

Legislative Drafting in Hong Kong

**Crystallization in Definitive Form
(2nd Edition)**



律政司
Department of Justice

What is legislative drafting

1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are mere scribes, required just to write out their instructing officer’s proposals in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

2 Reed Dickerson in his book “The Fundamentals of Legal Drafting” (formerly entitled “The Fundamentals of Legislative Drafting”) defines legal drafting as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government’s legislation*. It also vets all Members’ (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and exists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers (“counsel”), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of



*Legislative Drafting
in Hong Kong*

**Crystallization in Definitive Form
(2nd Edition)**

**Law Drafting Division
Department of Justice**

*First published 1999
Second edition 2001*

Foreword by the Secretary for Justice



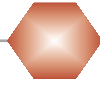
Legislation is a primary source of our law. It is therefore vital for anyone wishing to understand Hong Kong's legal system to have an appreciation of how our legislation is prepared and enacted. This booklet gives an overview of the drafting and legislative processes and accordingly will be of interest not only to professionals but also to anyone with an interest in understanding our legal system.

Legislative drafting is perhaps the most demanding form of legal drafting. Certainly, in view of its social consequences, it is the most significant. It is therefore, in our view, of fundamental importance to have a centralised office of dedicated professionals to ensure that we produce legislation of a high standard, that is consistent, conceptually sound and legally enforceable. The Law Drafting Division of the Department of Justice is charged with this key responsibility. The description of the functions of the Law Drafting Division in this booklet is, in addition, a further example of our efforts to make the workings of government more transparent.

The booklet will be of interest to anyone who wishes to have a better understanding of our legal system and in particular, of how our legislation is prepared and enacted. I hope that it will promote a wider and better understanding not only of the workings of this important Division of the Department of Justice but of the rule of law in Hong Kong as well.

Elsie Leung
Secretary for Justice

CONTENTS



	Paragraph
1. Legislative Drafting	
What is legislative drafting	1.1
What is a legislative drafter	1.4
Functions and structure of Law Drafting Division	1.5
What training do drafters undergo	1.10
2. The Drafting Process	
Instructions to draft	2.1
Committee on Legislative Priorities	2.2
How is legislation drafted	2.4
How long does it take to draft a piece of legislation	2.10
How much legislation is drafted each year	2.11
The legislative process	2.12
3. The Executive Council	
Submission to the Executive Council	3.1
Publication of subsidiary legislation and Bills	3.4
4. The Legislative Council	
Subsidiary legislation	4.2
Primary legislation	4.3
Publication of primary legislation	4.4
5. Completion of Process	
Legal Reports	5.1
Commencement of legislation	5.2
Time taken for the legislative process for a Bill	5.3

6. Supplementary Notes

Plain language	6.1
Bilingualism	6.2
Bilingual Legal Glossaries	6.3
The loose-leaf edition	6.6
BLIS and the Web	6.8

7. Annexes

Annex I	– Organization chart of the Department of Justice
Annex II	– Organization chart of the Law Drafting Division, Department of Justice
Annex III	– Chapter V, General Regulations
Annex IV	– Legislative Process – Bill timetable
Annex V	– Sample page from the loose-leaf edition
Annex VI	– Sample section from BLIS database
Annex VII	– Bilingual Laws Information System – Principal Features

What is legislative drafting

1.1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are mere scribes, required only to write out their instructions in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

1. Legislative Drafting

1.2 Reed Dickerson in his book “The Fundamentals of Legislative Drafting” (formerly entitled “The Fundamentals of Legislative Drafting”) defines legal drafting as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

1.3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

1.4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government’s legislation*. It also vets all Members’ (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

1.5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

1.6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and assists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

1.7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

1.8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers (“counsel”), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

1.9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of



What is legislative drafting

1.1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are mere scribes, required just to write out their instructing officer’s proposals in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

1.2 Legislative drafting is the art of converting legislative proposals into the form of a legally sound and effective law. Although it is important that legislation be drafted in a clear and unambiguous manner, legislative drafting is not just a literary exercise. Legislation is the framework within which any society functions. Accordingly when a new or amending law is proposed, the proposals must first be examined and analysed against that existing framework to see how they can be implemented. It is the task of the legislative drafter to carry out that examination and analysis and come up with the appropriate legislative concepts to give effect to the proposals. Only after this has been done can the drafter consider how best to express those concepts.

1.3 Reed Dickerson*, the American guru on legislative drafting, has described legal drafting (a term that encompasses legislative drafting) as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This definition succinctly recognises the dual aspects of legislative drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in the draft and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and then composing.

What is a legislative drafter

1.4 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.10 and 1.11. It is generally agreed that it takes about seven years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

* The Fundamentals of Legal Drafting (1965).

Functions and structure of Law Drafting Division

1.5 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government's legislation*. It also vets all Members' (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

1.6 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council and meetings of committees of the Legislative Council.

1.7 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.6 and 6.7) and assists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.8 to 6.11).

1.8 In terms of numbers of staff (149) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (444), the Administration and Development Division (203) and the Civil Division (194). (These figures are correct as at 1 December 2000.) The organization chart at *Annex I* shows the structure of the Department of Justice in diagrammatic form.

1.9 On 1 December 2000 the Law Drafting Division consisted of 41 lawyers ("counsel"), 18 Law Translation Officers, 22 Law Clerks, 1 Executive Officer, 30 Clerical Staff, 23 Secretarial Staff, 4 Typists and 10 Calligraphists. The organization chart at *Annex II* shows the structure of the Division in diagrammatic form.

What training do drafters undergo

1.10 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of two legislative drafting training courses conducted in London. One of these courses is run by the Royal Institute of Public Administration (RIPA) and the other by the Institute of Advanced Legal Studies at the University of London. Both courses last for approximately three months. Each year one or

* Because of constitutional constraints on the introduction of legislation, practically all legislation in Hong Kong is introduced by the Government.

two counsel are sent from the Law Drafting Division to attend one of these courses. The overseas training courses have however been temporarily replaced at the moment by an in-house course run by a retired legislative drafter. This course is a comprehensive course tailored to meet local needs and lasts for approximately five months.

1.11 The second method of training employed is on-the-job training. There is a strong feeling amongst drafters that the only way to learn how to draft, is to actually draft. It is considered that people learn best by actually doing the job, making mistakes and having those mistakes pointed out to them. Accordingly all junior drafters are required to draft under the supervision of more experienced colleagues who check their drafts before they are issued and offer advice and assistance.

2. The Drafting Process

What is legislative drafting

1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are mere scribes, required just to write out in instructing form the proposals in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer, let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

2 Reed Dickerson in his book “The Fundamentals of Legislative Drafting” (formerly entitled “The Fundamentals of Legislative Drafting”) defines legal drafting as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government’s legislation*. It also vets all Members’ (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

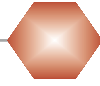
6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and assists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers (“counsel”), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of



Instructions to draft

2.1 All Government legislation is drafted on the basis of Drafting Instructions issued by the relevant policy Bureau. The requirements relating to the preparation of Drafting Instructions are set out in the Government's "General Regulations". A copy of the relevant chapter (together with its appendix and check list) is attached as *Annex III*.

Committee on Legislative Priorities

2.2 Before any proposal for the drafting of primary legislation (i.e. a Bill) can proceed, it must first have been approved by the Committee on Legislative Priorities. This Committee consists of the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice and the Law Draftsman, and is serviced by the Director of Administration. The function of the Committee is to plan and manage the legislative programme for each session of the Legislative Council. The Committee not only decides which Bills will be introduced each session but also nominates the day on which each Bill is required to be introduced. The Law Draftsman's role in this Committee is largely restricted to advising it on how long the drafting of each Bill is likely to take.

