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Electricity Regulatory Authority

Ministry of Energy and Natural Resources

**SUBORDINATE LEGISLATIVE DRAFTING
MANUAL 2024**



Electricity Regulatory Authority

Ministry of Energy and Natural Resources

Foreword

It is with great commitment to advancing our regulatory framework that we present this Subordinate Legislative Drafting Manual which aims to ensure drafting uniformity in format and style. This Manual has been carefully crafted to enhance the effectiveness, transparency, and consistency of subordinate legislations formulated by the Electricity Regulatory Authority, ensuring that we meet both current and future needs with precision and clarity.

In an evolving regulatory environment, it is crucial that our regulations and rules not only comply with legal standards but also foster efficiency and fairness. This Manual represents a significant step in that direction, embodying best practices and a thorough understanding of the challenges and opportunities within.

We trust that this Manual will provide a solid foundation for drafting effective, transparent and consistent subordinate legislations. It is our hope that it will serve as a vital tool in achieving our regulatory objectives in fostering a transparent and well-regulated environment.

The Electricity Regulatory Authority Secretariat shall adopt this Manual while performing the rulemaking functions. For this purpose, the Authority formally approved the Subordinate Legislative Drafting Manual 2024 during 124th Commission Meeting held on September 3, 2024, and shall come into force from October 1, 2024.

Signature of the Chairperson

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Background

Section 11.1 (i) of the Electricity Act of Bhutan 2001 (Act) empowers the Electricity Regulatory Authority (Authority) to formulate regulations, codes, standards and procedures pertinent to the electricity sector. Since its inception, the Authority has developed and issued numerous rules, regulations, codes, and standards to be complied by the Licensees involved in construction, generation, transmission, distribution, system operation, sale and export or import of electricity.

The drafting of subordinate legislations has been carried out without a proper guiding framework thus lacking uniformity in drafting standards. In addition, the strategic goal of the Authority, “Regulatory Framework Excellence”, mandates regulatory framework to be effective, responsive and enabling. Therefore, to address the current challenges, and to realize the objectives of this strategic goal, a standardized manual is pivotal.

Purpose and Scope of the Manual

1. This Manual:
 - (1) serves as a guidance and outlines the process to be followed by the Authority while formulating a new subordinate legislation, an amendment or repeal of the existing subordinate legislations;
 - (2) specifies the responsibilities in the process of formulating subordinate legislation;
 - (3) aims to bring uniformity in the style and form of the subordinate legislations; and
 - (4) is to enhance transparency, accountability, coordination and coherence in the process.
2. This Manual shall be adopted while formulating a new subordinate legislation, an amendment or repeal of the existing subordinate legislations.

Forms of Subordinate Legislation

3. Subordinate legislation includes the following:
 - (1) regulations; and
 - (2) rules.
4. Regulation refers to any subordinate legislations that elaborates on the substantive provisions of the Act, or addresses both substantive and procedural matters. It establishes legally binding rights and obligations that must be adhered to.

For example, under the Licensing Regulation for Solar Power Plant 2024, individuals have the right to install a solar power plant with a capacity of up to 30 kWp without obtaining a

license from ERA. However, they are still required to comply with the Grid Code, Safety Code and Safety Regulations set forth by the ERA.

5. Rules refers to any subordinate legislations that are of general application and that deals with procedural matters, for example, procedures for obtaining licenses or permits, disciplinary procedures and guidelines. It generally elaborates the process of realizing the rights and obligations set under the Act and regulation.

6. The formulation of subordinate legislation shall be in any of the following forms:

(1) Free-standing

If an entirely new subordinate legislation on a specific subject matter is required to be formulated, such subordinate legislation is referred to as free-standing subordinate legislation.

*For example, the Licensing Regulation for Solar Power Plant 2024. The format is provided in **Schedule 1**.*

(2) Amending

If the existing subordinate legislation is required to be modified, and still clearly organized and easily understood by users upon amendment, then such subordinate legislation shall be suitable for amendment. The amendment shall limit to insertion or deletion of a few clauses, words etc., and does not result in a new subordinate legislation. The format is provided in **Schedule 2**; and

(3) Repealing

If the subordinate legislation, upon review, requires substantive changes resulting in change in the whole structural flow and difficulty in understanding the text, then such subordinate legislation should be repealed. The term “revoke” shall be used for repealed subordinate legislation. The format is provided in **Schedule 2**.

