingly, you will need to pay attention to Articles 6, 7 and 8 of the Law for the preparation of a CRIA. Schedule 2 to the Law sets out exemptions from the requirement to prepare a CRIA.

Making new legislation – A guide to instructing the drafter

It is better for the drafters if you consult on your policy proposals rather than on the draft. If you do that, then any changes in policy you make following the consultation can be incorporated into your instructions and made part of the draft from the beginning. This is better than the drafter having to adapt the draft at a later stage. That being said, we understand that people like to see the actual legislation, even though changes are more difficult when the draft legislation has been framed.

Before you send any legislation out for consultation, tell the drafter in advance. **Never send draft legislation outside of Government without the drafter's agreement.**

Please let the drafter know when the consultation period starts and ends. As a matter of practice legislation may be sent to COM for approval to go out to consultation.

Some secondary legislation contains a condition that certain people or organisations must be consulted before the secondary legislation comes into force. It is vitally important that you make sure the required consultation happens. The consultation requirements will be recited by the drafter in the draft secondary legislation. It's a good idea to refer to them in the Report.



Data Protection requirements – high risk legislation

If your draft legislation would require, authorise or otherwise relate to the processing of personal data and (taking into account the nature, scope and purposes of the processing) is likely to result in a high risk to the rights and freedom of natural persons, it will engage Article 18 of the Data Protection (Jersey) Law 2018. This requires the Minister (or other person responsible for the lodging or making of the draft legislation), to consult the Data Protection Authority by means of a written “consultation notice”.

The consultation notice must include any data protection impact assessment carried out in connection with the proposed processing of that personal data, unless the assessment includes:

Making new legislation – A guide to instructing the drafter

- a systematic description of the proposed processing (including the means of processing), its purposes and the objectives of the provisions of the legislation effecting it;
- an assessment of the necessity (including proportionality) of the proposed processing in relation to those objectives;
- an assessment of the risks to the rights and freedoms of data subjects posed by the processing; and
- the measures envisaged to address those risks, including appropriate safeguards, security measures and mechanisms to ensure the protection of personal data and demonstrate compliance with this Law, taking into account the rights and freedoms of data subjects.

Seek guidance from the Government’s data protection team or the Office of the Information Commissioner if you are unsure about these requirements. Further information is also available on [the intranet](#).

7 I'm happy with the draft – now what?

What checks does the draft need to go through? Who is involved? What needs to be attached to the projet? How is it lodged?

Checks made by the Law Officers' Department

Before a draft Law is finalised for lodging, the LOD Advice Team will review it. LOD are the principal legal advisers to the Government and the Assembly. LOD's review briefs the Law Officers on **any legal issues** in respect of the draft Law before it comes to the Assembly. This ensures that the Law Officers can provide appropriate advice to the Assembly during the debate.

The Advice Team also prepare advice on **human rights** and, in the case of a draft Law, prepare:

- a confidential human rights advice memorandum, which confirms if the Minister can state that the draft Law is compatible with human rights – a statement that is required under Article 16 of the Human Rights (Jersey) Law 2000; and
- a human rights note for publication with the Minister's Report on the draft Law.

LOD must carry out a review of any **criminal penalties** in a draft Law or in any subordinate legislation. This is so that the Attorney General can advise the Department on whether these are:

- appropriate; and
- consistent with the level of penalty imposed for similar offences in Jersey.

You must allow enough time for LOD to review the draft Law and provide advice before you need to lodge it. **You should allow at least 28 days for the LOD review.**

Your drafter can usually advise you about when to approach LOD. Matthew Berry, Senior Legal Adviser in the Advice Team, is the best contact for further information.

Finalising the text

Once you and your drafter are happy with the draft legislation, it will go for in-house review. There are three checks:

- Editorial, by the Legislation Editor
- Legal or peer review, by another drafter
- Formatting, by a legislation clerk

The reviews check:

- that the legislation is clear and makes sense;
- that any amendments work; and
- that the draft legislation is properly formatted.

The editorial and legal checks are likely to spot things the drafter will miss. It's quite common for the drafter to come back to you with fresh points following these reviews. It's a very important step. By now, you and the drafter will have read the draft so many times you will not spot matters that a

person coming cold to the matter will think about. In-house reviews help ensure that legislation submitted to the States does not contain errors.

Depending on the length of the project **1-3 weeks is needed for the in-house review.**

Have a final check at your end too, for any last-minute typos or other errors. At this stage, it is a good idea if a person other than the instructor reads the draft.