2.3 Once the Committee has settled the legislative programme for a session, it is up to the relevant Bureau Secretaries and the drafters to get each Bill drafted in time to be introduced on the nominated date. The Law Draftsman monitors the progress of drafting to try to ensure that drafting timetables are met, and issues a monthly report to each Bureau showing the present position with respect to each item of legislation being drafted.

How is legislation drafted

2.4 The uninitiated may tend to think of legislative drafting principally in terms of writing. In fact, the writing part is only one step in the process – usually the step to which least time is allowed*. There are a number of other equally important steps in the drafting process.

* In one well documented case in the United States, a drafter's time sheet for drafting an amending Bill of 4½ double spaced pages was—

Research time	58 hours
Conference time	18 hours
Actual writing time	4 hours.

(Harry W. Jones *Some Reflections on a Draftsman's Time Sheet* 35 A.B.A.J. 941(1949))

2.5 The first thing that a drafter must do on receipt of instructions to draft a piece of legislation is to make sure that he, or she has a thorough understanding of the proposal. This might seem to state the obvious but it is vitally important to spend sufficient time on this step; for if the proposal is not completely understood the chances of the drafter producing an effective law to implement it are rather slim.

2.6 The next step is for the drafter to make himself, or herself as familiar as possible with all the law that may affect the proposal. All relevant common law and statute law must be studied. Textbooks and international conventions may need to be consulted. In Hong Kong special attention must also be paid to the Basic Law (our “mini-constitution”) and to the Hong Kong Bill of Rights Ordinance (Cap. 383).

2.7 After the drafter has become as familiar as possible with all the relevant law, the proposal must then be subjected to a thorough analysis to ensure that it is conceptually sound and that there are no legal impediments to its implementation. Only after completing these three essential steps will drafting begin in earnest.

2.8 This description of the drafting process as a series of discrete steps undertaken in sequence is somewhat misleading however. A step may often need to be repeated as the draft evolves and, very often, a drafter will begin with a rough draft or outline of the proposed legislation in order to better direct the required research and analysis. However all of these steps must be undertaken if the drafter is to produce law that is conceptually sound and legally effective.

2.9 After the initial stages have been completed, the drafting process normally consists of the drafter producing a series of drafts for consultation, during the course of which the original proposals are refined and perhaps even redefined. Drafts are also checked internally at least once by another drafter in addition to final clearance by the Law Draftsman before the “blue” or final draft is released.

How long does it take to draft a piece of legislation*

2.10 The length of time it takes to draft a piece of legislation depends of course on its length and complexity and on the length of time taken to complete the consultation process. However by measuring, over a number of years, the actual time taken to complete the drafting of particular items of legislation in Hong Kong, it is possible to offer the following as a guide —

* Reed Dickerson made the following observation on this frequently asked question: How long does it take to draft legal instrument? Abraham Lincoln's answer is as good as any. When asked how long a man's legs should be, he answered, “Long enough to reach the ground.” For the legal draftsman, this means, “As long as it takes the particular draftsman to do the particular job.”. (*The Fundamentals of Legal Drafting*, 2nd ed. 1985 p. 71)

Subsidiary legislation

Minor items	2 months
Average items	6 months
Major items	14 months
<u>Bills</u>	
Minor Bills	3 months
Average Bills	6 months
Major Bills	16 months

How much legislation is drafted each year

2.11 On average the Law Drafting Division drafts about 100 Bills each year. Practically all of these Bills eventually become law as Ordinances. The Division also drafts about 600 items of subsidiary legislation a year. Again, practically all of these items become law.

The legislative process

2.12 After the drafting of a piece of legislation has been completed, i.e. after the final agreed draft or “blue” has been issued, the draft must then go through the formal process of being made and becoming law. In the case of Government Bills and subsidiary legislation made by the Chief Executive, the first step is to submit the draft legislation to the Executive Council.

3. The Executive Council

What is legislative drafting

1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or "legal language". All drafters rightly resent any suggestion that they are mere scribes, required just to write out the instructing officer's proposals in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

2 Reed Dickerson in his book "The Fundamentals of Legislative Drafting" (formerly entitled "The Fundamentals of Legislative Drafting") defines legal drafting as "the crystallization and expression in definitive form of a legal right, privilege, function, duty or status". This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government's legislation*. It also vets all Members' (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and assists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers ("counsel"), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of



Submission to the Executive Council

3.1 The Executive Council is a council appointed by the Chief Executive, who presides at its meetings, to assist in policy making. All proposed Government legislation is submitted to the Executive Council for consideration before it may proceed*. Proposed legislation is submitted under cover of an Executive Council paper that explains the objects of the legislation and the situation or problem it is designed to deal with. The paper also sets out the arguments for and against the legislative proposal. All Executive Council papers are required to be cleared by the Secretary for Justice or the Law Draftsman on behalf of the Secretary for Justice, before they are submitted to the Council.

3.2 In the case of subsidiary legislation, the Executive Council will either make it or reject it. In the case of primary legislation (a Bill), it will either decide to forward it to the Legislative Council for enactment or reject it.

3.3 The Executive Council meets about 40 times a year, on Tuesday mornings. Whenever an item of legislation is to be considered the drafter of the legislation is required to attend the meeting together with the relevant Bureau Secretary or his or her representative, to answer any questions the Members may wish to ask. On average three counsel from the Law Drafting Division attend the Executive Council each week.

Publication of subsidiary legislation and Bills

3.4 After it is made by the Executive Council, an item of subsidiary legislation is published in the Hong Kong Government Gazette (“the Gazette”) – usually on the Friday of the following week†. Where a Bill is approved for introduction into the Legislative Council, a Notice of First Reading for the Bill is sent to the Clerk to the Legislative Council who arranges for publication of the Bill in the Gazette – again, usually on the Friday of the following week. The Law Drafting Division plays a role in connection with publication by checking proofs to ensure that what is published is correct.

* Subsidiary legislation that is to be made by a Government official is passed directly to that official for making after it has been drafted, without consideration by the Executive Council.

† An item of subsidiary legislation made by a person or body other than the Executive Council is also required to be published in the Gazette.

4. The Legislative Council

What is legislative drafting

1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are mere scribes required just to wrap up their drafting of other’s proposals in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

2 Reed Dickerson in his book “The Fundamentals of Legislative Drafting” (formerly entitled “The Fundamentals of Legislative Drafting”) defines legal drafting as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government’s legislation*. It also vets all Members’ (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

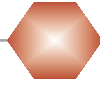
6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and assists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers (“counsel”), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of



4.1 The Legislative Council is the legislature of Hong Kong. It is concerned with both subsidiary and primary legislation.

Subsidiary legislation

4.2 The Legislative Council has a supervisory role over legislation the making of which it has delegated to another person or body. All subsidiary legislation is required to be laid on the table of the Legislative Council; and under the Interpretation and General Clauses Ordinance (Cap. 1), the Council may amend it, by resolution. Counsel from the Law Drafting Division draft all resolutions proposed or agreed to by the Government and vet all resolutions proposed by Members.

Primary legislation

4.3 Once the person having charge of a Bill has moved the Second Reading of the Bill the debate in the Legislative Council is (unless the Council orders otherwise) adjourned and the Bill is referred to the House Committee. The House Committee decides whether or not the Bill should be referred to a Bills Committee. In all but the most simple cases Bills will be referred to a Bills Committee and it is these Committees that carry out the detailed examination of Bills. The drafter of the Bill in question will be required to attend Bills Committee meetings to advise on questions relating to drafting. The drafter will also be required to draft all amendments proposed or agreed to by the Government and to vet all amendments proposed by Members. These amendments are moved when the Bill is in Committee Stage after the Second Reading. In 1999 the Law Drafting Division drafted or vetted 768 pages of Committee Stage Amendments in English and 629 pages in Chinese.

