



**UNDERSTANDING THE LAW :  
ROLE AND RESPONSIBILITIES OF THE GOVERNMENT**

**LAW MAKING PROCESS**





# LAW MAKING PROCESS

## POLICY-MAKING PROCESS

POLICY RECOMMENDATION  
AND WORKING PAPER TO  
PASS NEW LAW

Consultation with other  
government agencies  
and members of  
Legislative Council

Formulate  
government policy

POLICY

Acquire legal advice  
from Attorney  
General Chambers

Give effect to  
government policy  
through the  
enforcement of law  
and administratively

APPROVAL IN  
PRINCIPAL OF  
MINISTRY OR  
AUTHORITY  
WHO HOLDS  
JURISDICTION/  
RESPONSIBILITY  
FOR  
LEGISLATION

FORMULATION OF  
LEGISLATIVE SCHEME

Acquire legal  
advice from the  
Attorney General  
Chambers

AGC

Formulate  
legislative  
drafting  
instructions

Consultation  
with other  
government  
agencies

LEGISLATIVE  
DRAFTING  
PROCESS

LEGISLATIVE  
DRAFTING  
PROCESS  
INITIATED

FORMAL  
INSTRUCTION  
TO AGC TO  
PREPARE DRAFT  
LEGISLATION



## LEGISLATIVE SCHEME

Comprise of :

1. Drafting Instructions
2. Initial proposed draft



DRAFTING

INSTRUCTIONS

English - Malay

Compiled and prepared by:  
Attorney General's Chambers  
Negara Brunei Darussalam

HANDBOOK







## LEGISLATIVE SCHEME

### 5.3.7 Checklist of matters to be covered in drafting instructions

- Background information - Instructions should contain sufficient background information to enable the legislative draftsman to understand the problem or initiative, how it has arisen, and why it is being proposed. This will enable the draftsman to see the legislative proposals in perspective and context.
- Nature of the problem
  - Explain why the legislation needs to be introduced or why the current law needs to be amended.
  - Describe the nature of the problem whether economic, political or social.



- A statement of the history or circumstances giving rise to the proposals and the nature of the issues - Proposed legislation often has a history which contributes to the solution proposed by the instructing Ministry or department. The legislative draftsman needs this knowledge for the drafting process, but care should be taken to distinguish between background information and the actual legislative proposal.
- Aims of the legislation or its principal objectives - The principal objectives of the legislation should be clearly and fully stated. The legislative draftsman needs to know the purpose of the legislation so that he properly understands what the proposed legislation intends to achieve.





- Rationale
  - Rationale as to why this particular solution is chosen, that is, how it is expected to address the problem.
- The specifics of the proposal
  - The instructions should provide a picture of how the legislation will actually work and operate in practice, describing the machinery envisaged availability of resources and, the necessary powers and duties.
- Any known problems and benefits.
  - Any known or anticipated problems relating to the implementation of the legislative proposal, whether of a legal, administrative or other nature (including difficulties experienced by countries which enforce any similar legislation). Any known benefits need to be set out as well.

- Relevant information
  - Availability of all relevant legal opinions and legal research.
  - Any relevant court decisions, press releases and discussion papers.
- Consultation
  - Whether other Ministries and authorities are affected by the proposals. The drafting instructions should indicate if there have been consultations and if there are any outstanding issues.
  - If the legislation affects other Ministries or departments or their legislation, the drafting instructions should include –
    - a list of the departments;
    - an indication of the extent to which the departments have been consulted;
    - an indication of any consultation that will take place in the future.



- It is extremely important to alert the legislative draftsman to any other proposals that relate to or affect the legislative measure. This will allow the legislative draftsman to tailor the legislative measure to accommodate the other proposal and to consult with the other legislative draftsmen involved.

- Timeframe - Proposed timeframe for introduction of the legislation.

- Contact information
  - Name and contact information (telephone numbers, facsimile numbers, e-mail addresses) of the instructing officer or officers responsible for giving instructions and answering questions.
  - It is also important, if there are more than one instructing officers, that they consult and update each other before giving instructions to avoid contradiction and duplication.
  - Any planned absences must also be indicated.



