



Circular

16 December 2020

Intended for

- All Ministers
- All Chief Executives
- Chief Parliamentary Counsel
- Clerk of the House of Representatives
- All Senior Private Secretaries
- All Office Solicitors

Statutes Amendment Bill for 2021

Introduction

1 This circular sets out the process for developing the Statutes Amendment Bill in 2021.

Process for the Bill

This circular sets out the seven key steps involved in the preparation of Statutes Amendment Bills, which range from the identification of proposals through to cross-party consultation and drafting. Agencies are now required to submit their amendments to the Ministry of Justice for vetting before consultation with relevant Ministers. See paragraphs 10 to 12 for more information.

Important dates

- Departments are to submit potential items in the Bill to the Ministry of Justice for initial vetting of their suitability by **18 December 2020** (see paragraphs 10 to 12 for steps to be followed).
- Once vetted by the Ministry of Justice and approved by the portfolio Minister, departments are to submit potential items for inclusion in the Bill to the Ministry of Justice by **12 March 2021** (see paragraphs 13 to 17 for the steps to be followed).
- Departments are to send drafting instructions to the Parliamentary Counsel Office by **9 April 2021** (see paragraph 21).

The nature and content of the Bill

- 2 Statutes Amendment Bills are designed as vehicles for short, technical and non-controversial amendments to a range of Acts [refer paragraph 7.69 of the Cabinet Manual]. Amendments proposed for inclusion in a Statutes Amendment Bill should meet all three of these criteria. In determining whether an amendment/s meets the above criteria, consider the following:
 - “Short” is an objective test. A proposed amendment that spans several paragraphs is unlikely to be “short” for the purposes of a Statutes Amendment Bill;
 - “Technical” should be given its natural meaning. An amendment that reflects a substantial change in policy or substantially amends the principal Act is not “technical”;
 - “Non-controversial”, although a subjective test, should be interpreted with awareness of relevant history or implications. An amendment that has previously failed in Parliament, or is anticipated to generate debate or controversy with stakeholders or the wider community, is unlikely to be “non-controversial”.
- 3 It is important that all elements of the Bill are appropriate for inclusion in this type of Bill and that they have been the subject of prior consultation with all parties in the House. If any Member of Parliament objects to a clause of a Statutes Amendment Bill during its consideration by the committee of the whole House, it will be struck out of the Bill [Standing Order 313(2)]. The aim is to avoid this by engaging in full, cross-party consultation before including clauses in the Bill.
- 4 The Statutes Amendment Bill will include items approved by any Minister (or identified by Cabinet) which involve short, technical, and non-controversial amendments to Acts relevant to the Minister’s portfolio area. For proposals to come within the scope of a Statutes Amendment Bill they must consist entirely of amendments to an Act or the repeal (without replacement) of an existing Act. Consequential amendments, consequential repeals, application provisions, and savings and transitional provisions are permissible.
- 5 Stand-alone provisions, including the creation of a new principal Act, are normally ruled out. Amendments that the portfolio Minister considers require policy consideration by a Cabinet committee or by Cabinet will almost certainly be unsuitable.
- 6 A finite allocation of drafting time has been made for the preparation of the Bill and for its support through the House. The deadlines outlined in paragraph 1 must be met to ensure proposed amendments can be included in the Bill. Proposed amendments not meeting the deadlines may be submitted for inclusion in any later Statutes Amendment Bill.

The process for developing the Bill

Roles of Ministers and departments

- 7 Individual departments are responsible for identifying and developing amendments to Acts they administer. Portfolio Ministers will approve potential amendments within their portfolio areas and undertake any necessary government consultation.
- 8 The Associate Minister of Justice (Hon Aupito William Sio) is the Minister in charge of the Bill and will coordinate the inclusion of items in the Bill and the cross-party consultation process. The Ministry of Justice will coordinate the administrative aspects of the development of the Bill. Departments should liaise with the Ministry of Justice coordinator in the first instance (Sara Elgoran, Policy Advisor, Ministry of Justice, ph 04 918 8819; email sara.elgoran@justice.govt.nz)

Identify potential amendments

- 9 The **first step** is for a department to identify amendments that it considers appropriate for inclusion in the Bill. Departments must be satisfied that proposed amendments are *short, technical, and non-controversial* and otherwise consistent with the content requirements described in paragraphs 2 to 4. In identifying potential amendments, departments should consult with their legal departments.