Publication of primary legislation

4.4 After a Bill has been passed by the Legislative Council and signed by the Chief Executive, the Director of Administration arranges for it to be published in the Gazette as an Ordinance. Again, the Law Drafting Division checks the proofs to ensure that the correct text is published.

5. Completion of Process

What is legislative drafting

1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are mere scribes, required just to write up their instructions. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

2 Reed Dickerson in his book “The Fundamentals of Legislative Drafting” (formerly entitled “The Fundamentals of Legislative Drafting”) defines legal drafting as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government’s legislation*. It also vets all Members’ (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

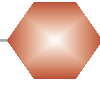
6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and assists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers (“counsel”), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of



Legal Reports

5.1 After an Ordinance is published in the Gazette the Law Draftsman prepares a Legal Report explaining the object of the Ordinance and the problem or situation it is designed to deal with. This Report, together with a copy of the Ordinance, is sent to the Standing Committee of the National People's Congress in Beijing. Under Article 17 of the Basic Law the Standing Committee may, in certain circumstances, return laws enacted by the Hong Kong Legislature. It may return any laws it considers to be not in conformity with the provisions of the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and Hong Kong. Upon return of a law under Article 17 it becomes invalid.

Commencement of legislation

5.2 Legislation comes into operation, in the absence of any provision for it to come into operation on another day, upon its publication in the Gazette. Often these days, legislation is expressed to come into operation "on a day to be appointed by the Chief Executive (or some other public officer) by notice published in the Gazette". Although all such notices ("commencement notices") are published in the Gazette it is sometimes quite difficult, where commencement is deferred in this way, to discover whether or not a particular piece of legislation is in operation. The Law Drafting Division has therefore published a guide ("Is it in Operation?") to assist in this regard. "Is it in Operation?" is available on the Internet at www.justice.gov.hk.

Time taken for the legislative process for a Bill

5.3 The length of time taken for each stage in the legislative process for a Bill is shown in the timetable at *Annex IV*. As can be seen, even after the drafting of the Bill has been completed and the "blue" issued, it will normally take at least two months for a Bill to become law as an Ordinance.

6. Supplementary Notes

What is legislative drafting

1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are merely scribes required just to write out their instructing officer’s proposals in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

2 Reed Dickerson in his book “*The Fundamentals of Legislative Drafting*” (formerly entitled “*The Fundamentals of Legislative Drafting*”) defines legal drafting as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government’s legislation*. It also vets all Members’ (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

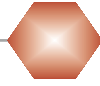
6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and assists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers (“counsel”), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of



Plain language

6.1 The policy of the Law Drafting Division is that laws should be drafted in as simple and direct a manner as possible. But this object must be balanced by the need for certainty. There are still however many archaic expressions and unnecessarily complicated constructions in our existing laws. This defect in our laws was brought into focus in recent years during the course of our Bilingual Laws Programme (see paragraph 6.2). This was a programme under which we produced Chinese versions of all laws that had originally been enacted in English only. As a result of this experience, we are currently planning a project to review our laws with a view to redrafting archaic provisions in a more simple and direct manner.

Bilingualism

6.2 Up until the late 1980s all legislation in Hong Kong was enacted in English only. However after the signing of the Joint Declaration* in 1984 it was obvious that Chinese would become the main language of Government in Hong Kong after the resumption of the exercise of sovereignty in 1997. In August 1986 the Royal Instructions† were amended to enable laws to be enacted in Chinese, and in March 1987 the Official Languages Ordinance (Cap. 5) was amended to require all new legislation to be enacted in English and Chinese. This was in accordance with Government policy of providing a bilingual legal system for Hong Kong. The 1987 amendment to the Official Languages Ordinance (Cap. 5) also provided a mechanism for publishing authentic texts in Chinese, of Ordinances enacted in English only. As a result of this amendment a programme was launched (the Bilingual Laws Programme) to produce Chinese texts of all of laws that had been enacted in English only. That programme was completed shortly before 1 July 1997. Consequently all our legislation is now available in both English and Chinese. Both the English and the Chinese texts are authentic and are presumed to have the same meaning. Where a comparison of the texts discloses a difference of meaning that cannot be resolved

* Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, signed on 19 December 1984.

† Hong Kong Royal Instructions 1917 to 1993 (Nos. 1 and 2) (Formal Instructions, issued under the Royal Sign Manual and Signet, to the Governor of Hong Kong).

by the rules of statutory interpretation ordinarily applicable, the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance, is required to be adopted (see section 10B(3) of the Interpretation and General Clauses Ordinance (Cap. 1)). The Law Drafting Division has prepared an article on section 10B discussing how alleged differences in meaning may be resolved. This article is available on the Internet at www.justice.gov.hk.

Bilingual Legal Glossaries

6.3 In order to promote bilingualism in our legal system, the Law Drafting Division published in 1995 its first English-Chinese Glossary of Legal Terms. This Glossary contains about 4 800 terms extracted from the bilingual legislative texts. It has increased dramatically in size since then and the latest edition (3rd edition) published in 1998 contains over 31 000 entries. In response to calls for a Chinese-English glossary, the Division also published, in December 1999, a Chinese-English Glossary of Legal Terms which contains around 11 500 entries. Further editions of these Glossaries will be issued whenever the updating materials become extensive enough to justify their publication.

6.4 These Glossaries serve as handy guides to terms used in Hong Kong's bilingual legislation. They are available for sale at the Government Publications Centre of the Information Services Department. To facilitate public access these Glossaries have also been made available on BLIS and the Internet at www.justice.gov.hk.

6.5 The Division completed an English-Chinese glossary and a Chinese-English glossary of terms relevant to electoral legislation, in April 1998. These electoral glossaries have been distributed to relevant Government Bureaux and Departments, Members of the Legislative Council, political parties and other interested people. They can also be found on the Internet at www.justice.gov.hk.

The loose-leaf edition

6.6 Although the laws as published in the Gazette are, in the final analysis, the authentic versions of our laws, they are published there in chronological order as they are promulgated or made. The laws are also published under a more logical arrangement pursuant to the Laws (Loose-leaf Publication) Ordinance 1990. In this publication (the loose-leaf edition) a chapter (Cap.) number is assigned to each new Ordinance (but not to Ordinances that merely amend other Ordinances) and the Ordinances are printed in numerical order according to their Cap. numbers. Subsidiary legislation is published together with the Ordinance under which it is made. The loose-leaf edition is kept up to

date by regular issues of new or replacement pages. Amendments to Ordinances are consolidated and printed on loose-leaf pages for replacement. From the user's point of view, this is a most efficient way of presenting the current statute law. There are two main advantages: firstly, there is a clear, easy-to-read consolidated text; secondly, the loose pages are easy to remove from and replace in the binders. There are several issues of new or replacement pages each year to keep the loose-leaf edition up to date.

6.7 The loose-leaf edition is printed on A4 size pages in landscape orientation. Bilingual texts of legislation are printed in two columns on one page, with the bilingual texts of each provision facing each other on the page. There are now 43 volumes of our laws in the loose-leaf edition. A sample page of an Ordinance published in the loose-leaf edition is attached at *Annex V*.

BLIS and the Web

6.8 Hong Kong has a searchable database of its legislation (primary and subsidiary) known as the Bilingual Laws Information System or BLIS. This database is bilingual – containing both the English and the Chinese versions of the legislation, and is subject to continual amendment as new legislation is enacted or made.

6.9 A sample printout of a section of an Ordinance as it appears on BLIS is attached as *Annex VI*.

6.10 The BLIS database is also available on the Internet at *www.justice.gov.hk*.

6.11 The principal features of BLIS on the Internet are set out at *Annex VII*. Some of the features are available only when using Lotus Notes as a browser. Information about using Lotus Notes is available on the BLIS web site.

