

PROCESS FOR MAKING LEGISLATION



Procedure for drafting of legislation

Step 1 Drafting instructions

The Legislative Drafting Unit receives drafting instructions from the Ministry or Department responsible for the particular subject area. Drafting instructions are received from the Permanent Secretary of the Ministry or Department in the form of a memorandum.

☑ **Drafting instructions may be given as -**

- (1) an explanation of the policy in point form;
- (2) a draft Bill or Statutory Instrument;
- (3) requests to incorporate or eliminate specific words or concepts from current Act or Statutory Instrument;
- (4) requests to represent existing provisions in the drafting of additional requirements;
- (5) explanations of the aim of the provision, not accompanied by a proposed draft but including suggestions of where the provision might be placed or how the desired result might be achieved; or
- (6) elements required in a particular regulatory provision.

☒ **Drafting instructions should never be -**

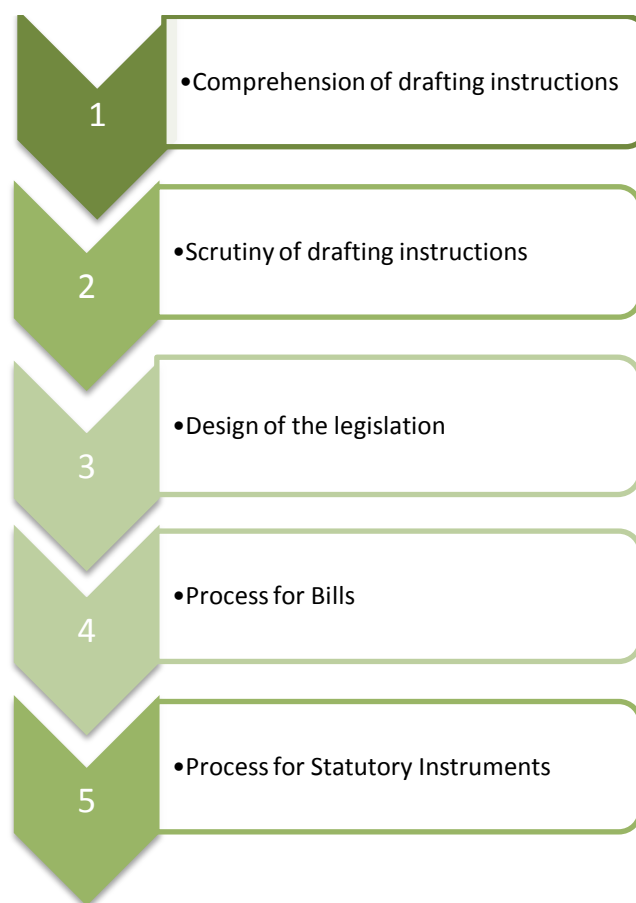
- (1) discourses on policy options;
- (2) a mixture of comments received by the Ministry or Department or from stakeholders. The comments should be carefully sifted and proposals to be adopted as part of the revised policy should be clearly indicated. It is preferable to submit a digest of what is accepted and where resulting changes must be made.

When drafting instructions are received, the Secretary submits it to the Director of Legislative Drafting who assigns it to the appropriate officer.

Step 2 Drafting process

Phases of drafting legislation

The following are phases that a legislative drafter must take into consideration when drafting legislation. These phases apply whether the drafting instructions require the preparation of legislation or the review of draft legislation.



Comprehension

In order to translate drafting instructions, the legislative drafter must first understand the drafting instructions.

Scrutiny of drafting instructions

When considering drafting instructions, the legislative drafter must take into account

- Existing laws
 - Interpretation Act, Cap. 1.06 for general rules relating to legislative drafting
 - Constitution of Saint Lucia, Cap. 1.01 to ensure that the drafting instructions are not inconsistent with the Constitution, to identify lawmaking powers of the legislature and the ability to make laws retrospectively
 - Statutes Act, Cap. 17.13 for other rules relating to legislative drafting and the enacting clause
 - Other legislation that may be relevant to the area
- Translation of the drafting instructions keeping in mind instructions that affect
 - Personal rights

- Private property rights
- Retrospective legislation
- Regional and International commitments
- Constitutional implications
- Other Government Ministries, Departments or agencies
- The Crown
- Suitability.

Design of the Legislation

Legislation consists of:



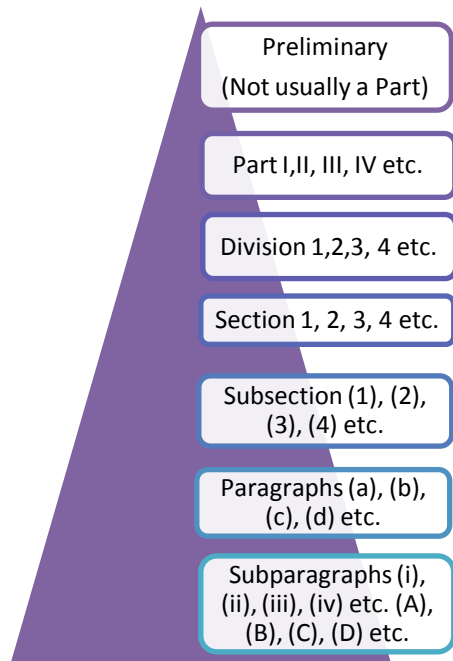
- Preliminary provisions
- Substantive or Regulatory Provisions
- Miscellaneous provisions.