- Consequential amendments
  - Any other laws to be amended, or repealed, and the nature of the amendments. The impact of the legislation on existing legislation and other laws should be included in the instructions.
- Commencement date
  - Should state when the legislation is to commence.
  - The main options for commencement dates for principal legislation are –
    - on the day His Majesty the Sultan and Yang Di-Pertuan makes it;
    - on a stated future or past day;
    - on a date to be appointed by notification;
    - on the commencement of another legislation.





- State also if different commencement dates are required for the commencement of different provisions
- The main options for commencement dates for subordinate legislation are –
  - on the day of publication in the Gazette;
  - on the commencement of the principal legislation or other legislation;
  - on a stated future or past day.
- The commencement date occasionally hinges on whether the necessary subsidiary legislation has been finalised.



- Savings and transitional provision
  - Any savings or transitional provisions needed to deal with issues resulting from a change in the law for example –
    - the application of the new legislation to cases that arose before the change;
    - the requirement for a transitional period during which the effect of the new law needs to be modified, or special provisions are required;
    - the extent to which anything done under the old legislation may have effect under the new legislation.
  - Will any savings provisions be needed? Such as –
    - the preservation of obligations, rights of appeal or subsisting benefits or allowances;





- continuance of periods of time or pending proceedings;
  - provision for continuing offences;
  - preservation of effect of conviction under amended or repealed law;
  - saving appointments, forms in use or existing licences.
- Will any transitional arrangements be required? Such as –
    - whether the issue of new licences under the new legislative scheme is obligatory for licensees licensed under the old law;
  - whether any time period will be granted to allow an activity to be operated without a licence which otherwise would be mandatory under the new legislative scheme;
  - whether registration under the new law is deemed;

- in the case of a body corporate, will assets and liabilities be transferred without further assurances.

- Appointments
  - Indicate if any appointments need to be made for the necessary administration of the legislation.

- Table of comparative legislation
  - If any particular law is made or wish to be followed, as a benchmark or precedent for the draft, a table of comparative legislation showing the source of each provision in the draft must be prepared. Reasons must be given if changes to the precedent are desired.

- Copy of law
  - Provide a copy of similar legislation in other jurisdiction. This helps the legislative draftsman to check the version relied on.

- General
  - Indicate whether the instructions are incomplete or are subject to possible changes.



## **5.3.8 Supporting documents**

The following documents form an important part of the drafting instructions -

- all relevant policy papers sent to the Minister;
- all relevant precedents, cases, legal opinions, and reports;
- notes of any relevant court or other proceedings in contemplation;
- official copies of any relevant international agreements or obligations;
- a description of consultation with other Ministries, departments and agencies: the names of organisations and individuals within them consulted, and their input; and
- any other relevant background material.



It is important that relevant material is included whether or not it supports the Ministry's or the department's view. If it is not certain whether a document is relevant, discuss it after the instructions have been submitted, with the legislative draftsman. If new documents become available later on, they must be submitted promptly. The legislative draftsman needs as complete a picture of the proposal as possible.





ATTORNEY GENERAL'S CHAMBERS  
PRIME MINISTER'S OFFICE | BRUNEI DARUSSALAM



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## Publication

1. Brunei Darussalam Treaty Series:

- i) Counter Terrorism
- ii) Intellectual Property
- iii) Law of the Sea and Maritime

2. Government Contracts Manual

3. Musings From Chambers: *Chambers Decoded*

4. Attorney General's Chambers Report 2013 - 2015

5. Guidelines on Criminal Case Negotiations

6. Drafting Instructions Handbook (*Panduan Arahan Penggubalan*)

7. Practical Approach on the Preparation of Initial Draft  
(*Pendekatan Praktikal untuk Menyediakan Rang Permulaan*)

8. Law Making Process

9. Policy Making Process

10. Attorney General's Chambers Strategic Plan 2012 - 2017 (*Rancangan Strategik 2012 - 2017 Pejabat Peguam Negara*)  
[English Version] [Malay Version]

Legislation Online

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Publication

Investigation Papers Registry

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## **PRACTICAL APPROACH ON THE PREPARATION OF INITIAL DRAFT**

### **1. List out the current issues and implication**

- List out the issues concerning the subject matter.
- Please highlight the reasons for the concerns, their implications and the proposed solutions (if any).
- List out potential stakeholders.

