



Cabinet Office Circular

CO (09) 1

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Law Commission: Processes for Setting the Work Programme and Government Response to Reports

Key points

- **The government has adjusted some aspects of the processes for selecting Law Commission projects, how the Parliamentary Counsel Office should work with the Law Commission and responding to Law Commission reports on government references. This circular sets out the new processes and confirms existing processes that still apply to Law Commission projects.**
- **The Minister Responsible for the Law Commission will select government-referred projects for the annual Law Commission work programme following consultation with the relevant portfolio Ministers.**

- **Ministers who are proposing projects for referral to the Law Commission will be required to comment on how the proposed projects align with government priorities and confirm that departmental resources will be made available to work with the Law Commission during the project and to provide advice to the Government in responding to the final report of the Law Commission on the project. Proposed projects should meet one or more of the criteria set out in paragraph 12.**
- **The government will determine its position on Law Commission reports on government references by considering a Cabinet paper submitted by the relevant portfolio Minister. The portfolio Minister will determine on a case by case basis which agency is to prepare Cabinet papers on the topic. Where it is proposed to present a formal response to the House of Representatives, the Cabinet paper will include the views of the Law Commission.**
- **If Cabinet decides to accept the Law Commission's recommendations, with the result that a Bill is required, the Bill will be prepared with no further need for the government to present a response to the House of Representatives.**
- **If, however, Cabinet rejects the Law Commission's recommendations, or the government is responding to a self-initiated Law Commission project other than by introducing a draft Bill, the government will still be required to present to the House of Representatives a response to a Law Commission report within 120 working days.**
- **A place on the annual Legislation Programme still needs to be sought at the earliest opportunity for a proposed Bill resulting from Law Commission recommendations.**
- **The Minister Responsible for the Law Commission is required to present all Law Commission reports to the House of Representatives and publish those reports in accordance with section 16 of the Law Commission Act 1985. The current administrative arrangements supporting this process will continue.**

Introduction

- 1 Cabinet has recently made decisions adjusting aspects of the interaction between the [Law Commission](#) and executive government.
- 2 Projects for the Law Commission may be proposed by any Minister or by the Law Commission in consultation with its stakeholders. This circular, which replaces Cabinet Office circular CO (07) 4, makes adjustments to the processes for:
 - 2.1 selecting projects referred to the Law Commission by the government (government references);
 - 2.2 how the Parliamentary Counsel Office (PCO) should work with the Law Commission;
 - 2.3 how the government will respond to Law Commission reports resulting from either government references or projects initiated by the Law Commission (self-initiated projects).

- 3 The processes in this circular apply to reports in the Law Commission’s report series presented to the House of Representatives (the House) after the date of this circular. They do not apply to reports in the Law Commission preliminary paper series, study paper series, or annual reports.

Projects referred to the Law Commission by the government

Process for selecting Law Commission projects

- 4 Each year the Minister Responsible for the Law Commission (MRLC) will write to all Ministers inviting suitable proposals with a view to settling the work programme by the end of June¹.
- 5 Ministers will be required to:
- 5.1 comment on how proposed projects align with government priorities; and
 - 5.2 confirm that departmental resources will be made available to work with the Law Commission during the project and to provide advice to the Government on responding to the final report of the Law Commission.
- 6 To allow for adequate scoping and costing of potential projects, early correspondence with and engagement by Ministers is desirable.
- 7 Following consultation with Ministers, the MRLC will approve an annual programme of projects for the Law Commission. Only projects supported by the relevant portfolio Ministers should be contained in the programme. The resource implications for the relevant departments in working with the Law Commission on a particular project and in responding to the final report of the Law Commission are to be considered by the MRLC in approving a programme.
- 8 Proposed projects should meet one or more of the following criteria:
- 8.1 involve issues that span the interests of a number of government agencies and professional groups;
 - 8.2 require substantial, long term commitment or fundamental review;
 - 8.3 involve extensive public or professional consultation;
 - 8.4 need to be done independently of central government agencies because of the existence of vested interests, or a significant difference of views;
 - 8.5 require independent consideration in order to promote informed public debate on future policy direction;
 - 8.6 involve technical law reform of what is often called “lawyer’s law” that would be likely otherwise to escape attention.