7. Annexes

What is legislative drafting

1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are mere scribes, required only to write out their instructing officer’s proposals in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

2 Reed Dickerson in his book “The Fundamentals of Legislative Drafting” (formerly entitled “The Fundamentals of Legislative Drafting”) defines legal drafting as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government’s legislation*. It also vets all Members’ (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and assists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

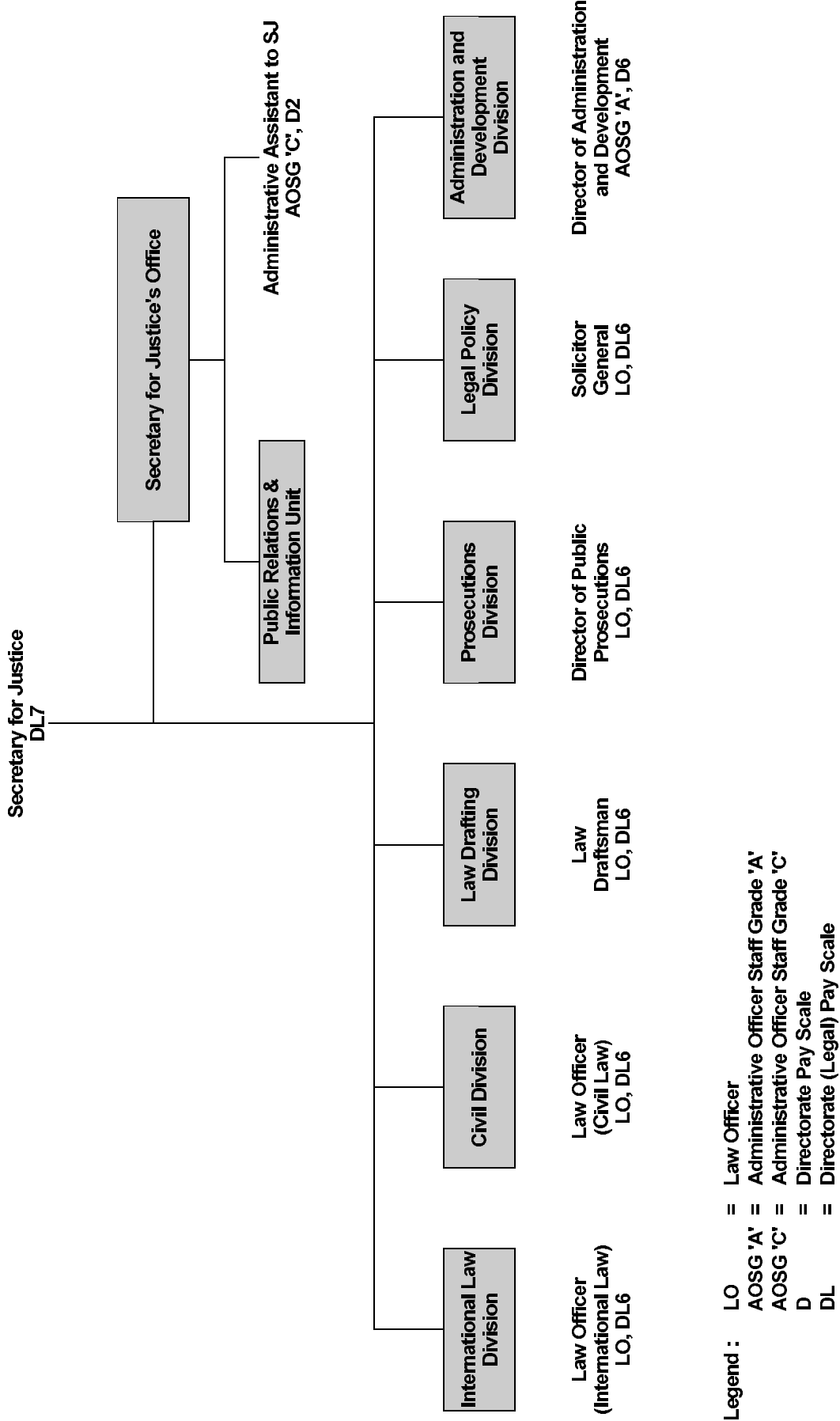
8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers (“counsel”), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of

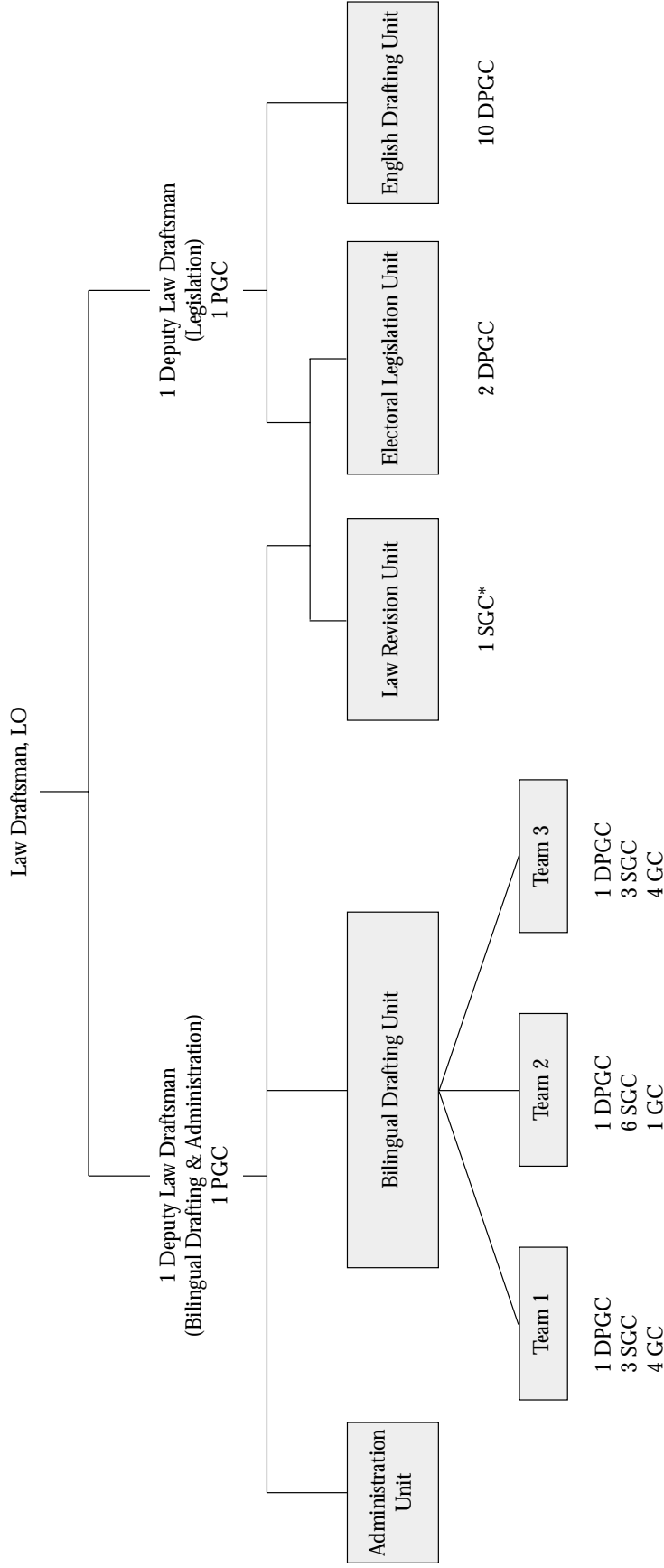
Organization Chart of the Department of Justice

(as at December 2000)



Organization Chart of the Law Drafting Division, Department of Justice

(as at 1 December 2000)



*The SGC in Law Revision Unit also works in Team 1, Bilingual Drafting Unit
(2 counsel temporarily posted to other Divisions)

- Legend: LO = Law Officer
 PGC = Principal Government Counsel
 DPGC = Deputy Principal Government Counsel
 SGC = Senior Government Counsel
 GC = Government Counsel

GENERAL REGULATIONS

Chapter V

Legal Matters

Preparation of New Legislation

450. The following regulations on the preparation of new legislation are intended to cover the generality of cases and should be read in conjunction with the guidelines on the preparation of drafting instructions set out in the Appendix to this Chapter. There will be occasions when circumstances demand a deviation from the principles and procedures outlined below, e.g. where the proposed legislation is particularly urgent.