### **2. Benchmark**

- Study how other jurisdictions, preferably Singapore, Malaysia or other Commonwealth countries, deal with the issues or the subject matter, that is either administratively or through the introduction of legislation.
- If legislation is proposed, compile the laws (softcopy and hardcopy) of those jurisdictions (countries) that have been identified to be used as reference.



### 3. Study the benchmark

- Read, study and understand each provision and relate to the issues to be tackled and consider whether it is desirable in the public interest.

### 4. Preparation of initial draft

- Initial draft does not need to be perfect as long as all relevant provisions are there.
- Relevant provision means the provisions that have basis or reasons to be incorporated in the draft.
- If uncertainty arises with respect to the relevancy of the provision, this can be highlighted in the draft itself in the form of a footnote.



## 5. Table of Comparative Legislation

- Table of Comparative Legislation can be prepared at the same time when the initial draft is being prepared.
- This Table will be very helpful to assist the Ministry and also the Attorney General's Chambers to understand the source of the provisions proposed.
- An alternative this can be highlighted in the draft itself in the form of a footnote.

## 6. Internal Discussions

- Discussions among stakeholders within your organisation is encouraged to check and test the acceptance of the initial draft as a document to reflect the government policy.

## 7. Approval-in-principle of Director and Ministry

- Approval-in-principle from the Director and the Ministry concerned to be acquired to endorse the initial draft.





## 8. Collaboration

- Discussions among stakeholders, if any, outside your organisation, is also encouraged. This ensures their cooperation in the enforcement of legislation in the future and their interest is not affected.

## 9. Approval-in-principle of Ministry of Finance

- Approval-in-principle from the Ministry of Finance is to be acquired if the initial draft contains any financial provision that involves financial commitment on the part of the Government.

## 10. Submission of initial draft to Attorney General's Chambers

- The initial draft can now be submitted to the Attorney General's Chambers for consideration and perusal.



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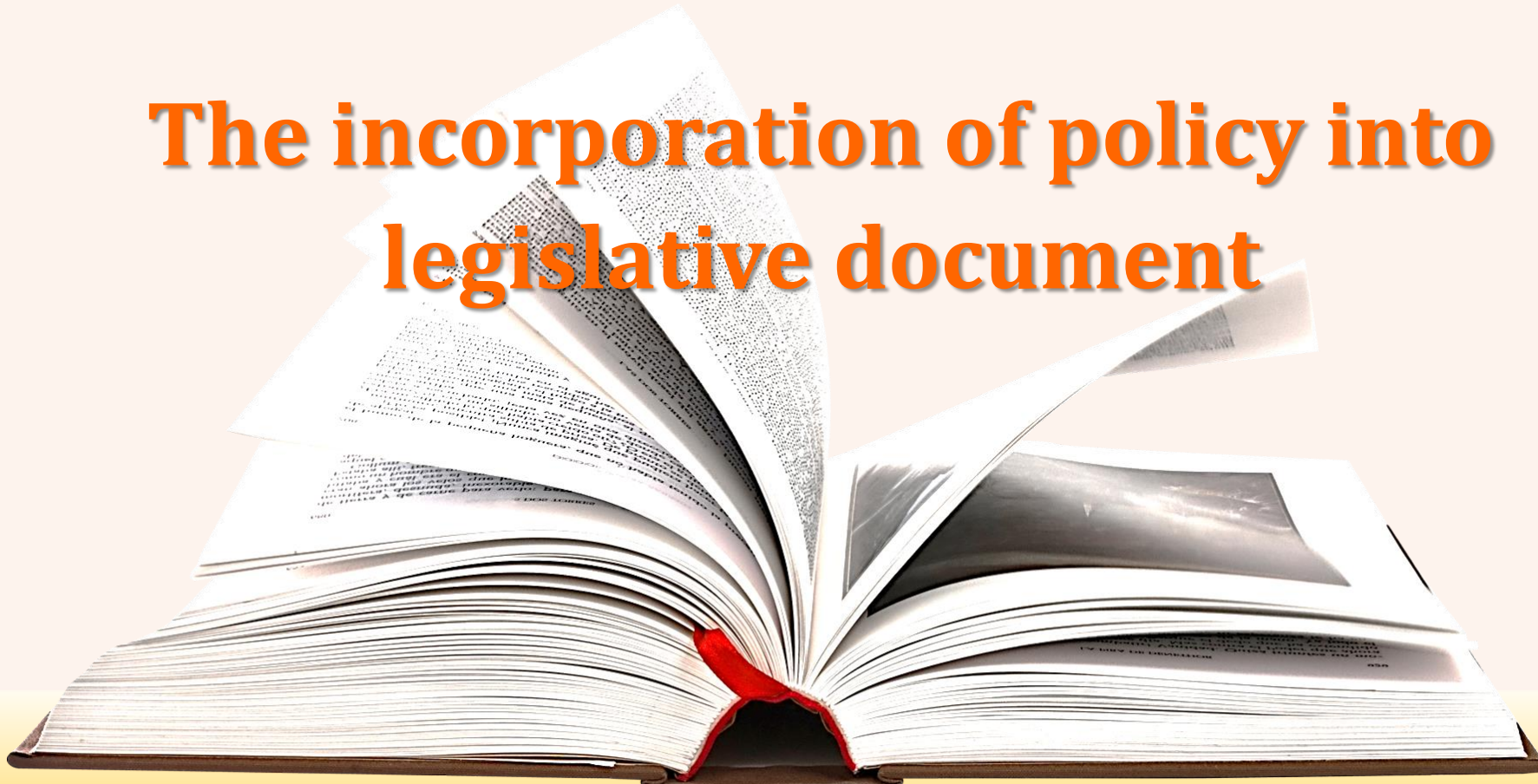
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## LEGISLATIVE DRAFTING