This is illustrated in the diagram below -

Preliminary Provisions	Substantive or Regulatory Provisions	Miscellaneous provisions
• Title • Arrangement • Long Title • Enacting clause • Short title for a Bill/citation for a statutory instrument • Commencement • Definitions • Purpose • Application • Act binds the Crown	• Administration • The rights and responsibilities of persons or bodies under the legislation • Finance • Enforcement	• Provisions that place limits on the application of the legislation generally • Regulations • Repeal • Saving • Transitional

Arrangement of legislation

The laws of Saint Lucia are arranged in a particular manner. The structure of the law will be affected by the complexity of the law. In the diagram below, the techniques used for arranging legislation is identified.



Style of legislative drafting

The drafting style used in the Legislative Drafting Unit is plain language drafting. This style of legislative drafting ensures clarity and effective communication.

Style of legislative drafting

Active language

Subject performs the action

‘doer’ identified for each action

Answers ‘who?’ and ‘by whom?’

Avoid the passive voice

Use the present tense

Use natural word order (subject-verb-object)

Modifiers belong with words they modify

Use descriptive cross-references instead of repeating provisions of the legislation

Take the opportunity to clear things up in outdated provisions

Avoid archaic latin terms and legalese

Use singular nouns

Use upon if time sensitive only

Use “if” for condition, “when” for certain event and “where” for place

Do not use and/or

Avoid ambiguity and uncertainty

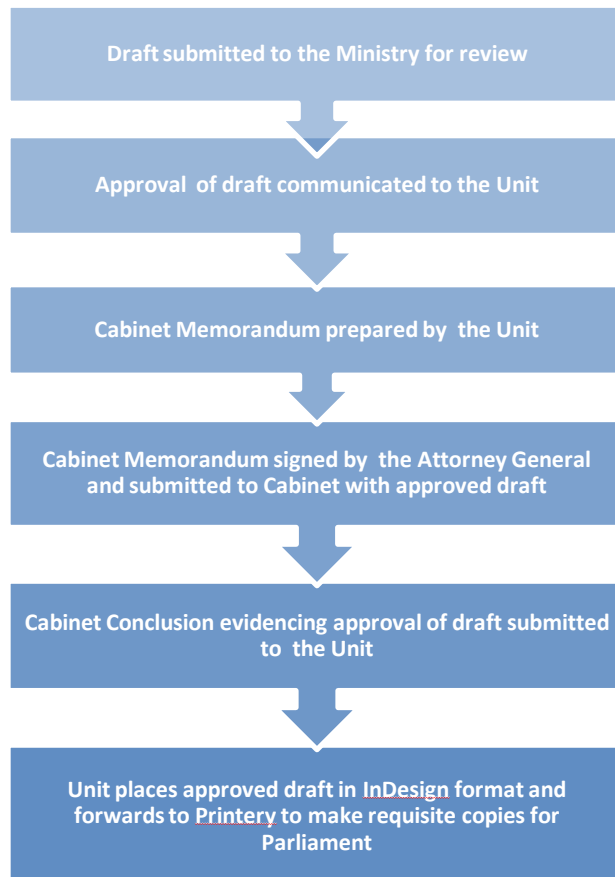
Use consistent terms

May is permissive

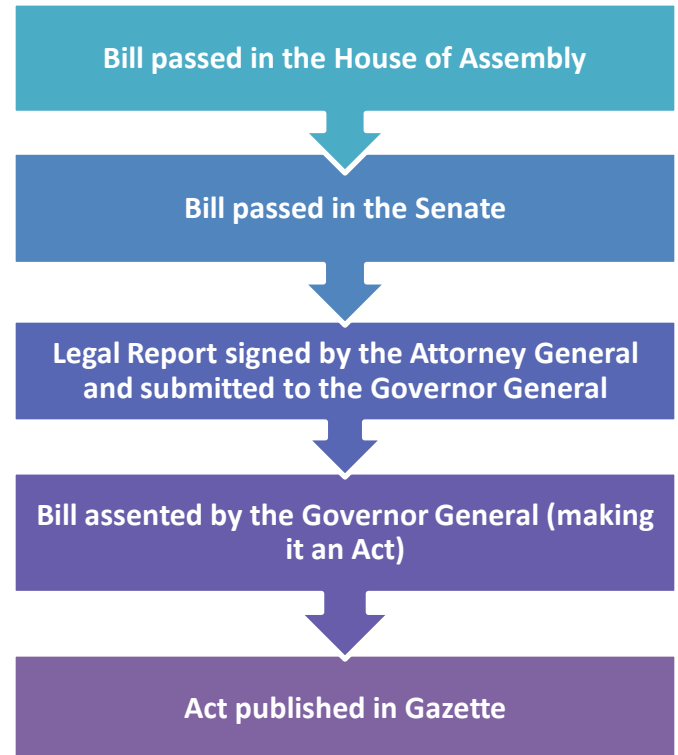
Must is imperative

Shall is an instruction or command.

Process for Bills



Parliamentary process and completion of enactment of Bill



Process for Statutory Instruments



In relation to statutory instruments which require the signature of the Minister or appropriate signatory, a memorandum is prepared requiring the Minister or appropriate signatory to sign the statutory instrument.

Approval and signature

When legislation is prepared by the Legislative Drafting Unit approval is required of the legislation. In order to obtain approval a memorandum is provided to the Ministry or department requiring the review and approval of the legislation before any further action on the legislation may be taken.

Approval of legislation must be provided by the Permanent Secretary of the Ministry or Department which submitted the drafting instructions.