¹ Beginning with the programme for the 2009/10 year.

Providing departmental and drafting assistance on government references to the Law Commission

- 9 If a project is approved, departmental resources should be made available to work on the project so that officials are kept in touch with the development of the project and can provide advice on it. This may include the provision of [PCO](#) legislative drafting assistance, if the nature of the report is such that it would be appropriate to append a draft Bill to it.
- 10 The extent to which the PCO will provide assistance at this stage will be considered by the government on a case by case basis. Any PCO drafting assistance to Law Commission projects must also be considered in light of the Government's legislation programme priorities and take into account any PCO drafting resources that are already seconded to the Law Commission.

Cabinet consideration of Law Commission recommendations

- 11 Once a portfolio Minister has received a Law Commission report, a draft Cabinet paper will be prepared as soon as reasonably practicable reflecting the views of the Minister and all relevant agencies, and incorporating split recommendations where there is no consensus.
- 12 The portfolio Minister will decide on a case by case basis which agency will prepare the draft Cabinet paper on the Minister's behalf. Options include:
 - 12.1 the portfolio Minister's department or other agency (the agency) preparing the Cabinet paper in consultation with other relevant agencies (including the Law Commission);
 - 12.2 the agency and the Law Commission jointly preparing the Cabinet paper;
 - 12.3 the Law Commission preparing the Cabinet paper in consultation with all relevant agencies;
 - 12.4 the Cabinet paper being prepared in any alternative manner.
- 13 The relevant Minister will submit the paper to a Cabinet committee seeking Cabinet's approval of the recommendations in the Law Commission report to the extent that the Minister considers appropriate.
- 14 If Cabinet accepts the recommendations with the effect that a Bill will be required, Cabinet will add the Bill to the [Legislation Programme](#) with an appropriate priority. If a Bill ready for introduction is not already appended to the Law Commission report, Cabinet may invite either the portfolio Minister or the Law Commission (as considered by Cabinet to be appropriate in the particular case) to issue drafting instructions to the PCO. The Bill that ensues will be introduced in the normal way in the name of the portfolio Minister.

Government response may be required

- 15 Where Cabinet accepts the recommendations in the Law Commission report, there will be no need for a formal government response to the Law Commission report to be presented to the House.

- 16 If Cabinet rejects the recommendations in the Law Commission report, the government will continue to be required to respond formally, by way of a paper presented to the House within 120 working days of the presentation of the Law Commission's report to the House. This process is set out in paragraphs 21 to 24.

Projects initiated by the Law Commission

- 17 It remains open to the Law Commission to initiate projects itself.
- 18 In the case of Law Commission reports on such projects, the government is required to respond to the recommendations within 120 working days of the presentation of the Law Commission report to the House, either by presenting a response to the House or by introducing a Bill.
- 19 If the Law Commission report raises matters that require policy decisions to be taken by Cabinet, a paper will need to be submitted to the appropriate Cabinet committee prior to the consideration of a proposed government response or draft Bill by the Cabinet Legislation Committee. The process for presenting a response to the House is set out in paragraphs 21 to 24.

Process where government response to be presented to House

- 20 The government is required to present to the House a response to a Law Commission report in two circumstances:
- 20.1 if Cabinet rejects the Law Commission's recommendations on a government reference; or
- 20.2 if the government responds to self-initiated Law Commission projects other than by introducing a draft Bill.
- 21 A government response must be presented to the House within 120 working days from the time that the Law Commission presents its report to the House.
- 22 Where a government response is required to a Law Commission report, the relevant Minister must obtain Cabinet approval for the text of the government response by submitting the response, with a Cabinet paper, to the Cabinet Legislation Committee and Cabinet. In this case, the Cabinet paper is to include the views of the Law Commission.
- 23 Template documents showing the [standard format for a government response](#) and the [Cabinet Legislation Committee paper](#) are attached as [Appendices 1](#) and [2](#). The template will need to be adapted to match the format of the particular Law Commission recommendations. It may be appropriate to summarise or cluster key recommendations together when drafting the government response.
- 24 Once the government response is approved by Cabinet, the office of the Minister concerned must arrange the presentation of the government response by delivering it the Clerk of the House of Representatives in the [usual way](#).