Submit potential amendments to the Ministry of Justice for initial vetting

- 10 The **second step** is for the department to submit the amendments they have identified to the Ministry of Justice for initial vetting. These need to be provided to the Ministry of Justice by **18 December 2020**.
- 11 The Ministry of Justice will vet the amendments to determine whether they are *short, technical, and non-controversial* and otherwise consistent with the content requirements described in paragraphs 2 to 4. Departments may wish to provide to the Ministry of Justice any advice from their legal departments they have received as to the suitability of the proposed amendments.
- 12 The Ministry of Justice will then provide advice to the department as to whether it considers the amendments suitable for inclusion in the Bill. This advice will be provided to the department by **late January 2021**.

Obtain approval of portfolio Minister

- 13 The **third step** is for the department to brief the Minister responsible for the principal Act and obtain that Minister's approval for the proposed amendment and for the proposal to proceed to cross-party consultation. The department's briefing to the portfolio Minister should include the advice that the Ministry of Justice has provided to the department as to the suitability of the amendments. As well as this, the briefing should include the following documents, templates of which are available from the Ministry of Justice coordinator:
- 13.1 A letter from the portfolio Minister to the Minister in charge of the Bill seeking to include the proposed amendment in the Bill. This letter should provide contact details for two officials in the department responsible for the proposed amendment who will be the contact persons for the Ministry of Justice coordinator. These contact persons should be able to respond to queries on the substance of the proposed item; and
- 13.2 An attachment on Ministerial portfolio letterhead clearly citing in full the sections of the principal Act proposed to be amended, and providing information on the proposed amendment and the reasons for it. This attachment should provide contact details for a private secretary in the portfolio Minister's office who will be the contact person for all parliamentary parties. This contact person must be able to respond to queries on the substance of the proposed item.
- 14 The attachment referred to in paragraph 13.2 is designed to go under a covering letter from the Minister in charge of the Bill to the leader of each parliamentary party seeking support for all the proposed amendments.
- 15 The portfolio Minister will need to undertake consultation with his or her own party caucus, as necessary, in the normal way.

Provide information to Ministry of Justice

- 16 The **fourth step** is for departments to provide all relevant briefing material and correspondence, once approved and signed by the portfolio Minister, to the Ministry of Justice by **12 March 2021** (Sara Elgoran, see contact details in paragraph 8).
- 17 The Ministry of Justice will brief the Minister in charge of the Bill on all proposals tendered by portfolio Ministers, on an aggregated basis. This advice will include whether the proposals tendered are *short, technical*, and *non-controversial* and otherwise consistent with the content requirements in paragraphs 2 to 4.

Parliamentary parties consulted

- 18 The cross-party support process is coordinated through the Minister in charge of the Bill. The **fifth step** is for the Minister in charge of the Bill to send a letter to each parliamentary party seeking its support for the proposed amendments. Letters will be sent to parliamentary parties by the **start of April 2021** to be returned to the Minister in charge of the Bill by **7 May 2021**.

- 19 Each letter will be accompanied by a set of attachments from the portfolio Ministers setting out the details of the proposed amendments. The recipients of the letters will be asked to direct queries on the substance of the proposed amendments to the office of the relevant portfolio Minister, and to finally respond to the Minister in charge of the Bill indicating their support or otherwise for the amendments.
- 20 The Ministry of Justice will notify departments and the Parliamentary Counsel Office of the outcome of the consultation process.

Submit drafting instructions to Parliamentary Counsel Office

- 21 The **sixth step** is for the department to send drafting instructions to the Parliamentary Counsel Office drafting team leader responsible for the department's drafting by **9 April 2021** [refer to paragraphs 7.50 and 7.52 of the Cabinet Manual which relate to the role of the drafter and drafting instructions].

Drafting by the Parliamentary Counsel Office

- 22 The **seventh step** is for the Parliamentary Counsel Office to draft the Bill. The Parliamentary Counsel Office will not begin drafting any amendment until confirmation of support from all parties has been obtained. Confirmation needs to be received by **10 May 2021**.
- 23 Parts of the Bill, when drafted and settled with instructing departments, are sent by Parliamentary Counsel to the Ministry of Justice, which will organise the vetting of the proposals for consistency with the provisions of the New Zealand Bill of Rights Act 1990.

Timing of introduction

- 24 The intention is to finalise the Statutes Amendment Bill for introduction in August 2021.

Michael Webster
Secretary of the Cabinet

Enquiries:

Sara Elgoran, Ministry of Justice
Ph:04 918 8819