



Instructor Guidance Note— Consequential amendments

What is a consequential amendment?

1 A consequential amendment is an additional amendment that is required as a result of the main changes being made in a legislative project. Consequential amendments may range from purely technical changes, such as cross-references to amended provisions, to much more substantial changes required as a consequence of introducing new concepts or abandoning old ones.

Instructing agency's responsibility

2 The instructing agency is expected to be the subject-matter expert in the laws it administers. As a result, the instructing agency (not OPC) holds primary responsibility for identifying, and instructing on, any consequential amendments that arise from a legislation project.

3 The drafting instructions should, as a minimum, list all provisions that require consequential amendment. Detailed instructions on the changes to be made to those provisions are not necessary if the required changes are obvious.

Identifying consequential amendments

4 The main way of finding provisions that need consequential amendments is to search the Federal Register of Legislation or other electronic databases.

5 The 2 main kinds of consequential amendments are:

- amendments *within* the legislation being amended; and
- amendments to *other* legislation which are necessary or desirable as a consequence of the amending legislation.

6 Consequential amendments may be required to *both* primary and subordinate legislation. Note also that consequential amendments may be required because of a Bill that has been introduced into the Parliament but has not yet been enacted.

7 Searching the Federal Register of Legislation is an essential step in identifying consequential amendments. However, it is not sufficient of itself, because often the need for consequential amendments can only be identified by thinking deeply and broadly about the impact of the proposed changes.

8 The process of searching for consequential amendments can also assist in revealing problems that need to be taken into account when working out the strategy for implementing the new policy.

Tips for finding and dealing with consequential amendments

9 Here are some tips for finding and dealing with consequential amendments:

- Search both the legislation that is being amended and other legislation
- Search both primary and subordinate legislation
- Search Bills that have been introduced into the Parliament but not yet enacted
- Search for cross-references using the number of the provision being amended (e.g. "31", "135A")
- Search for cross-references using all possible unit level references (e.g. "section 31", "subsection 31(1)", "paragraph 31(1)(a)", "subparagraph 31(1)(a)(ii)")
- Search for plural references ("sections 31 and 32")
- Search for references that include the provision being amended without mentioning it by number ("sections 29 to 35")
- Search for references to the Part, Division or Subdivision in which amended or repealed provisions appear
- Check headings, long titles, objects provisions, lists of functions and any simplified outlines (whether at the start of the legislation or in a later unit such as a Chapter or Part)
- Check general provisions near the end of the legislation such as delegations, fees, review of decisions and instrument-making powers
- Consider the structural impacts of the amendments (e.g. repealing Division 2 of a Part that has only 2 Divisions will leave Division 1 stranded. That Division heading should be repealed and any cross-references appropriately amended)
- Check whether any defined terms are no longer necessary as a result of the amendments and, if so, repeal them
- Consider whether new concepts that are introduced as part of the amending legislation need to be referenced in other legislation (e.g. should a new concept of an e-cigarette advertisement be included in other legislation that bans broadcast of tobacco advertisements?)

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- Consider what should be done if a key concept in a particular Act is being repealed but another Act relies on that key concept.
- Consider whether the amendments create any decisions that need to be referenced in other legislation
- Consider whether the amendments will result in generating information the use or disclosure of which needs to be mentioned in other legislation
- If the legislation creates a new Act, does the Act need to be included in any lists of legislation in other Acts?
- If the legislation creates a new payment, what are the tax and other financial consequences of the payment?

Legislation administered by other agencies

10 It is common for legislation administered by other agencies to need consequential amendments. If this is the case, consult the relevant agency early on and seek their agreement to the instructions for those amendments.

OPC's role

11 OPC will identify consequential amendments that are necessary to, or because of, Bills and instruments that are still being drafted. However, instructors should advise OPC about any related projects of which the instructors are aware.

12 Instructing agencies are encouraged to seek advice and/or assistance from OPC, particularly if a large number of consequential amendments are likely to be needed.

13 OPC can provide guidance on the kinds of searches to be conducted and, for a fee, can also arrange electronic searches of its own databases.

The purpose of Instructor Guidance Notes is to assist agencies with general legislative drafting issues and preparing drafting instructions for Bills and instruments. The series is intended to be a starting point for instructors' own engagement with the matters covered. Instructor Guidance Notes are not statements of official policy and are not intended to be a comprehensive statement of the law. This Instructor Guidance Note should not be relied on as a substitute for legal advice.