Presentation of Law Commission reports to the government and the House

- 25 After the Law Commission has completed a report, it submits the report to the MRLC and the relevant portfolio Minister.

- 26 The MRLC is required to present all Law Commission reports to the House and publish reports in accordance with section 16 of the Law Commission Act 1985. Once a report has been presented to the House, or 20 working days after an advance copy of the report has been forwarded to the MRLC and the relevant portfolio Minister, the Law Commission will publish the report. This 20 working day period is to allow the government time to prepare its initial views for conveying to the Law Commission and more widely as appropriate.
- 27 The office of the MRLC is responsible for:
- 27.1 the administrative function of presenting Law Commission reports to the House;
 - 27.2 monitoring the progress of government responses to Law Commission reports.
- 28 The office of the relevant portfolio Minister is responsible for the administrative function of presenting any government response to the House.

Place on annual Legislation Programme still required

- 29 A place on the annual [Legislation Programme](#) is still required for proposals for Bills that emerge as a result of the government accepting Law Commission recommendations. Ministers should submit proposals for Bills to be incorporated into the annual Legislation Programme, either as part of the annual process (if the prospect of a Bill is known at that stage) or as part of the Cabinet paper seeking agreement to the Law Commission's recommendations. The normal processes for obtaining a place on the Legislation Programme are set out in Chapter 7 of the Cabinet Manual, the [legislation procedures](#) in the CabGuide, and the relevant annual [circular](#).

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Secretary of the Cabinet

Appendix 1

Below is the format for recommendations for a paper seeking approval by LEG of the government response to a Law Commission report.

The Minister of xx recommends that the Cabinet Legislation Committee:

- 1 note that on xx *[date]*, the Minister Responsible for the Law Commission presented the Law Commission's report entitled xx to the House;
- 2 note that the Law Commission recommended that the government:
 - xx [summarise key recommendations of Law Commission's report];*
- 3 note that on xx *[date]*,
 - xx [summarise any relevant policy decisions taken with appropriate minute references];*
- 4 note the submission of the Minister of xx and in particular his/her advice that:
 - xx [summarise main points of the proposed government response];*
- 5 approve the proposed government response, attached to this submission, to the report of the Law Commission entitled xx;
- 6 note that the government response must be presented to the House by xx *[date]*;
- 7 invite the Minister of xx to present the government response to the House.

Note:

The above format is set out on the basis of prior approval of the relevant policy issue. If necessary, the proposed government response could be prepared and considered by a policy committee at the same time as the policy is considered. In that case, the above recommendations should be adapted and added to the policy paper. There would then be no need for the proposed government response to be considered by LEG.

**GOVERNMENT RESPONSE TO
LAW COMMISSION REPORT
ON
[title]**

Presented to the House of Representatives

GOVERNMENT RESPONSE TO LAW COMMISSION REPORT ON [title – as on cover page]

Introduction

An opening remark such as:

“The government has carefully considered the Law Commission’s report on xx”.

or

“The government welcomes the Law Commission’s report which represents a major contribution to the development of policy on xx”.

A sentence stating:

“The government responds to the report in accordance with Cabinet Office circular CO (09) 1”.

Any general statements or explanations of the nature and content of the response, such as:

“The government has taken (or intends to take) action on the majority of the Commission’s recommendations”.

or

“The government has taken action on certain of the Commission’s recommendations, but is as yet unable to respond positively on the recommendations dealing with xx because xx”.

or

“The government has carefully considered the Commission’s recommendations and has identified the need for further work on the issues raised. The government priority for this further work, relative to other higher priorities, means that significant progress on this work is unlikely to be made within the next xx.”

Law Commission Report and Government Response

Law Commission Report

[Summarise key recommendations of Law Commission’s report].

Response

List key recommendations of report and response in turn.

[For each recommendation or group of recommendations: State response. This should be concise and informative. Responses should be framed in terms of how “the government” responds to the issue, with references to the responsibilities of and action taken by particular Ministers/departments as appropriate].

Conclusion

Brief summary of overall response.