With an **Order**, when the draft is final the legislation clerks produce a formal “signature copy”. They send this to you to arrange for the relevant Minister to sign it.

With **other draft legislation**, the Minister should approve the final draft. You can then submit it for lodging.

Please note that the LDO has a strict system of version control. This is also why it's never a good idea to write amendments on a draft. The drafter works from the last draft produced, and this is the version used for signing or lodging. You should never attempt to substitute another version. If you need changes, even at the last minute, they must be made on the master copy or they will not take effect.

The Report

You need to attach a report to any draft Laws or draft Regulations that you lodge. The Report is to explain the policy intention, i.e. the reasons for the legislation. It must outline the manpower and resource implications of the proposed legislation. If the proposed legislation will increase expenditure, it must say so. You should have consulted Treasury about this.

When you have completed the Report upload the final version in Word format into the appropriate Dynamics folder. The LDO Editorial team will download it and attach it to the draft legislation to form the *projet*.

For a draft Law, the Report must include a statement confirming whether the legislation is compatible with the European Convention on Human Rights (ECHR). Any legal issues concerning compatibility with the ECHR must be outlined in a separate report (prepared by the LOD), which must be added as an appendix.

The Explanatory Note

This is a document prepared by the drafter. It summarises what the draft does and explains the legal effect of each provision. Unlike your report it won't give any reason or justification for the content of the draft. The drafter usually produces the explanatory note when the draft legislation is nearing completion. You should read the note carefully to check it is accurate. The explanatory note is lodged with the draft Law or Regulations, and in the case of Orders, is part of the order paper for the States Assembly the newly made Order is tabled.

Approval for lodging

As soon as the text of a draft Law or draft Regulations is in final form, you should submit it to the Executive Leadership Team for “assurance”. This is a high-level consideration by officers. It checks that the legislation works and that there are no unintended consequences. If the legislation affects

Making new legislation – A guide to instructing the drafter

the responsibility of a Minister other than the Minister bringing forward the legislation, you should submit it to COM. The approval stage requires an explanatory paper for authority to lodge *au Greffe*. The paper should include:

- the draft;
- any advice from the Law Officers' Department on –
 - any legal implications of the legislation
 - its compliance with the European Convention on Human Rights
 - the Island's international obligations;
- if needed, confirmation that you have received Treasury agreement; and
- who will take the legislation through the States Assembly (the rapporteur) – usually the Minister, but if not, who will take it in their place.

Once the Council of Ministers have agreed the draft, the drafter cannot alter the content of the draft. The only exceptions are:

- matters of detail that do not affect the main principles;
- minor technical amendments or typographical errors; and
- if the COM authorises the alteration.

If you find any technical or typographical errors, tell the drafter who will advise if they can fix them.

Once COM approves a submission, the legislation can be lodged. When you receive approval:

- notify the drafter;
- give the name of the Member moving the draft legislation; and
- tell the drafter if the COM requires any alterations to the draft.

The drafter will inform the LDO Editorial Team that the legislation is ready for lodging. A legislation clerk will take the draft approved by the drafter and add the Report and Explanatory Note, thereby creating the *projet*. They will then pass it to the Greffe's Publications and Data Editor who will arrange for the *projet* to be lodged. The Greffe will also arrange for the printing of the *projet* and loading onto the States Assembly website before lodging.

Briefing and Scrutiny

The period after lodging allows Members to read the draft legislation before debating it. However, if the content of the legislation is important or sensitive, the Government may brief Members in advance. The timing of a briefing is a matter for you and your policy colleagues. You may have involved Scrutiny at an earlier stage if the draft Law or Regulations are likely to be of interest to them. You will need to brief the Minister before the draft Law or Regulations go public.

Orders

Orders don't need to go to the States – they are signed by a Minister. You will receive an email from a legislation clerk containing a PDF of the Order, the Explanatory Note and instructions on the process for having the Order signed and returned. Once the Order is signed it is very important that you send it straight back to the LDO Editorial Team for numbering and publication. **Legislation must be made public before people can be bound by it, so don't delay.**

8 Passage through the States Assembly

What happens after lodging? How does a projet pass through the States Assembly? What happens if it's amended? If it's a Law, what happens afterwards?

General

The Standing Orders of the States set out the procedure for debate of draft legislation. The Assembly timetables its own business – the LDO plays no part.

You need Treasury agreement before the debate if your legislation involves:

- expenditure of public money; or
- causing a reduction in Government income.