General Principles

7. The subordinate legislation:

(1) shall be formulated in line with the empowering provisions of the Act;

(2) shall ensure the principles of natural justice in the event of negative impact caused by enforcement of the subordinate legislations;

(3) shall generally address administrative offenses only, unless explicitly authorized by the Act;

(4) shall apply prospectively;

- (5) shall be in conformity with the provisions of the Act and shall not, in any way, displace or amend other existing subordinate legislations unless specified; and
- (6) shall not sub-delegate the role of formulating subordinate legislation.

Responsibilities of Drafter or Proponent

8. A drafter or proponent shall:
 - (1) ensure adherence to the General Principles outlined in this Manual;
 - (2) comply with the process outlined in this Manual; and
 - (3) conform to the Organization and Structure outlined in this Manual.

Organization and Structure of Subordinate Legislation

9. Subordinate legislation consists following elements in the order set out:
 - (1) cover page along with the name of the subordinate legislation as per Schedule 3;
 - (2) the enactment date and signature as per Schedule 4;
 - (3) table of contents;
 - (4) the enacting statement;
 - (5) the title, scope and objective of the subordinate legislation;
 - (6) any consequential amendments or repeals;
 - (7) any required transitional (including saving) provisions;
 - (8) the substantive provisions;
 - (9) any provisions creating regulatory violations or subjecting conduct to administrative penalties;
 - (10) any interpretation provisions including definitions; and
 - (11) schedules, if any.
10. The subordinate legislation shall be formulated in a logical order as below:
 - (1) main principles to be established by the subordinate legislation should be provided first;
 - (2) general provisions before specific ones;
 - (3) substantive provisions before ancillary, procedural or administrative ones;
 - (4) more important provisions before less important;
 - (5) more frequently used provisions before less frequently used; and
 - (6) provisions describing a process follow the order of the process.
11. The following numbering format shall be adopted in making reference to the provisions;
 - (1) section 11;
 - (2) subsection 11(1);
 - (3) paragraph 11(1)(a); and
 - (4) subparagraph 11(1)(a)(i).

12. The numbering format making reference to the provision for rules and regulation is as follows;

| Numbering of provision | Regulation | Rule |
|------------------------|--|---|
| 1. 2. 3., etc. | Section e.g. section 23 of the Accounting and Reporting Regulations, 2006 | Rule e.g. Rule 12 of the Rules for Fines and Penalties 2020 |
| (1), (2), etc. | Subsection e.g. subsection 23(3) of the Accounting and Reporting Regulations, 2006 | Rule e.g. rule 24(3) of the Rules for Fines and Penalties 2020 |
| (a), (b), etc. | Paragraph e.g. paragraph 23(3)(c) of the Accounting and Reporting Regulations, 2006 | Rule e.g. rule 24(3)(c) of the Rules for Fines and Penalties 2020 |
| (i), (ii), etc. | Subparagraph e.g. subparagraph 23(3)(c)(iv) of the Accounting and Reporting Regulations, 2006 | Rule e.g. rule 24(3)(c)(i) of the Rules for Fines and Penalties 2020 |

13. The section, subsection and paragraph should be aligned to the left margin with a hanging indent for the text (a hanging indent means that the text of the second and subsequent lines of text do not come back to the left margin but rather align with the text of the first line).

For example:

Assessment (section heading)

1. While assessing the application for License Exemption, the Authority shall consider the following:

(1) the ability of the Applicant to construct and operate the proposed system safely and efficiently;

(2) available Rooftop or Ground area for installation of Solar Power Plant of requisite capacity as below:

(b) 1 MW and above; and

(c) 2 MW and above.

Transitional and Saving Provision

14. If a subordinate legislation is formulated or amended, the transitional provision may be required for transitioning from the old subordinate legislation to new.

15. If a subordinate legislation is formulated, amended or repealed, the saving clause may be used for restricting the scope of the repealed or amended subordinate legislation. It is generally intended to reserve the rights, pending proceedings, penalties, and etc.

Penal Provision

16. The penal provisions shall be formulated in any of the following ways:
- (1) directly referring to existing Penalty Rules and Regulation; or
 - (2) prescribing sanctions and penalties for the specific breaches in the provisions of the subordinate legislation if section 16 (1) is not applicable.

Example:

- (1) Breach of any provisions of this regulation is a violation and shall be liable for fines and penalties as per the Penalty Rules and Regulation 2024
- OR
- (2) An unauthorized tapping of electricity is a violation and is liable for penalty amount not exceeding Ngultrum 30,000.