**The incorporation of policy into  
legislative document**





# LEGISLATIVE DRAFTING

## Core Services

**To provide legislative drafting services to Ministries and Departments and statutory bodies to give effect to the policies of the Government of Brunei Darussalam**

**To prepare revised texts of *Laws of Brunei***







# **ORGANISATIONAL STRUCTURE**

**HEAD OF LEGISLATIVE DRAFTING DIVISION**

**DEPUTY HEAD OF LEGISLATIVE DRAFTING DIVISION**

**FINANCE, SOCIAL ECONOMICS  
AND COMMUNITY**

**SECURITY, INFRASTRUCTURE  
AND REGULATORY**

**CONSTITUTIONAL AND  
LAW REVISION**





# LEGISLATIVE DRAFTING DIVISION







## LEGISLATIVE DRAFTER

- A legislative drafter is a person engaged in the drafting of laws of Brunei Darussalam and other instruments. The legislative drafter assesses the need to have the legislation and the suitability of the proposed draft.
- It is not the role of the legislative drafter to blindly accept whatever an instructing ministry or office wants : A legislative drafter, provides legislative advice and drafting services in a professional and impartial manner.





## DUTY OF A LEGISLATIVE DRAFTER

It is the duty of the draftsman “to try to imagine every possible combination of circumstances to which his words might apply and every conceivable misinterpretation that might be put on them, and to take precautions accordingly. All the time he must keep his eye on the rules of legal interpretation and the case-law on the meaning of particular words and on the previous statutes on the same subject-matter, and choose his phraseology to fit them. No one can expect pretty writing from anyone thus burdened.”

*Sir Ernest Gowers; The Plain Words*





## LEGISLATIVE DRAFTING PROCESS

1. Legislative drafting process is initiated with submission to AGC of an official letter and includes the legislative scheme.
2. Legislative scheme consist of the drafting isntructions and the initial draft.
3. Attendance of Legislative Drafting Division officers in meetings does not suffice to initiate legislative drafting process.
4. Policy which is not clear will jeopardise the efficiency of legislative drafting process.