You must describe the financial consequences of the legislation in the Report.



Final bits before lodging

Your draft Law or draft Regulations must be:

- approved by the Bailiff; and
- circulated to other Members.

The *projet* consisting of that draft legislation will then appear on the Order Paper. A minimum of 6 weeks must pass before it the States can debate it.

For the most urgent or important matters, the States can waive the lodging period (for example, during covid). The States need to suspend standing orders to do so and are usually very reluctant to agree to it. **Do not plan your timetable on the assumption that the States will truncate the lodging period.**

Amendments

Any Member, Scrutiny Panel or Minister may lodge amendments to the draft legislation.

Amendments:

Making new legislation – A guide to instructing the drafter

- must be lodged at least 2 weeks before the debate;
- must be within the scope of the legislation and not raise wholly unrelated matters; and
- are drafted by the LDO, normally by the same drafter who drafted the original legislation.

This is the same whether the amendment is proposed by the government, a Scrutiny Panel or a backbench Member. If it is an amendment by a Panel or backbench Member, the drafter will keep the draft confidential. It is up to the Panel or Member if they wish to disclose the draft amendment to the relevant Department in advance of lodging.

You may need an amendment lodged on behalf of the Minister if:

- something has arisen after the legislation was lodged; or
- it was not possible to include a matter before lodging.

You will need get Ministerial approval and to instruct the drafter to draft an amendment. The requirements are the same as for instructing the drafter at an earlier stage. The difference is that the drafter will produce a separate document in the amendment format.

When amendments are finalised:

- a legislation clerk will notify the Publications and Data Editor; and
- the Member moving the amendment must ensure its inclusion on the Order Paper.

As the same drafter drafts both the legislation and any amendment to it, we ought to avoid...



The debate

Opening of the debate

The Greffier reads the citation, thus the legislation is moved in first reading. For the second reading the Minister gives a speech, outlining the scope of the legislation. There is a general debate on the principles behind the legislation. This should not be a clause-by-clause analysis – although references are often made to specific provisions. After this debate, the Minister moves the legislation in second reading. You must brief the Minister in full so that he or she can respond to questions raised in the debate.

Consideration of the legislation in detail

If the legislation is passed in second reading, it is then considered in detail. The Minister may move consideration of:

- individual Articles or Regulations; or
- groups of Articles/Regulations or whole Parts *en bloc*.

Their decision depends on the structure of the legislation and what elements of it are likely to be controversial. This stage of the debate gives Members the opportunity to:

- debate individual aspects of the legislation;
- seek an explanation about the effect of particular provisions; and
- move and speak about their amendments.

For more on the procedure, look up the Standing Orders.

Third reading

After the States have considered the provisions of the legislation in detail, the Minister moves the legislation in third reading. If Members support the proposition:

- the Regulations are made (and that is the end of the process); or
- the draft Law is adopted (and moves on to the next stage).

Clerical corrections

After the legislation is made, but before it is published, it is possible for the legislation clerks to:

- renumber the year in the title to the legislation; and
- renumber provisions as a result of amendments.



9 Royal Assent and coming into force

How does an adopted projet de loi become law? How do I bring my legislation into force?

General

To become a Law, every *projet de loi* adopted by the States Assembly must receive Royal Assent by the King in Council (Privy Council).

Ministry of Justice procedure

After the States adopt the draft Law, the legislation clerks prepare a Royal Assent copy which is sent to LOD so they can prepare a Royal Assent Memorandum (“RAM”) which is:

- prepared by the Law Officers’ Department; and
- signed by the Attorney General.

The Memorandum –

- outlines the purpose and effect of the draft Law and includes:
 - analysis of the Law’s compliance with the European Convention on Human Rights
 - analysis of any other international convention that the Law may impact upon.

When the LOD have completed the RAM, they send it to the LDO. The legislation clerks print a Royal Assent copy and send it, with a covering letter from the Greffier of the States and the LOD’s RAM to the Office of the Lieutenant-Governor for onward transmission to the Secretary of State to lay before the Privy Council.

The turnaround time for receipt of Royal Assent is now about 2-3 months.

If the draft Law is urgent, the Law Officers’ Department may be able to notify the Ministry of Justice (MOJ). The MOJ will see if Royal Assent can be expedited. You should opt for this only in exceptional circumstances.

The MOJ advises the Privy Council on Royal Assent. The Privy Council consider the legislation at its monthly meeting. Once the Law obtains Royal Assent, the Privy Council notifies LOD. The Law is then registered in the Royal Court.