Proposal for Legislation

451. When a Head of Department or any other Government agency (the originator) considers that new or amending legislation is required, he must first secure support in principle from the appropriate Policy Secretary. For this purpose, a clear statement of the proposals in general terms is required. The statement should demonstrate that:

- (a) legislation is necessary in the public interest and that other options such as voluntary agreements or non-statutory codes of practice cannot achieve the objective;
- (b) all major implications of the proposal, i.e. in policy, implementation, human rights, binding effect on the “State” or particular organs of it, treaty obligations, Basic Law, resources and public relations terms, have been considered and that Finance Bureau has been consulted if additional resources will be required;
- (c) the proposal is not inconsistent with the Basic Law;
- (d) the views of other parties affected have been considered;
- (e) consideration has been given to seeking advice from the Independent Commission Against Corruption (ICAC) in view of its responsibilities for

identifying practices, procedures and policies which may be conducive to corruption, and for advising on methods for eliminating or reducing these. Also, if the proposed legislation establishes a new organization, that ICAC has been consulted as to whether it should be a Public Body under section 2 of the Prevention of Bribery Ordinance (Cap. 201) and that Director of Administration has been consulted as to whether it should be included in Schedule 1 to The Ombudsman Ordinance (Cap. 397) and be subject to the provisions of the Ordinance;

- (f) if the proposal concerns the Hong Kong Garrison, consideration has been given to the requirement to consult the Hong Kong Garrison under Article 10 of the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region; and
- (g) if the proposal may affect the privacy of individuals in relation to personal data, consideration has been given to the Personal Data (Privacy) Ordinance (Cap. 486) and the need to consult the Privacy Commissioner for Personal Data.

Consultation with Law Officer (Civil Law)

452. The statement of proposals should be sent to the Law Officer (Civil Law) so that he can advise whether the Secretary for Justice has any objections in principle and whether legislation is necessary to achieve the stated aim. His advice should cover whether primary legislation, subsidiary legislation or other options such as statutory codes of practice is more appropriate to give effect to the proposals. The statement should also be copied to all interested Departments, Policy Bureaux and other parties as necessary, and to the Law Draftsman so that he will be aware of the proposal.

Secretariat Approval

453. Before giving approval in principle to a drafting proposal the Policy Secretary should:

- (a) satisfy himself, taking into account the Law Officer (Civil Law)'s advice, that the matter is one which should be dealt with by legislation, that the form of the legislation proposed is appropriate;

- (b) ensure that all interested parties within the Administration have had an opportunity to comment on the proposals and that consideration has been given to the need for consultation with concerned parties outside the Administration at that stage;
- (c) satisfy himself that consideration has been given to consulting ICAC and where advice has been offered that it has been taken into consideration;
- (d) satisfy himself that consideration has been given to the resources required to enforce the proposed legislation, and to the timing of their availability;
- (e) ensure that the proposals will be in conformity with the Basic Law including the provisions concerning human rights;
- (f) if the proposal concerns the Hong Kong Garrison, satisfy himself that steps have been or will be taken to consult the Hong Kong Garrison in accordance with Article 10 of the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region;
- (g) if the proposal may affect the privacy of individuals in relation to personal data, satisfy himself that the question of consistency with the Personal Data (Privacy) Ordinance (Cap. 486) has been considered and, where it is considered that there is a need to consult the Privacy Commissioner for Personal Data, that such consultation has been or will be carried out;
- (h) ensure that all implications of the proposals have been identified and examined in detail in the light of (b), (c), (d), (e), (f) and (g); and
- (i) where the proposals are considered to be of major public concern or will break new ground or are likely to lead to public controversy, submit a policy document in respect of the proposals to the relevant Chief Secretary for Administration's Policy Group or (in the case of financial and economic matters) to the Financial Secretary, for the purpose of obtaining clearance to issue drafting instructions.

Policy Secretaries are personally responsible for deciding at this stage whether legislative proposals should proceed and if so, whether the proposals need the approval of the Committee on Legislative Priorities. All legislative proposals other than budget legislation and subsidiary legislation, including legislative proposals under the localisation of laws and

adaptation of law programme, should be submitted to that Committee. Policy Bureaux should plan ahead the target dates for the introduction of bills into the Legislative Council and respond to the Committee's invitation for bids for Legislative slots accordingly. The legislative programme for bills in the first half (October to February) and the second half (March to July) of a legislative session is normally decided by the Committee six months ahead.

Preparation of Drafting Instructions

454. When a Policy Secretary has approved proposals in principle and, where necessary, obtained clearance in accordance with paragraph (i) of GR 453 or from the Committee on Legislative Priorities, he will inform the originator and the Law Draftsman. The originator should then proceed with the compilation of formal drafting instructions. He should also nominate himself or another officer as instructing officer, with authority to amend or supplement the instructions and to liaise with the draftsman. As all legislation is now bilingual, where the instructing officer is responsible for only one of the two texts of the legislation, an officer responsible for the text in the other official language should also be appointed.

455. (1) In compiling formal instructions it will usually be necessary to seek the advice and assistance of the Law Officer (Civil Law). It may also be desirable to consult other interested departments and outside bodies. Drafting instructions should be clear and detailed enough to permit drafting to proceed with the minimum of subsequent consultation and changes.

(2) Drafting instructions may be either in ordinary narrative prose or in tabular forms depending on the nature of the instructions (The narrative form is generally preferable except for minor amendments). They should not be in the form of draft legislation unless the Law Draftsman has first given his agreement.

(3) For further guidance on drafting instructions and to ensure proper standards, see the guidelines set out in the Appendix to this Chapter, and the Check List to the Appendix.

Issue of Drafting Instructions

456. (1) Instructing officers should address drafting instructions direct to the Policy Secretary for approval and, at the same time, send a copy to the Law Draftsman. Drafting instructions should not be approved by the Policy Secretary unless he is satisfied that they are comprehensive and appropriate and that all policy and practical implications have been provided for.

(2) As decided by the Committee on Legislative Priorities on 12 December 1995, Bureaux are required to pass drafting instructions to the Law Draftsman before bidding for a legislative slot to introduce a particular bill. After approval has been given by the Committee, instructing officers must confirm with the Law Draftsman that the scheduled date for the bills is accepted.

457. If the Law Draftsman is unable to start work on an item immediately, he will inform the Policy Secretary and the instructing officer with other interested parties being consulted as necessary.

Further Instructions

458. Once the Law Draftsman starts work on an item, any further instructions sought by him must be supplied by the instructing officer without delay. It is generally preferable that consultation between those concerned should be by discussion rather than memorandum. Every effort should be made to keep to a minimum the number of drafts requested leading up to the final draft.