## LEGISLATIVE DRAFTING PROCESS

5. Clock starts from zero despite years of policy making process. Average timeline set for first discussion draft from AGC is 6 months or less and for further discussion draft 3 months or less.
6. Any new instructions must be in writing to ensure proper record is made. This allows AGC to make reference to such instructions when there are queries from His Majesty's Office or Office of the Prime Minister.

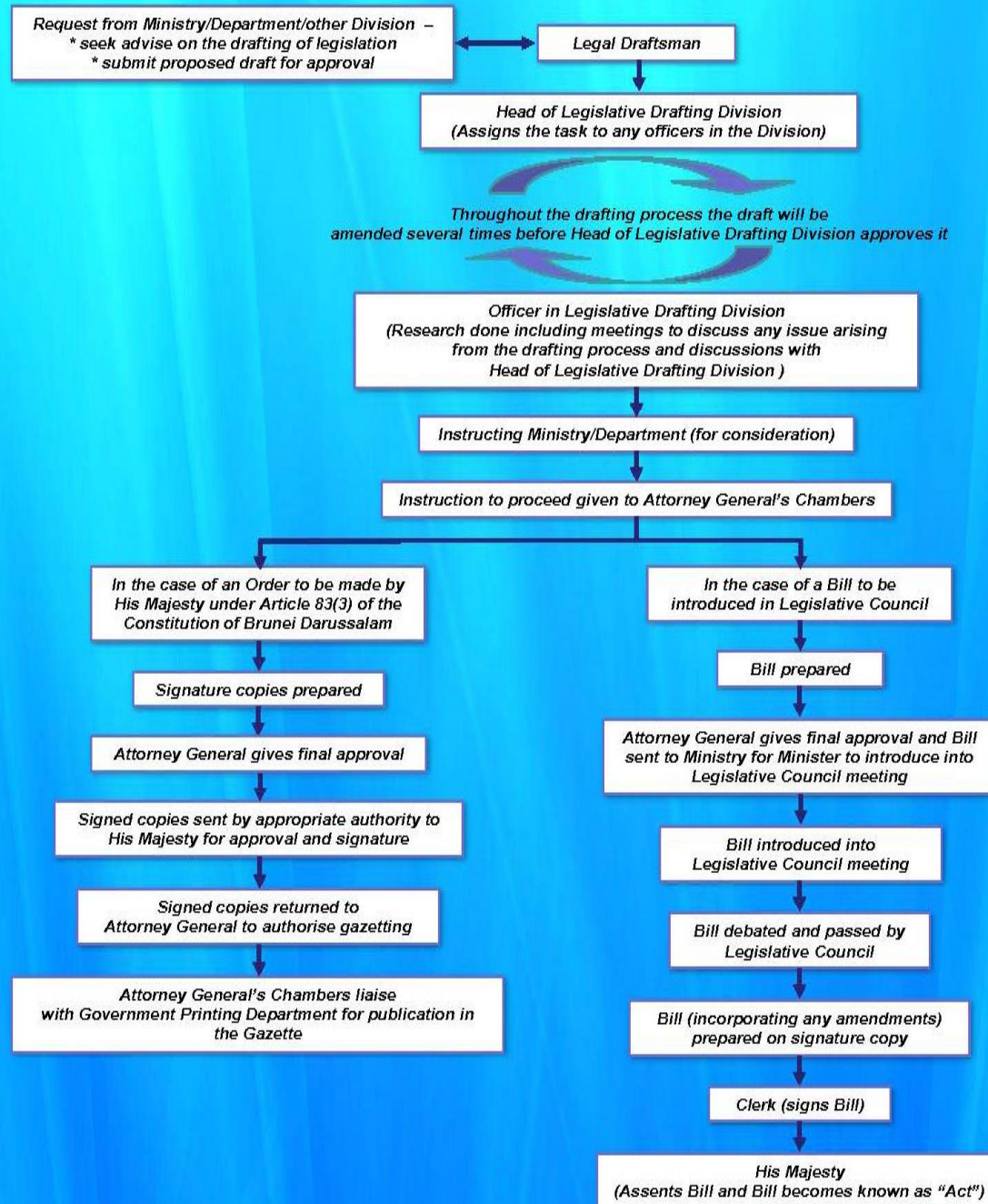


## LEGISLATIVE DRAFTING PROCESS

7. Meetings to be held before AGC issues the first discussion draft are not encouraged. AGC assumes that initial draft submitted by client has been thoroughly discussed amongst stakeholders and no further changes will be proposed whilst AGC studies and prepares the first discussion draft.
8. The use of email to convey any further instructions and comments on AGC discussion draft is acceptable and regarded as an early alert to AGC. This must be followed by written official correspondence.
9. Query on status of draft can be done via follow up correspondence.