When is legislation made?

Laws are made when they are registered in the Royal Court.

Regulations are made when adopted by the States.

Other secondary or subordinate legislation is made when signed by the person responsible (see Article 2 of the Legislation Law).

Commencement

Because your legislation has become law, it does not mean that it has effect. That depends on when it comes into force. If your legislation doesn't state when it comes into force, then it will come into force on the day after it is made. (See Article 3 of the [Legislation \(Jersey\) Law 2021](#) to read this provision). There are some exceptions:

- Legislation that has effect only to commence other legislation.
- Legislation that gives effect to a taxation draft.

Commencement do's and don'ts

Do leave 7 days between making the legislation and commencement, as long as the legislation isn't urgent. This means it can be publicised so people will be aware of the change.

Do tell the drafter if there are further steps needed before the Law comes into force. The drafter can provide for the Law to come into operation later.

Do use a Commencement Act if you want the States to vote to say if the law should come into force.

If you don't think the States need to have a vote, **do** use a Commencement Order, which is signed by the relevant Minister.

Don't immediately commence provisions creating offences or imposing obligations. The public should have time to read a copy of the Law and consider it before having to change their behaviour.

Do consider what publicity you want to give the law change, such as a press release. All legislation is published immediately on www.jerseylaw.je very soon after it is made.

Do think about delaying commencement if you need to have:

- Regulations, Orders or procedural rules drafted; or
- set up administrative systems.

DON'T commence a provision that “the Minister must make an Order” or “the States must make Regulations” **UNLESS** the Order or Regulations is ready to come into force.

Don't apply a provision retrospectively in secondary legislation unless:

- it is expressly permitted by the Law; or
- it is absolutely necessary.

Do give people affected by the new law proper notice if commencement is by Commencement Act or Order. The Act or Order should not commence the Law too soon.

If your Law does not commence immediately, **don't** forget about it and assume it is in force. Your part in the process doesn't stop until all the Law is operative. The only exception is if intervening events make further commencement undesirable. Your Law is the will of the elected Assembly and should be operative as soon as practicable.

10 Appendices

[*Appendix 1: Steps in preparation of legislation up to final draft*](#)

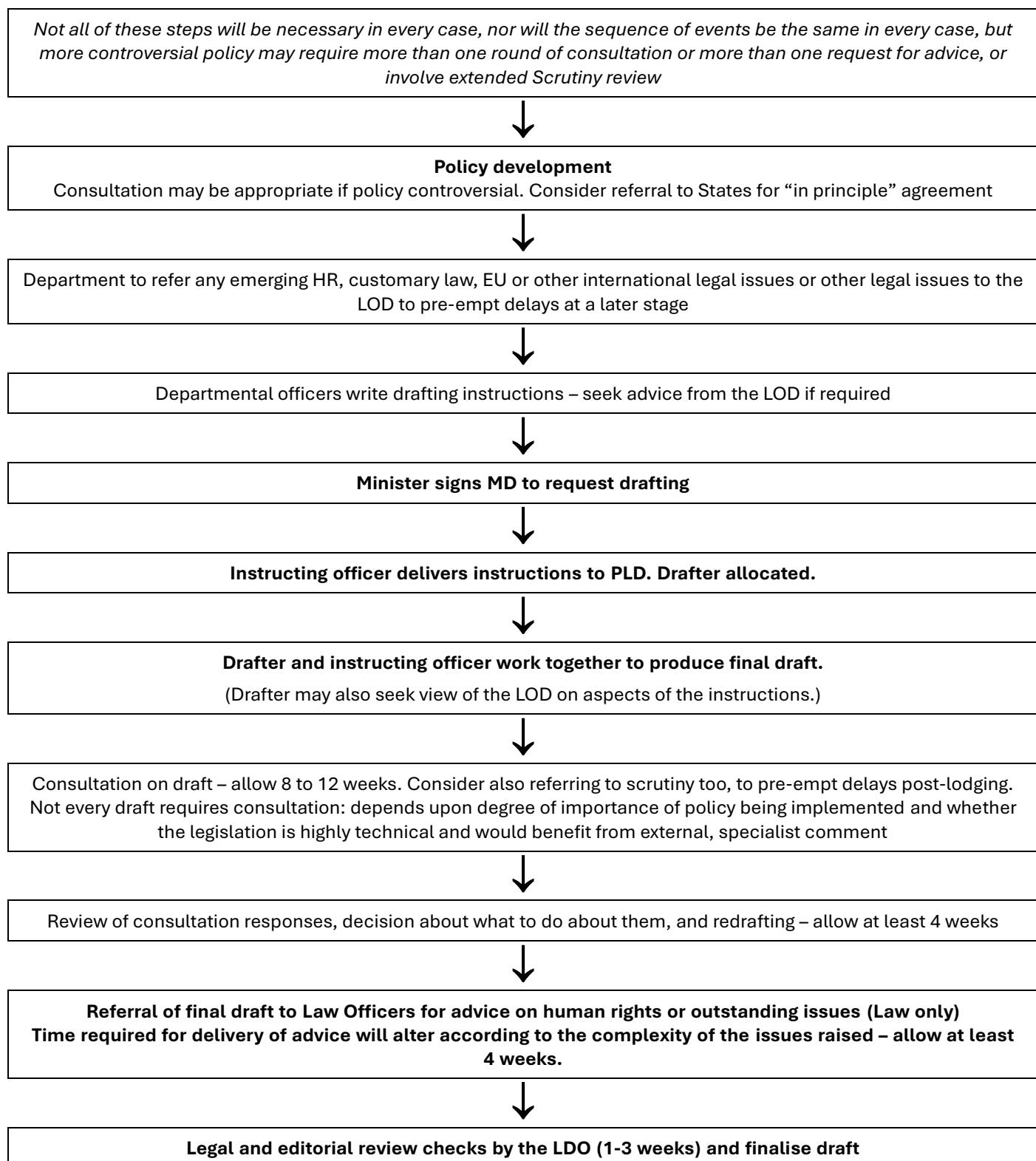
[*Appendix 2: Structure of a Law*](#)

