



HOW A BILL BECOMES AN ACT

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TABLE OF CONTENTS

<u>STAGES IN THE MAKING OF AN ACT OF PARLIAMENT</u>	3
<u>THE POLICY STAGE</u>	4
• The Role of Policy in the Law-Making Process	4
• The Difference between policy and law	4
• The Formulation of Policy	4
• Getting policy from a Ministry or Portfolio to the Legislative Drafting Department	5
• The “instructing officer”	5
• Drafting Instructions	5
<u>THE LEGISLATIVE DRAFTING STAGE</u>	7
• When does the drafting of legislation commence?	7
• The steps to be taken by Legislative Counsel assigned to draft legislation	7
• The steps to be taken after Legislative Counsel has completed the drafting of the Bill	8
<u>THE LEGISLATIVE OR PARLIAMENTARY STAGE</u>	10
• The procedure for the passage of a Bill in the Parliament	10
• The First Reading	10
• The Second Reading and Debate	10
• The Committee Stage	11
• The Report to the House, Third Reading and Passage	11
<u>THE PUBLICATION STAGE</u>	12
• When does a Bill become an Act?	12
<u>APPENDIX</u>	13
• Example of a Notice of Committee Stage Amendments	13

STAGES IN THE MAKING OF AN ACT OF PARLIAMENT

The following are the stages in the making of an Act of Parliament —

1. The Policy Stage;
2. The Legislative Drafting Stage;
3. The Legislative or Parliamentary Stage; and
4. The Publication Stage.

It should be noted however that the Governor has a reserved power to enact legislation.

Section 81 of the Constitution empowers the Governor to enact legislation where all the following conditions are met —

- The Governor must consider the enactment of the legislation to be necessary or desirable;
- The legislation must pertain to the areas for which the Governor has special responsibility under section 55 of the Constitution, which are defence, external affairs, internal security and the appointment of persons to public office;
- The Governor must consult with the Premier on the proposed course of action;
- The Cabinet must appear to the Governor to be unwilling to support the introduction of the Bill into Parliament or the Parliament must appear to the Governor to be unlikely to pass the Bill; and
- The Governor must seek the approval of a Secretary of State.

Once the abovementioned requirements are satisfied, the Bill must then be published for at least 21 days prior to assent, unless the Governor certifies by writing that the matter is too urgent to permit a delay in assenting to the Bill.

If the Governor certifies that the matter is too urgent to permit a delay in assenting to the Bill, the Secretary of State must be informed.

The Governor may then, either after the expiration of 21 days or after certifying that the matter is of urgency, assent to the Bill.

One such example where the Governor used this reserved power was to enact the *Civil Partnership Act, 2020*¹.

¹ https://legislation.gov.ky/cms/images/LEGISLATION/PRINCIPAL/2020/2020-0035/CivilPartnershipAct_Act%2035%20of%202020.pdf

THE POLICY STAGE

The Role of Policy in the Law-Making Process

- Policy outlines the goals and objectives which a Government Ministry or Portfolio hopes to achieve and the methods and principles it will use to achieve them.
- Simply put, policies outline what a Government is going to do and what it can achieve for society as a whole.

The Difference between policy and law

- A policy may be considered a statement or a document of what is intended to be done in the future.
- Laws are set standards, principles, and procedures that must be followed in society.
- Policies are only documents and not law; however, these policies can lead to new laws needed to achieve the goals of the policy.

The Formulation of Policy

- In developing the policy for a legislative proposal to deal with an issue, the policy-maker must undertake the following —
 - (a) identify problems;
 - (b) research;
 - (c) consultation; and
 - (d) recommend possible solutions.
- The policy-maker must also consider —
 - (a) constitutionality;
 - (b) workability;
 - (c) financial implications; and
 - (d) staff implications.

Getting policy from a Ministry or Portfolio to the Legislative Drafting Department

- A Ministry or Portfolio develops a policy for a matter which it wishes to become law.
- The Ministry or Portfolio drafts and submits a Cabinet Paper requesting that Cabinet approve the policy.
- Cabinet grants approval for the Ministry or Portfolio to issue drafting instructions to the Legislative Drafting Department to draft the required legislation to give effect to the Ministry's or Portfolio's policy.

The “instructing officer”

- The Cabinet Paper approved by Cabinet identifies an “instructing officer” in the Ministry or Portfolio responsible for communicating instructions to the Legislative Drafting Department.
- The instructing officer is responsible for —
 - (a) developing policy;
 - (b) preparing drafting instructions;
 - (c) communicating instructions on draft legislation to the assigned legislative drafter (“Legislative Counsel”);
 - (d) clarifying drafting instructions;
 - (e) carefully examining draft legislation;
 - (f) providing constructive comments on drafts; and
 - (g) consulting on the draft legislation.