# WORKFLOW FOR LEGISLATIVE DRAFTING DIVISION







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# FIVE STAGES OF LAW MAKING PROCESS

## Stage 1 – Formulation of policy

- ❖ The Ministries, departments and statutory bodies are responsible for the formulation of the legislative policy and also in initiating the drafting of the required legislation.
- ❖ Policy recommendation and working papers to pass new laws must have approval in principle from His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam or the Ministry or authority holding responsibility for administering the proposed legislation.



- ❖ It requires detailed planning through a study on the need to introduce legislation, including the current legal position, how the proposed legislation will change it and how the proposed legislation will implement the policy; a study and research of equivalent laws of countries such as Singapore and Malaysia; consultation with other Government authorities to seek their views and approval concerning the legislative proposal.
- ❖ The Ministries, departments or statutory bodies may want to seek legal advice from the Attorney General's Chambers on their legislative proposal.



## Stage 2 – Instruction to draft

- ❖ The role of the Ministries, departments and statutory bodies is to translate political and administrative policy into legislative policy through drafting instructions.
- ❖ Drafting instructions provide a more detailed view of how the policy will be reflected in the legislation and allow other Ministries, departments or statutory bodies an opportunity to consider how the proposal may affect their responsibilities and interests.
- ❖ The drafting instructions guide the legislative drafter and provide information relating to what, why and when it has to be done.



- ❖ The drafting instructions need to cover, among others, a background information; the nature of the problem; a statement of the history or circumstances giving rise to the proposals and the nature of the issues; the aims of the legislation or its principal objectives; the rationale for the proposal; any consequential amendment; commencement date.
- ❖ If any particular law is made or wish to be followed as a benchmark or precedent for the draft legislation, a table of comparative legislation must be prepared. The table of comparative legislation can be prepared at the same time when the initial draft is being prepared. This table will be very helpful to understand the source of the provisions proposed.



## Stage 3 – Preparation of draft legislation

- ❖ On receipt of drafting instructions, the legislative drafter must make sure that he has a thorough understanding of the legislative proposal.
- ❖ A legislative drafter has the responsibility to prepare the requisite draft; legislation; to confirm the suitability of the legislative proposal or the need for legislation; to identify and resolve constitutional and legal issues; to raise questions of principle and spot any financial or other practical implication; to refer any relevant matter to their divisions of the Attorney General's Chambers; and to maintain an orderly statute book.





## Stage 4 – Making law

- ❖ His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam makes Orders which His Majesty considers desirable in the public interest under Article 83(3) of the Constitution of Brunei Darussalam.
- ❖ Orders are made upon His Majesty signing the signature copies of Orders.
- ❖ The Orders are to be laid in the next meeting of the Legislative Council for resolution whether the Orders will cease to have effect or be passed.



- ❖ In the case of a Bill, it is to be introduced in the Legislative Council as provided under Parts VI and VII of the Constitution of Brunei Darussalam. Currently, only the Supply Bill is introduced and debated in the Legislative Council. After the Bill is passed, His Majesty the Sultan and Yang Di-Pertuan assents to, signs and seals the Bill with the State Seal.
- ❖ Ministers, statutory bodies or public officers are conferred powers to make subsidiary legislation, ie. regulations, rules, orders etc.



## Stage 5 – Publication law

- ❖ Signed copies of legislation are returned to the Attorney General's Chambers for gazetting.
- ❖ The Attorney General's Chambers liaise with the Government Printing Department for publication in the Government Gazette.



## **SIGNATURE COPIES OF ORDERS**

NO signature copies will be prepared in the months of December (due to change of year) and February (prior to Legislative Council meetings) every year.





# THANK YOU