[*Appendix 3: How different types of legislation are made*](#)

[*Appendix 4: Drafting instructions checklist*](#)

[*Appendix 5: Human rights*](#)

Appendix 1: Steps in preparation of legislation up to final draft



Appendix 2: Structure of a Law

This example shows a sample draft Law, with all the different parts labelled – this should help you when referring to the parts of the draft Law in your review.



**DRAFT EXPLAINING THE STRUCTURE OF A
LAW (THIS BIT IS THE SHORT TITLE) (JERSEY)
LAW 202-**

This is the Table of Contents

Article

| | | |
|---|--|---|
| 1 | This is the Interpretation Article – it’s always Article 1 | 3 |
| 2 | This is an Article..... | 3 |
| 3 | This is another Article..... | 3 |
| 2 | This is the citation and commencement – it’s always the last Article | 4 |

| | |
|-----------------------------|----------|
| THIS IS THE SCHEDULE | 5 |
|-----------------------------|----------|

| | |
|--------------------------------------|---|
| DETAIL AND ADMINISTRATIVE PROVISIONS | 5 |
|--------------------------------------|---|



DRAFT EXPLAINING THE STRUCTURE OF A LAW (THIS BIT IS THE SHORT TITLE) (JERSEY) LAW 202-

A **LAW** to explain to instructors, officials and anyone else who is interested how a Jersey law fits together, what goes where, and what all the parts are called – this part is the long title, which sets out the scope of the law.

| | |
|--|------------------------------|
| <i>Adopted by the States</i> | <i>[date to be inserted]</i> |
| <i>Sanctioned by Order of His Majesty in Council</i> | <i>[date to be inserted]</i> |
| <i>Registered by the Royal Court</i> | <i>[date to be inserted]</i> |
| <i>Coming into force</i> | <i>[date to be inserted]</i> |

The following words are the enacting words – they will be read out in the States Assembly: THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

1 This is the Interpretation Article – it’s always Article 1

In this Law –

“this” means whatever I say it means in this bit;

“that” means the other; and

“those words” have those meanings wherever they are in the Law.

2 This is an Article

This is an unnumbered paragraph –

(a) this is a sub-paragraph;

(b) as is this; and

(c) this, but –

(i) this is a clause, and

(ii) so is this.