Drafting Instructions

- Drafting instructions —
 - (a) contain sufficient background information to enable the Legislative Drafting Department to understand the issues which the legislative proposal is intended to address and solve;
 - (b) state clearly and fully the principal objects of the proposed legislation;
 - (c) provide full information as to how the principal objects of the legislation are to be achieved;

- (d) refer to all known implications and difficulties - whether political, legal, administrative, financial or otherwise; and
 - (e) contain relevant examples of legislation in other jurisdictions which should be considered in drafting the legislation.
- **Good drafting instructions** should identify —
 - (a) the nature of the problem by providing **background information**;
 - (b) the **purposes** of the proposed legislation;
 - (c) the **means** by which those purposes are to be achieved; and
 - (d) the **impact** of the proposals **on existing circumstances and law**.

THE LEGISLATIVE DRAFTING STAGE

When does the drafting of legislation commence?

- The Cabinet approves of the proposed legislation and issues drafting instructions to the Attorney General.
- The First Legislative Counsel receives the “Cabinet Extract” which records Cabinet’s decision to approve the policy proposals.
- The First Legislative Counsel assigns Legislative Counsel to draft the Bill.
- The assigned Legislative Counsel then liaises with the instructing officer to get the instructions and policy clarification necessary for drafting the required legislation.

The steps to be taken by Legislative Counsel assigned to draft legislation

- Legislative Counsel must —
 - (a) contact the instructing officer and inform the Ministry or Portfolio of his or her being assigned to draft the particular legislation;
 - (b) carefully review and analyse the drafting instructions;
 - (c) prepare the draft legislation and submit the draft to the Ministry or Portfolio for the comments of the Ministry or Portfolio and for consultation;
 - (d) settle the draft after receiving comments and feedback from the Ministry or Portfolio and from consultation; and
 - (e) review and submit the finalized draft Bill for proofreading by First Legislative Counsel or Senior Legislative Counsel.

The steps to be taken after Legislative Counsel has completed the drafting of the Bill

- When the drafting of the legislation is complete, the following steps occur —
 - (a) Legislative Counsel submits the finalized draft Bill to the Ministry or Portfolio for approval by the Chief Officer to prepare the Bill for submission to Cabinet;
 - (b) The Ministry or Portfolio submits the draft Bill to the Cabinet for the Cabinet's approval;
 - (c) Where Cabinet approves the Bill for onward transmission to the Clerk of the Parliament and for introduction in the Parliament, the Bill is forwarded by the Ministry or Portfolio under cover of a memorandum to the Clerk of the Parliament;
 - (d) The Clerk of the Parliament reviews the Bill and then advises the First Legislative Counsel that the Bill should be published in the Legislation Gazette;
 - (e) The Bill is then submitted to the Chief Information Officer, Government Information Services, for publication in the Legislation Gazette; and
 - (f) The Clerk of the Parliament then arranges for the Bill to be circulated to Members of the Parliament.
- In accordance with section 77(2) of the Constitution, the Parliament cannot proceed upon any Bill until the expiration of 28 days after the date on which the Bill was published (also referred to as “the period of public consultation”), unless the Premier certifies by writing that consideration of the Bill is too urgent to permit such a delay. The first time that the Premier's power was engaged under this subsection was in relation to the *Immigration (Transition) (Amendment) Bill, 2021* and the *Customs and Border Control (Amendment) Bill, 2021*.
- In accordance with section 77(4) of the Constitution, where, in the opinion of the Governor, a Bill concerns a matter for which the Governor is responsible under section 55(1) of the Constitution or a matter that by law is the responsibility of the Governor, the consent of the Governor is required prior to Parliament proceeding upon the Bill.

- The Governor's special areas of responsibility under section 55(1) of the Constitution are defence, external affairs, internal security and the appointment of persons to public office.
- During the period of public consultation referred to above, the Ministry or Portfolio may receive comments from various stakeholders or members of the public on the Bill, which may result in changes being proposed to the Bill.
- Where the Ministry or Portfolio decides that an amendment should be proposed in respect of the Bill, the Chief Officer will write to the Legislative Counsel who prepared the Bill, instructing the Legislative Counsel on the proposed amendment.
- The Legislative Counsel will then prepare a Notice of Committee Stage amendments and submit same to the Chief Officer for onward transmission to the relevant Minister, for the Minister's consideration.
- Once the Minister approves the Notice of Committee Stage Amendments and affixes the Minister's signature to the Notice, a signed copy of the Notice must be submitted to the Clerk of the Parliament, the Honourable Attorney General, the First Legislative Counsel and the Legislative Counsel who prepared the Bill and Notice. (See *the example of a Notice of Committee Stage Amendments set out in the Appendix*).
- It should be noted that, in accordance with Standing Order 52 of the Parliament's Standing Orders, "***Notice of any amendment, new clause or new Schedule proposed to be moved to the Bill shall be given in writing not later than two days before that on which the Bill is to be considered in committee; and, except with leave of the Chairman, no amendment of which notice has not been given may be moved.***".

