

# Legislative drafting in the UK

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## The 'architecture' of legislative drafting

- Responsibility for legislative drafting generally falls to two separate parts of Government
  - The Office of the Parliamentary Counsel drafts primary legislation
  - Individual departments draft secondary legislation
- But the goal remains the same – giving legal effect to policy objectives

## Legislative drafting: ‘more an art than a precise science’

- All legislation is different – drafters should treat as such!
- There is guidance available for drafters but this is largely **principles-based rather than prescriptive**
  - Example 1: the Drafting Guidance for primary legislation instructs drafters only “to have a regard to the guidance”
  - Example 2: the Statutory Instrument Practice Manual (ie. secondary legislation) sets out what drafters “should” do to conform with Parliamentary procedures
- Legislative drafting in the UK thus draws heavily on convention and making sure drafters are aware of good practice

## What guidance and support looks like (i)

- Separate **guidance manuals** for primary and secondary legislation
  - Primary legislation guidance issued by the Office of Parliamentary Counsel
  - Secondary legislation guidance issued by Her Majesty's Stationary Office and the Government Legal Service
- Both provide guidance on:
  - Operative drafting techniques, eg. clarity of text, using precedents
  - Conformity with Parliamentary procedures (technical detail)
- Interpretations Act 1978: helping drafters and readers

## What guidance and support looks like (ii)

- Training for legislative drafting:
  - National School of Government, primary and secondary legislation
  - Departmental ‘in-house’ training, secondary legislation
- Electronic validation: templates
- Updates and revisions:
  - Triggered by... legislative changes, court decisions, Parliamentary scrutiny (Joint Committee on Statutory Instruments)
  - Provided by... departmental co-ordinators, Government Legal Service (Secondary Legislation Group)

## Useful links

- **Office of the Parliamentary Counsel Drafting Guidance:**  
<http://www.cabinetoffice.gov.uk/sites/default/files/resources/opc-drafting-guidance.pdf>
- **‘The Art of Legislative Drafting’,** Sir Geoffrey Bowman:  
<http://webarchive.nationalarchives.gov.uk/20100814113337/http://cabinetoffice.gov.uk/media/190031/dale.pdf>
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