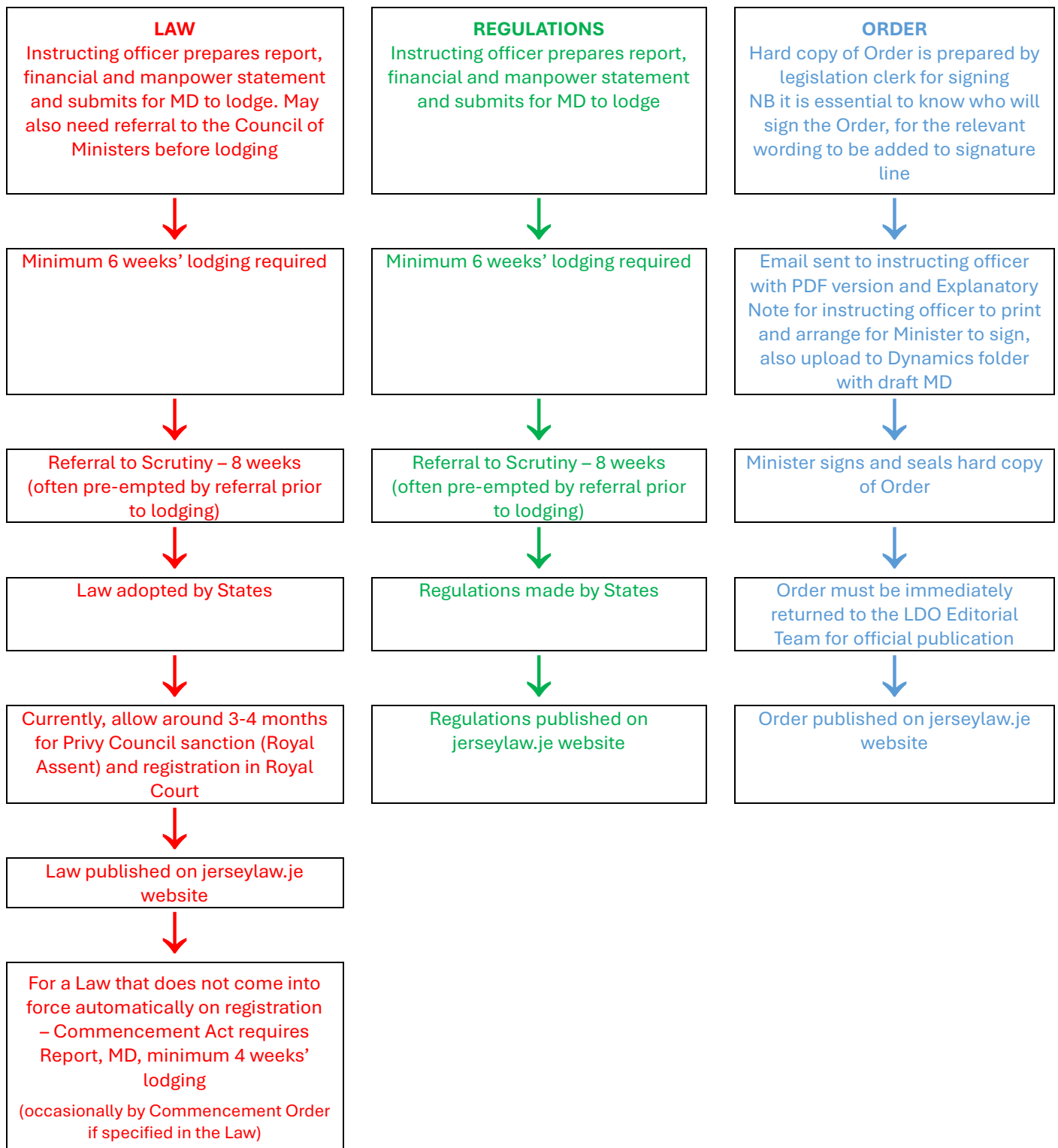
3 This is another Article

- (1) This is a paragraph.
- (2) So is this.
- (3) This paragraph tells you that there is further information about it in the Schedule.

2 This is the citation and commencement – it's always the last Article

- (1) This Law may be cited as the Explaining the Structure of a Law (This Bit is the Short Title) (Jersey) Law 202-. This is the citation, which gives you the short title of the Law.
- (2) This Law comes into force 7 days after it is registered. This is the commencement provision, which tells you when the Law comes into force.

Appendix 3: How different types of legislation are made



Appendix 4: Drafting instructions checklist

Part A: Contacts

- A1. Name of sponsoring Minister.
- A2. Date of MD and date instructions submitted.
- A3. Name and contact details of Instructing Officer.
- A4. If LOD has provided any advice relating to these instructions, give the name and contact details of LOD officer.

Part B: Introduction and overall structure

- B1. Number your paragraphs.
- B2. Make sure the instructions have page numbers.
- B3. Outline the policy, giving:
 - the background;
 - an overview of the policy;
 - why the law is needed; and
 - what effect the new law is to have on existing law and practice.