THE LEGISLATIVE OR PARLIAMENTARY STAGE

The procedure for the passage of a Bill in the Parliament

- The rules governing the procedure for the Parliament are called “Standing Orders”.
- In accordance with the Standing Orders, for a Bill to be passed it has to go through three stages; each stage is called a “Reading”.
- Standing Order 47 provides that —
“Every Bill shall be read three times before being passed and no Bill may be given more than two readings at any one sitting.”.

The First Reading

- During the **first reading** of a Bill, the Clerk of the Parliament presents the Bill to the House. This stage generally takes place without debate.

The Second Reading and Debate

- During the **second reading** of a Bill, the following occur —
 - The Minister pilots the Bill (Outlines its general objectives and principles).
 - Members of the Parliament (MPs) debate on the Bill.
 - Legislative Counsel assists Minister with responses to issues of law and with the drafting of amendments.
 - Instructing Officer assists Minister with responses to issues of policy.

The Committee Stage

- After the second reading, the Bill enters the **Committee stage** (which involves all MPs unless the House refers it to a Select Committee), where detailed examination of each clause takes place.
- Once the committee stage is finished, the Bill returns to the House for its report stage, presented by the MP responsible for the Bill.

The Report to the House, Third Reading and Passage

- Once the Committee stage is finished, the Bill returns to the House for its **report stage**, presented by the MP responsible for the Bill.
- Following a **Third Reading** in the House, the Bill is voted on by MPs.
- If the Bill is passed by a vote of the majority of MPs, the Bill will go to the Governor of the Cayman Islands, who must give assent to all Bills before they are enacted.
- The Clerk of the Parliament sends the Bill to the Attorney General through the First Legislative Counsel, for submission to the Governor.
- The Legislative Drafting Department then prepares the vellum copies of the Bill, which involves printing the approved Bill on specially textured vellum paper. The vellum copies are submitted to the Speaker and the Clerk of the Parliament for signing. The Legislative Drafting Department also prepares a Legal Report in respect of the Bill for the Attorney General to submit to the Governor along with the signed vellum copy of the Bill.
- Upon review of the Bill and the Legal Report, the Governor signifies his or her assent.

THE PUBLICATION STAGE

When does a Bill become an Act?

- The assented Bill is returned to the Legislative Drafting Department to prepare it for publication in the Legislation Gazette.
- The assented Bill is published in the Legislation Gazette and is thereafter referred to as an Act.
- Acts are published in the Legislation Gazette of the Cayman Islands. The Legislation Gazette is one of the Gazette types which constitute the official publishing mechanism of the Cayman Islands Government.
- The Legislation Gazette is available free online at <http://gazettes.gov.ky/portal/page/portal/gazhome/publications/legislation-gazettes> and printed copies are available by subscription.

EXAMPLE OF A NOTICE OF COMMITTEE STAGE AMENDMENTS

NOTICE OF COMMITTEE STAGE AMENDMENTS THE DEVELOPMENT AND PLANNING (AMENDMENT) BILL, 2024

In accordance with the provisions of Standing Order 52(1) and (2), I the Honourable _____, give notice to move the following amendments to the Development and Planning (Amendment) Bill, 2024 —

1. That the Bill be amended in clause 4, in the proposed new section 21A, by inserting after the word “development” the words “and planning”.
2. That the Bill be amended in clause 8, by deleting paragraph (c) and substituting the following paragraph —
“(c) _____;”.
3. That the Bill be amended in clause 10 in the proposed new section 36A as follows —
 - (a) in subsection (2)(a), by inserting before the word “37” the words “subject to subsection (2A)”;
 - (b) by inserting after subsection (2) the following subsection —
“(2A) Subsection (1) does not apply to a person referred to under subsection (5)”.

MOVED BY:

The Honourable _____

TABLED in the Clerk’s Office the _____ day of _____, 2024.

PASSED/REJECTED by the Parliament the _____ day of _____, 2024.

Clerk of the Parliament



LEGISLATIVE DRAFTING DEPARTMENT

Portfolio of Legal Affairs

4th Floor, Government Administration Building,
133 Elgin Avenue, George Town,
Grand Cayman, Cayman Islands.