

## CHECKLIST FOR DRAFTING INSTRUCTIONS

The table below is a brief overview of the best structure for a set of instructions. At the core of this proposed structure is the following analysis—

- This is something we want to happen (the desired outcome).
- This is why it cannot happen without legislation (the mischief).
- This is how we think the law needs to be changed in order for it to happen (the remedy).

For further details please refer to the full version of this [document](#).

<b>Section</b>	<b>Purpose and main content</b>	<b>Matters to be covered</b>
<b><i>Introduction</i></b>	To outline the factual and political context in which legislation is being proposed; the general purpose of the changes that are being proposed; and the principal reasons for legislating.	<ul style="list-style-type: none"> <li>• the political and factual context;</li> <li>• a paragraph introducing the devolution issues that are likely to arise;</li> <li>• a warning about any significant EU or ECHR issues the Bill is likely to give rise to;</li> <li>• any conventions that have been adopted in the instructions (eg acronyms or abbreviations);</li> <li>• any information about whether the instructions are contingent (eg on collective agreement), and about any risk that they will change; and</li> <li>• any other information about the current state of the project.</li> </ul>
<b><i>Description of the existing law</i></b>	To describe the relevant existing law, its application in practice.	<ul style="list-style-type: none"> <li>• a description of the legislative provisions, relevant common law rules and case law, and also (where appropriate) examples of how all that operates in practice;</li> <li>• a brief history of statutory provisions that are being described;</li> <li>• an explanation of why a previous round of amendments occurred;</li> <li>• any recent developments affecting the law being described and anything in the pipeline (eg relevant SIs in preparation); and</li> <li>• what is known about any Law Officers' advice that relates to the background law or to the matters to be dealt with in the Bill, and anything about the contents of any other legal advice given by or within Government or pending litigation that could be relevant.</li> </ul>
<b><i>Description of the mischief</i></b>	To describe the respects in which, and extent to which, the existing law prevents the implementation of the department's policy.	<ul style="list-style-type: none"> <li>• how the existing law prevents the implementation of the proposed policy;</li> <li>• different circumstances will require different contents, discuss the contents with Counsel.</li> </ul>
<b><i>Description of the proposed remedy</i></b> <i>(It may be appropriate to interweave this</i>	To describe the legal changes to which the Bill is to give effect in order to provide a remedy for the mischief and to	<ul style="list-style-type: none"> <li>• an outline of all the specific things that need to be achieved by way of addition to or other amendment of the law;</li> <li>• a description of the substance of any specific changes to the effect of the existing law that need to be made to</li> </ul>

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<i>with the above section)</i>	ensure that the correct analysis underlies the operative part of the instructions.	bring that about and why those changes will have that effect.
<b><i>Incidental and supplemental matters</i></b>	To describe the incidental and supplemental provisions needed to support the remedy or need to be considered during the drafting process.	<p>The following are the matters that need to be considered in this way.</p> <ul style="list-style-type: none"> <li>● service of documents under the Bill, including a consideration of electronic service.</li> <li>● any impact of the Electronic Commerce Directive (2000/13/EC) on the proposals.</li> <li>● any impact of the Services Directive (2006/13/EC) or the Technical Services Directive (1998/34/EC) on the proposals.</li> <li>● other EU issues including ECHR compatibility.</li> <li>● territorial extent and application.</li> <li>● devolution issues.</li> <li>● application of the Statutory Instruments Act, Parliamentary etc. control and incidental, supplemental, transitional and consequential powers for SIs under the Bill.</li> <li>● the implications of the proposals for Government finances and how are they going to be met.</li> <li>● vicarious liability for criminal offences and also the liability of company directors etc. for offences by companies etc.</li> <li>● application of criminal offences etc. to armed services personnel.</li> <li>● application to the Crown.</li> <li>● any impact of the proposals on matters covered by Parliamentary privilege.</li> <li>● disclosure and confidentiality of information obtained under the Bill and information sharing.</li> <li>● extent to which powers conferred under the Bill may be delegated.</li> <li>● consequential amendments and repeals in other legislation.</li> <li>● commencement provisions.</li> <li>● transitional and transitory provisions and savings.</li> </ul>
<b><i>Parliamentary and other handling matters</i></b>	To discuss any Parliamentary or other handling matters relevant to the drafting, particularly in relation to Parliamentary procedure.	<p>The principal matters to be mentioned are:</p> <ul style="list-style-type: none"> <li>● the timetable and arrangements for pre-legislative scrutiny of a draft Bill;</li> <li>● any timetable or arrangements for PB Committee and introduction;</li> <li>● the proposals for or progress of any consultation on aspects of the Bill;</li> <li>● matters on which further provisions may be needed and the plans for instructing on them, including areas where the need for concessions in the House can be predicted.</li> </ul>

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		<p>Departments may also wish to raise any questions they may have about the likely scope of the Bill;</p> <ul style="list-style-type: none"> <li>● financial matters;</li> <li>● other Parliament Acts matters;</li> <li>● issues that give rise to concern about the potential hybridity either of provisions of the Bill or of affirmative instruments made under a power proposed for the Bill;</li> <li>● concerns have about proposals affecting the prerogatives or interests of the Crown and the implications for any requirement for Queen's or Prince's consent.</li> <li>● any comments on short and long Bill titles.</li> </ul>
<b><i>Housekeeping matters</i></b>	To outline key information to support effective project management.	<ul style="list-style-type: none"> <li>● the contact details and availability of the Bill team members;</li> <li>● arrangements for Bill training events for the team; and</li> <li>● arrangements for correspondence between OPC and the department and consultation with the devolved administrations.</li> </ul>