Part C: Detailed instructions

THE EXISTING LEGISLATIVE FRAMEWORK

- C1. Set out in detail how the existing law operates in practice. (Assume the drafter knows nothing about the subject.)
- C2. Give examples of how the law operates in practice. If the practice is not the same as the law requires/permits then explain.
- C3. Explain any case law or customary law that is relevant.
- C4. Consider whether a historical analysis of the legal framework is necessary (e.g. why any recent amendments have been made).
- C5. Explain recent changes to the law or other changes that are in the Government Legislative Programme.
- C6. Explain how any LOD or other advice may be relevant to the policy approach being taken (e.g. any advice given on ECHR/EU issues or data protection).

WHAT IS PROPOSED

- C7. Set out the proposals in a logical order to tell the story.
- C8. Explain, in relation to each proposal, why new or amended legislation is necessary, including how any existing legislation is to change.
- C9. Analyse the present obstacles or defects.
- C10. Explain what needs to be achieved by way of the proposed law. How are things intended to work in practice after the amendments are made? If there are existing precedents which you believe have the intended effect, refer to them and explain exactly how the adoption of similar provisions will achieve the intended effect.

- C11. Set out the circumstances in which the new provisions will apply.
- C12. Explain if other options have been considered and why they have been rejected or if there has had to be a compromise when reaching the policy decision.
- C13. Describe any procedures to be included (e.g. procedures for applications, licences etc.).
- C14. Are there new independent public appointments to be made? If so, ensure that they do not run for more than 9 years in total. Consider the pension position - sometimes appointees are initially appointed as States employees as a shadow appointment. When appointed formally under new legislation (not as a States employee) different pension arrangements need to be made.
- C15. Does the legislation introduce new controls or restrictions? If so, identify the person or authority responsible for administering and enforcing them. If they involve a registration or licensing system, include full details.
- C16. Is anything in the new law a criminal or civil offence? Describe envisaged enforcement mechanisms and any sanctions and appeals mechanisms. Identify those acts and omissions that are to constitute criminal offences or for which a system of civil penalties is required, and suggest appropriate penalties.
- C17. Describe other powers needed (e.g. to make codes of practice, give guidance, directions etc. and who will exercise those powers).
- C18. If you intend to make subordinate legislation, describe in detail:
- what will be covered in the subordinate legislation; and
 - who will have the power to make it (States or Minister).
- page 16C19. Explain any consequences for other legislation and what consequential changes to other legislation may be needed.
- C20. Explain transitional, transitory or savings that may be required – how will you treat the existing situation when the new regime comes in? See page 16.
- C21. Suggest when the legislation should commence. If you want different provisions to commence at different times, explain your reasons.
- C22. Is there anything else you need a drafter's advice on? Make sure you include it.

Part D: Other information

Provide any other relevant information (and explain its relevance)

- D1. Treaties, conventions or international agreements:
- Specify any treaties, conventions or international agreements to be implemented by the legislation.
 - Include hyperlinks or copies.
 - Include any reports of experts or committees on the treaties, etc.
- D2. Recommendations in reports:
- Specify any recommendations in any report of a commission, committee or inquiry to be implemented by the legislation.
 - Specify any such recommendations that are relevant to the legislation.

Making new legislation – A guide to instructing the drafter

- Include a web-link or electronic copy of the report.
 - Include any associated papers.
 - Identify any other documents relevant to the legislation, and include web-links or electronic copies.
- D3. Give details of any consultation and the date it ends/ended and include copies of consultation papers, responses to them and the Department's views on the responses.
- D4. Explain if the instructions incorporate changes required as a result of the consultation responses and if not, then explain why not.
- D5. If the legislation is intended to introduce a similar regime to that operating elsewhere, specify the relevant legislation and supply copies (other than existing UK legislation or where there is a link to the legislation online), and indicate any substantial changes sought.
- D6. Set out the nature of the project and its likely scale (i.e. is it stand-alone, or part of a series of projects that are to work and/or be brought into force together?).
- D7. Set out any known timetable or deadline that is likely to apply to the project as a whole.
- D8. Set out the policy officers' understanding of the status of the project and its importance to the States of Jersey.