Presentation to Executive Council

459. When drafting work is complete, the Law Draftsman will send the completed draft to the instructing officer who will copy it to all Departments concerned. (In appropriate cases at the request of the instructing officer, the Law Draftsman may send copies direct to the Departments.) Departments will ensure that the draft achieves the aims of the drafting instructions and will send comments either to the instructing officer or to the Law Draftsman, as appropriate. The instructing officer will also consider to which other departments, committees or outside bodies (if any) the draft should be sent before it begins the final legislative stage. Such further reference should be avoided wherever possible as it should have taken place during the compilation of drafting instructions, but there may be occasions when it is unavoidable or desirable.

460. (1) In the case of draft legislation which is required to be made or approved by the Executive Council, the Executive Council memorandum should be prepared concurrently. For guidance on this refer to the appropriate Executive Council Procedures Manual. When the Department and the Secretariat Bureau confirm their agreement with the draft legislation and the related Executive Council memorandum, the Law Draftsman will prepare the final draft of the legislation in the form in which it will be put to the Executive Council. He will then make this available to the instructing officer for transmission to the Clerk to the Executive Council as soon as the covering Executive Council memorandum has been cleared by the Secretary for Justice or by the Law Draftsman on behalf of the Secretary for Justice.

(2) Note that the Secretary for Justice requires at least 7 days for clearance of Executive Council memoranda.

Explanatory Memorandum or Note

461. An Explanatory Memorandum is required by the Rules of Procedure of the Legislative Council to be attached to Bills. It should contain a description in layman's language of the contents and objects of the legislation and is written in the Law Drafting Division. In the case of subsidiary legislation, it is the practice to attach an Explanatory Note to indicate the legal effect of the subsidiary legislation. This is also written in the Law Drafting Division.

Monitoring Progress

462. Policy Secretaries and Heads of Departments should personally check from time to time on progress being made on legislative items originated by them or within their area of responsibility, and take appropriate action where there appears to be undue delay. The action required may be to call a meeting to resolve some outstanding policy matter, or even a recommendation for removal from the legislative programme where substantial policy issues are unlikely to be resolved in the immediate future. Policy bureaux should continue to monitor closely the progress of legislation after its introduction into the Legislative Council, and should give consideration to withdrawing a bill under consideration by a bills committee or other relevant committee of the Legislative Council, if issues raised by the committee are unlikely to be resolved quickly.

Use of Maps in Legislation

475. (1) Policy Secretaries and Heads of Departments concerned with legislation in which maps are to be used should ensure that, before drafting instructions are issued to the Law Draftsman, maps designating areas where statutory provisions are to apply or to be removed, have either been prepared by the Deputy Director/Survey & Mapping or have been approved by him. Where this has been done, a statement to that effect should be included in the drafting instructions.

(2) For the drafting of legislation which is to be brought into operation urgently, Bureaux and Departments should attempt, wherever possible, to forward drafting instructions together with the required map(s) to the Law Draftsman in ample time for any inadequacies or discrepancies in the maps to be rectified.

(3) Where practicable, a detailed description of any established and recognizable boundaries of the areas to be designated should also be provided so that the Law Draftsman may decide whether or not it should be included in the legislation in addition to a reference to a map.

Preparation of Drafting Instructions

The main principles of the legislative scheme to be embodied in a particular piece of legislation should be decided in advance by the sponsoring Policy Bureau, if appropriate in consultation with the Department concerned, and expressed in the Drafting Instructions given to the Law Draftsman. It is not the draftsman's job to work out basic principles as he goes along. Instructions should be complete, and show that every aspect of the proposals concerned has been thoroughly thought through and that all likely effects have been anticipated and approved by the Policy Secretary concerned. Inadequate or ill thought out instructions can lead to a number of unsatisfactory results, including legislation that has an effect that is different from what was intended, or involves a considerable waste of time on the part of all concerned.

2. Legislation is not drafted on oral instructions except in an emergency.
3. Unless approved by the Law Draftsman, instructions must not be in the form of draft legislation.
4. Where a new substantive Bill will need to be presented to the Legislative Council in one of the official languages only under the urgency procedure set out in section 4(3) of the Official Languages Ordinance (Cap. 5), this should be made clear at the outset.
 5. (1) The memorandum forwarding the instructions to the Law Draftsman should state the name and telephone number of the officer with whom the draftsman can make arrangements for any necessary discussions, and list those to whom it is proposed the draft Bill will be circulated.
 - (2) Where the instructing officer is responsible for only one of the two texts of the legislation, the name and telephone number of the officer responsible for the text in the other official language should also be stated.
6. Drafting instructions should not be sent to the Law Draftsman unless they have the personal approval of the Head of the Department and Policy Secretary concerned.
7. Instructions, both for Bills and subsidiary legislation, should comprise two parts, a general statement and detailed instructions.

8. The general statement should be comprehensive and contain:
 - (a) all relevant background material relating to the proposals to be included in the legislation, so that the draftsman can see them in perspective and context;
 - (b) a statement of the circumstances giving rise to the proposals to be included in the legislation and the nature of the problem to be dealt with;
 - (c) the principal objectives to be achieved by the legislation;
 - (d) how it is proposed to achieve those objectives and how it is expected that the legislation will operate in practice;
 - (e) any known practical or legal difficulties involved; and
 - (f) an indication of any legal advice received from the Law Officer (Civil Law).
9. A copy or paraphrase of the Departmental or other submission to the Policy Secretary seeking approval in principle may not meet these requirements.
10. The length of the general statement will depend on the nature and extent of the legislative proposals dealt with, but should be comprehensive rather than brief.
11. (1) Detailed instructions should be provided in respect of all matters to be dealt with in the proposed legislation. Where appropriate these detailed instructions should in respect of each legislative proposal included in the legislation:
 - (a) deal with every aspect of the proposal and indicate every requirement which the Department or Bureau considers necessary;
 - (b) indicate any administrative provisions which are considered necessary, including the level at which the proposed statutory functions will be discharged and any need for provision to delegate such functions;
 - (c) if it appears that other Hong Kong legislation or legislation of another jurisdiction satisfactorily deals with the subject of the proposal, provide a reference to that legislation and indicate whether inquiries have found it to operate satisfactorily;
 - (d) if the proposal would result in some activity being prohibited or regulated, indicate the nature (and the intended level) of the sanction proposed, i.e. whether provision should be made for criminal offences, civil penalties, forfeiture, cancellation or suspension of licences or any other sanction. The

Secretary for Justice will decide the actual level to be recommended to the legislative authority;

- (e) indicate the relative gravity of offences arising under the proposals, both in relation to one another and in relation to any other offences considered relevant;
- (f) in the case of instructions for amending legislation, indicate the provisions of the principal legislation which the Department or Bureau considers should be amended;
- (g) indicate any consequential amendments;
- (h) indicate any transitional or savings provisions required (e.g. phasing in of new measures, saving of former rights, licences, etc.);
- (i) indicate whether any provisions are to have retrospective operation;
- (j) if the Department or Bureau has any decided view on either the form or position of the legislative provision, furnish particulars;
- (k) give references to any known decided cases or copies of any legal opinions available to the Department or Bureau that may affect the proposal including any opinion from the Law Officer (Civil Law);
- (l) indicate any specific regulation-making powers required;
- (m) provide copies of reports of committees, etc., or, if the reports are readily available, references to reports that deal with the proposal;
- (n) give where practicable, Chinese equivalents for technical expressions intended to be used by the draftsman;
- (o) indicate the commencement of the proposed legislation, particularly if it is to be phased in;
- (p) indicate if the rights or property of persons will be affected, and if so what provision is to be made for compensation and appeals if any and generally for compliance with the human rights provisions of the Basic Law;
- (q) indicate whether the "State" (as defined in section 3 of the Interpretation and General Clauses Ordinance, Cap. 1) or particular organs of it are to be bound; and

(r) indicate if it is envisaged that the procedure under s. 4(3) of the Official Languages Ordinance will be invoked.