Part E: Documents

Send the following documents or explain why any such documents are not included:

- E1. Ministerial decision.
- E2. Reports or propositions laid before the States.
- E3. Consultation document.
- E4. Responses to consultation.
- E5. All legal and technical advice relied upon in preparation of the instructions from LOD (Note: all legal advice provided by lawyers in the private sector must also be shared with LOD and LDO).
- E6. All European or other international documents that the proposed legislation is intended to implement.
- E7. Any other relevant documents.

Appendix 5: Human rights

1. Article 4 of the Human Rights (Jersey) Law 2000 states that so far as it is possible to do so, principal legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights (meaning the rights set out in the ECHR to which Jersey is bound). Article 5 enables the higher courts in Jersey to make declarations of incompatibility in relation to Jersey legislation. Under Article 7 it is unlawful for a public authority to act in a way which is incompatible with a Convention right. You should also be familiar with Article 16, which states:

16 Statements of compatibility

- (1) A Minister who lodges *au Greffe* a *projet de loi* must, before the second reading of the *projet* –
 - (a) make a statement to the effect that in the Minister’s view the provisions of the *projet* are compatible with the Convention rights (a “statement of compatibility”); or
 - (b) make a statement to the effect that although the Minister is unable to make a statement of compatibility, he or she nevertheless wishes the States to proceed with the *projet*.
 - (2) The statement referred to in paragraph (1) must be in writing and be published in such manner as the Minister making it considers appropriate.
2. In advising the Minister to make the statement set out in Article 16(1)(a) at the very least the balance of arguments must support the view that the provisions are compatible. The Minister will form a view on the basis of appropriate advice from the Law Officers’ Department. The advice will indicate which rights are potentially engaged and whether the provisions of the draft Law are likely to stand up to challenge on Convention grounds before any courts. The most common ECHR rights that are potentially engaged by legislation are (1) Article 5 (right to liberty and security), (2) Article 6 (right to a fair trial), (3), Article 7 (no punishment without law), (4) Article 8 (right to respect for private and family life) (5) Article 10 (freedom of expression) and (6) Article 1 of Protocol 1 (protection of property). However, in the end it is the Minister’s decision whether or not to make the statement.
 3. The Report will contain that statement of compatibility. The Report should not simply record the fact that an Article 16 statement has been made, but also briefly draw attention to any Convention issues in the draft Law together with conclusions on compatibility. In some cases, it may be sufficient simply to state that an issue has been considered, and that a particular conclusion has been reached. In other cases, you may refer to the policy justification for what is proposed. You are not expected to list every human rights point which could be taken on the Law, or to cite case-law supporting the conclusions on compatibility.
 4. For many *projets*, the information will most conveniently be contained in a single passage in the introductory section of the Report. For longer *projets*, or those containing several different subjects, a series of passages at the beginning of each part of the Report may be more suitable. If the Report contains factual information or policy analysis relevant to the human rights issues being discussed, the passage on compatibility might usefully contain cross references.

11 Useful references and contacts

Jersey legislation: <https://www.jerseylaw.je/laws/>

UK legislation: <http://www.legislation.gov.uk/>

Guernsey legislation: <http://www.guernseylegalresources.gg/>

Isle of Man legislation: <https://legislation.gov.im/cms/>

Common legislative solutions: <https://gov.wales/common-legislative-solutions-a-guide-to-tackling-recurring-policy-issues-in-legislation>

Data protection toolkit:

<https://soj/CorporateProjects/DataProtection/Pages/DataProtectionToolkit.aspx>

Legislative Drafting Office:

<https://www.gov.je/government/nonexeclegal/statesgreffe/pages/legislatedraftingoffice.aspx>

LDO@gov.je

Legislative Drafting Office

States Greffe

Morier House

Halkett Place

St Helier

Jersey

JE1 1DD

Principal Legislative Drafter/Head of LDO: Lucy Marsh-Smith: L.marshsmith@gov.je

Senior Legislative Drafters: Zoe Rillstone: z.rillstone@gov.je / Jackie Miller: j.miller@gov.je

Legislation Editor: Graham Halpin: g.halpin@gov.je

Legislation Clerks / Assistant Legislation Editors:

Anita Le Monnier: a.lemonnier@gov.je

Brenda DeLouche: b.delouche@gov.je

States Greffe:

<https://www.gov.je/Government/NonexecLegal/StatesGreffe/Pages/WhoWeAreWhatWeDo.aspx>

States Assembly: <https://statesassembly.gov.je>

Law Officers' Department Advice Team

Morier House (as above)

Senior Legal Adviser: Matthew Berry: m.berry@lawofficers.je