(2) Legislative Drafting Instructions should normally be in ordinary narrative prose. However, in appropriate cases, e.g. where a series of paragraphs have a common feature, instructions may be sent in tabular form. An example might be -

“General heading	
Particular matters to be provided	Remarks, queries and explanations”

Note: Drafting Instructions should not use the phrase “consideration needs to be given” to a topic. Consideration should have been given before the instructions are issued. The term “etc.” should not be used in drafting instructions.

12. It will generally be unnecessary for Departmental files or copies of Departmental correspondence to accompany properly prepared instructions, and as far as possible this should be avoided.

13. If the proposed legislation deals with a technical subject the instructions should include sufficient material on the subject to enable the draftsman to gain an adequate understanding of the technicalities and technical terms involved.

14. If all of the provisions are not to commence at the same time, the instructions should indicate clearly the different times at which it is proposed that different provisions should commence. In providing instructions in accordance with this paragraph, Departments and Bureaux should ensure that the provisions that are to commence earlier than others are not rendered ineffective because their operation depends on the commencement of the other provisions.

15. Proposals which need to be considered for possible contravention of the Basic Law including provisions concerning human rights should be referred by the Policy Secretary to the Solicitor General as early as possible, and in any event before instructions are given to the Law Draftsman. Examples are provisions for heavy or unusual penalties, changing the onus of proof, retrospective effect, wide discretionary powers, powers of entry, search and arrest and evidentiary provisions. Where a person or body is to be given power to make decisions affecting the rights or property of persons, consideration should be given to the question of whether there should be provision for compensation and a right of appeal and if so what body should award compensation or hear the appeal.

16. Other examples of legally contentious proposals are provisions with extraterritorial effect or which refer to international agreements. All such proposals should be referred to the Law Officer (Civil Law) for consideration of whether they are likely to be inconsistent with the Basic Law.

17. If the proposed legislation is to bind the “State” (as defined in section 3 of the Interpretation and General Clauses Ordinance, Cap. 1) or particular organs of it, the instructions should say so, since the “State” or particular organs of it are only bound if express provision is made to that effect or the application of the legislation to the “State” or particular organs of it arises by necessary implication. Bureaux and departments should inform the Constitutional Affairs Bureau, Security Bureau, Department of Justice and the Administration Wing of the Chief Secretary for Administration’s Office of the binding effect of the proposed legislation.

18. Instructions should not be overloaded with proposals for legislative provisions that can be dealt with administratively. Purely informative provisions with no legal effect should be avoided.

19. After drafting instructions have been provided to the Law Draftsman, the instructing officer should be readily available and arrange promptly any conferences required by the draftsman.

20. Departmental and Bureau officers attending drafting conferences should have the detailed knowledge, ability and authority to make decisions on most of the questions that inevitably arise in drafting. If their decisions are to be reviewed by superior officers, drafting can be greatly delayed by the draftsman having to await confirmation of tentative decisions. An officer attending a conference on proposed amending legislation should have a detailed knowledge of the provisions and operation of the principal legislation to be amended.

21. Requests for the draftsman to include in a draft additional provisions which were not the subject of original instructions should be avoided if at all possible. If additional provisions are requested after the draftsman has devised the legislative scheme appropriate for his original instructions and has started drafting, work done by the draftsman can be rendered useless by instructions to include additional provisions that do not fit in with that legislative scheme. Most additional provisions can be made the subject of subsequent legislation. Additional provisions will not be included in draft legislation without the Policy Secretary’s prior approval.

22. On completion, the first draft will be sent by the draftsman to the instructing officer, who will send copies to the sponsoring Department (if any) and all other parties concerned for consideration. In appropriate cases, at the request of the instructing officer, the draftsman may send copies direct to those concerned. Any alterations agreed by those concerned will be made by the draftsman, and if necessary, a further draft will be prepared for consideration. This process will be repeated until the draft is satisfactory to all concerned.

23. Prompt consideration should be given to drafts and the draftsman should be advised quickly of any alterations required. Draftsmen are usually working on several assignments at the same time so that, if queries raised by them are not considered promptly, the continuity of their consideration of the proposed legislation is interrupted and subsequently delay in picking up the threads is likely to occur.

24. A check list is annexed; it should be used in the preparation of drafting instructions except where clearly unnecessary.

Preparation of Drafting Instructions

Check List

1. Preliminary steps

Refer all proposals to the Solicitor General for advice on legal policy matters, e.g. human rights issues and Basic Law issues.

2. General explanatory statement

This should be comprehensive and set out:

- (a) background material and known legal implications;
- (b) the reasons for the proposals;
- (c) the principal objectives;
- (d) how these objectives are to be achieved;
- (e) how the proposed legislation is expected to operate; and
- (f) any known practical difficulties.

3. Detailed Instructions

These should set out all matters to be dealt with in the proposed legislation including:

- (a) every requirement considered necessary to effect the proposals;
- (b) administrative provisions required, the level at which statutory functions will be discharged and any provision for delegation;
- (c) reference to any useful legislative precedents;
- (d) the nature of penalties or sanctions desired;
- (e) the relative gravity of proposed offences;
- (f) existing provisions that require amendment including consequential amendments;
- (g) transitional and saving provisions required;

- (h) retrospective provisions required;
- (i) all regulation-making powers required;
- (j) any preference for a particular form of legislation;
- (k) references to or copies of relevant committee reports, etc.;
- (l) references to or copies of legal decisions or opinions, etc.;
- (m) commencement of the proposed legislation, particularly if it is to be phased in;
- (n) if persons or property will be affected, what compensation and appeals if any are proposed;
- (o) whether the “State” (as defined in section 3 of the Interpretation and General Clauses Ordinance, Cap. 1) or particular organs of it are to be bound;
- (p) if it is envisaged that the procedure under section 4(3) of the Official Languages Ordinance will be invoked, a statement to that effect; and
- (q) any assistance which can be given as to the appropriate technical terms in Chinese.

4. The detailed instructions should:

- (a) be in memorandum or tabular form;
- (b) be in simple non-technical language;
- (c) not seek legislative provision for matters that can be dealt with administratively; and
- (d) not seek inclusion of purely informative provisions which are not to have any legal effect.

5. Approval

The drafting instructions (i.e. both general statement and detailed instructions) must be approved personally by:

- (a) the Head(s) of Department concerned; and
- (b) the Policy Secretary.

6. **The Law Draftsman should be furnished with:**

- (a) the name and telephone number of the instructing officer and, where the instructing officer is responsible for only one of the two texts, the name and telephone number of the officer responsible for the text in the other official language; and
- (b) a list of the Departments and other addressees to whom the draft legislation will be circulated in due course.

Legislative Process - Bill Timetable

Action	Earliest Day	
Approved Bill submitted for clearance by Secretary for Justice	1	
Bill submitted to Clerk to the Executive Council	7	
Executive Council approval	20	
Brief issued to Legislative Council	22	
Bill Gazetted	30	
(Legislative Council) Bill introduced and Second Reading moved	41	
(Legislative Council) Conclusion of Second Reading stage	} Assuming all at one meeting	
(Legislative Council) Bill passes committee stage		55
(Legislative Council) Bill passes Third Reading stage		
Signature by Chief Executive	56	
Ordinance Gazetted (Promulgation)	57	

第 5 章

CHAPTER 5

法定語文條例

OFFICIAL LANGUAGES

本條例旨在訂定香港的法定語文，並訂定這些語文的地位與應用。

To provide for the official languages of Hong Kong, and for their status and use.

[1974 年 2 月 15 日]

[15 February 1974]

1. 簡釋

本條例可引稱為《法定語文條例》。

1. Short title

This Ordinance may be cited as the Official Languages Ordinance.

2. 釋義

在本條例中，除文意另有所指外——

“法院”、“法庭”(court)指任何法院、法庭，亦指任何依法有權聆聽、收取及審查經宣誓而作的證供的委員會、審裁處或人士；

“雙語法例諮詢委員會”(Bilingual Laws Advisory Committee)指根據第 4C 條設立的委員會。(由 1987 年第 17 號第 2 條增補)

2. Interpretation

In this Ordinance, unless the context otherwise requires—

“Bilingual Laws Advisory Committee”(雙語法例諮詢委員會) means the Committee established under section 4C; (Added 17 of 1987 s. 2)

“court”(法院、法庭) means any court, and also means any board, tribunal or person having by law the power to hear, receive and examine evidence on oath.

3. 法定語文與其地位與應用

(1) 現予宣布：在政府或公職人員與公眾人士之間的事務往來上以及在法院程序上，中文和英文是香港的法定語文。(由 1995 年第 51 號第 2 條修訂)

(2) 各法定語文享有同等地位，除本條例另有規定外，在第(1)款所載用途上亦享有同等待遇。

3. Official languages and their status and use

(1) The English and Chinese languages are declared to be the official languages of Hong Kong for the purposes of communication between the Government or any public officer and members of the public and for court proceedings. (Amended 51 of 1995 s. 2)

(2) The official languages possess equal status and, subject to the provisions of this Ordinance, enjoy equality of use for the purposes set out in subsection (1).

Sample Section from BLIS Database

Chapter: 542	Title: LEGISLATIVE COUNCIL ORDINANCE	Gazette Number: 134 of 1997
Section: 14	Heading: How Member can resign	Version Date: 03/10/1997

(1) A Member may, at any time, resign from office as a Member by giving written notice of resignation to the Clerk to the Legislative Council.

(2) A notice of resignation is not effective unless it is signed by the Member concerned.

(3) A notice of resignation takes effect –

(a) on the date on which the notice is received by the Clerk to the Legislative Council; or

(b) if a later date is specified in the notice, on that later date.

Bilingual Laws Information System

Principal Features

(a) *Content*

This database contains all primary and subsidiary legislation in both English and Chinese. It also has a bilingual glossary of terms used in the legislation. The database does not contain Bills, or amending enactments which are not yet in force. Whole new laws (i.e. not laws which merely amend other legislation) that are not yet in force are included with a covering note to that effect.

(b) *Structure*

Each section, schedule, form, regulation, rule, bylaw, etc., is a separate document in the database.

(c) *Currency*

Updating of the legislation database is done on-line. After a law is amended a pencil sign (✍) will be marked against the affected provision. The pencil sign will appear in the database on the day after the change in the law comes into effect.

The actual updating of the texts is carried out section by section and the pencil signs removed over the next few days. On average, we are able to complete the updating within 2-3 weeks after the amendments come into operation.

(d) *Search functions*

In common with most text search engines, readers can search for individual terms, combined terms, alternative terms, excluded terms, phrases, and terms related by proximity to each other.

(e) *Windows based*

The program used for the database, Lotus Notes version 4.51, is Windows based, thus providing a familiar and productive environment to readers. For example, readers can copy and paste the text from BLIS into their own email or word processing documents. A convenient facility to export text directly into a Microsoft Word document is also provided.

(f) ***Finding and viewing a particular enactment*** can be done by moving the scroll bar through the list of enactments or by doing a simple search for the relevant title or chapter number.

(g) ***Law as at a particular date***

One of the most significant features of the BLIS is that readers are not restricted to viewing the current law. All changes to the law after 30 June 1997 are stored as separate documents and readers are able to choose to view the current law or the law as at any date on or after 30 June 1997. Readers can also easily check to see if changes have been made to a particular section between any 2 specified dates.

(h) ***Bilingual text***

If the PC is using Chinese Windows 3.1, 95, 98, NT or 2000, Chinese text can be viewed and the reader can switch between Chinese and English views or display both on screen at once in separate Windows. Chinese text viewer software can also be used to display Chinese.

(i) ***Sort by relevance***

When a search is performed, the sections that have the most search terms are presented first, but readers can also change the order to sort by Chapter number and section number.

(j) ***Preview***

It is not necessary to open a document to see its contents. A Preview Pane can be invoked that will display the selected section content at the bottom of the screen.

(k) ***Word variants***

Readers can specify that a search should return common variations of terms. For example, a search for “canopy” will return “canopy” as well as “canopies”.

(l) ***Upper/lower case***

Readers can restrict the search return to capitalised words.

(m) ***No excluded words***

Common words such as “the”, “a”, “in”, “of”, “this”, etc. are not excluded from a phrase search. It is therefore possible, for example, to search for “Chief Executive in Council”.

What is legislative drafting

1 In attempting to define legislative drafting it is perhaps more helpful at the outset to say what it is not. Legislative drafting does not consist of simply putting legislative proposals into a legislative format or “legal language”. All drafters rightly resent any suggestion that they are mere scribes, required just to write out their instructing officer’s proposals in the form of a law. If this were all there was to it, it would hardly require the services of a lawyer let alone a lawyer skilled in the art of drafting. The development and preparation of legislative instruments is much more than that.

2 Reed Dickerson in his book “The Fundamentals of Legal Drafting” (formerly entitled “The Fundamentals of Legislative Drafting”) defines legal drafting as “the crystallization and expression in definitive form of a legal right, privilege, function, duty or status”. This is also an excellent definition of legislative drafting as it embodies the twin aspects of such drafting: the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in his draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts. Drafting is, as Reed Dickerson says, first thinking and second composing.

What is a legislative drafter

3 A legislative drafter is a lawyer who is specially trained in the art of legislative drafting. The nature of that training is described in paragraphs 1.9 and 1.10. However it is generally agreed that it takes several years of training and practice for a qualified lawyer to achieve full competence as a drafter, capable of tackling any drafting assignment.

Functions and structure of Law Drafting Division

4 The Law Drafting Division, headed by the Law Draftsman, is one of the six Divisions of the Department of Justice. The primary function of the Division is to provide a high quality legislative drafting service to the Government. The Division is responsible for drafting all of the Government’s legislation*. It also vets all Members’ (non-Government) Bills and all subsidiary legislation that is to be made by non-Government bodies. This latter function is performed pursuant to the role of the Law Draftsman as keeper of the statute book, a role that gives the Law Draftsman a duty to protect the integrity of the statute book.

5 Counsel in the Law Drafting Division also advise the Government on matters relating to legislation and assist the passage of legislation through the legislative process. They attend meetings of the Executive Council as well as meetings of committees of the Legislative Council.

6 The Law Drafting Division maintains the loose-leaf edition of the laws of Hong Kong (see paragraphs 6.7 and 6.8) and exists in maintaining an electronic database of the laws (BLIS) (see paragraphs 6.9 to 6.12).

7 In terms of numbers of staff (151) the Law Drafting Division ranks 4th in size in the Department of Justice after the Prosecutions Division (447), the Administration and Development Division (208) and the Civil Division (172). (These figures are correct as at 1 March 1999). The organisation chart at Annex I shows the structure of the Department of Justice in diagrammatic form.

8 On 1 March 1999 the Law Drafting Division consisted of 39 lawyers (“counsel”), 16 Law Translation Officers, 22 Law Clerks, 2 Executive Officers, 30 Clerical Staff, 26 Secretarial Staff, 4 Typists and 12 Calligraphists. The organization chart at Annex II shows the structure of the Division in diagrammatic form.

What training do drafters undergo

9 In Hong Kong two methods of training are employed. The first is off-the-job training. This involves attendance at one of