Drafting of Definition

17. The definition shall be provided when:
- (1) a particular word has several meanings or expression;
 - (2) the abbreviation is being used; or
 - (3) the meaning of a word or expression has no ordinary meaning.
18. Avoid using “means” and “includes” together in a single definition provision.
19. The word or expression to be defined is in quotation marks, arranged in alphabetical order and formatted with a hanging indent.
20. Definition is located at the end of the subordinate legislation before the schedule unless required to be defined under each Part, Chapter or Section for better clarity and relevance.

Drafting of Schedule

21. Use a schedule to include supplementary materials or information that support the provisions of subordinate legislation.
22. The followings shall be included in the schedule but not limited to: :
- (1) tabulated reference such as fee structures;
 - (2) forms (license application forms);

- (3) technical material such as technical standards and equipment referred to in the subordinate legislation; and
 - (4) material for the purposes of information only.
23. If there is more than one schedule, it must be arranged and numbered in Arabic according to the order in which it appears.

Style and Grammar

24. Subordinate legislation should be written clearly without grammatical errors and in plain language. .
25. Wherever possible, subordinate legislation should be drafted in concise sections, subsections, and paragraphs to enhance clarity and understanding.
26. The subordinate legislation should be in active voice wherever possible to identify the actor of the sentence.

For example:

Passive voice (actor absent): The regulation shall be prepared in accordance with the Drafting Manual of ERA.

Active voice (actor present): The drafter shall prepare regulation in accordance with the Drafting Manual of ERA.

27. The subordinate legislation should be generally in present tense. However, future tense may be used if it is specifically intended that as of the time in question, some event was future.

For example:

The Authority may revoke (present tense) the License if the Authority has reasonable grounds to believe that the Licensee will not be able to (future tense—future in relation to the Authority's action of revoking the License) perform the Licensed Activities.

28. Singular nouns should be used instead of plural nouns to ensure clarity in sentences.
29. Wherever possible, express ideas positively rather than negatively.

For example:

Negative: This section does not apply to.....

Positive: This section applies to....

30. Gender-neutral language such as chairperson, applicant, and firefighter, should be used to avoid gender-specific terms.

Choice of Words

31. The use of word such as “may”, “shall”, and “must” should be used correctly and consistently as tabulated below:

| | |
|-----------|--|
| Shall | should be used if all of the following conditions are satisfied: (1) the statement imposes a duty or prohibition; (2) the subject of the sentence is a human being or entity; and (3) the duty or prohibition is imposed in the active voice. |
| shall not | should be used if: (1) a person “has a duty not to”; or (2) a person “is not permitted to” |
| may | should be used when a thing or person “is permitted to” or a person “has discretion to” or “has authority to” |
| must | Should be used when a thing or person “is required to” meet a condition for a consequence to apply. Do not use “must” to impose obligations or duties on persons. |

32. The word “and” and “or” should be used separately. The word “and” is used when connecting two or more phrases, conditions, events, etc. all of which must occur. whereas the word “or” is used when connecting two or more phrases, events, conditions, etc. when only one or more, but not all, need to occur.
33. The use of word “deem” should be avoided if it bears the meaning of “think” or “consider”. It should be used only if something is to be what it is not, or if something is not to be what it is.
34. If provisions are inconsistent, and to clarify on which provision is to prevail, the words “notwithstanding” or “subject to” should be used. “Subject to” is used if the provision intends to set a conditional relationship. However, it is advisable not to use both these words in a provision as it impairs readability.
35. The use of word “pursuant to” should be avoided and more precise expressions such as “under the authority of”, “under”, or “in accordance with” should be used.
36. The word “void” should be used for “null and void”, and “shall take effect” for “shall be in force and effect”.
37. The contraction such as “can’t”, “don’t” and “wouldn’t” should be avoided, and use “cannot”, “do not” and “would not” instead.

Punctuation

38. The colon shall be used (:):
 - (1) conclude the enacting words in subordinate legislation; and
 - (2) mark the introduction of a list of paragraphs at the end of an independent section.
39. The semicolon shall be used (;):
 - (1) to separate sentences within a series divided by paragraphs;
 - (2) at the end of each element of the series;
 - (3) preceding the “and” or “or” in the second to last paragraph; and
 - (4) to separate independent clauses within a paragraph.
40. The headings of the subordinate legislation should be bold.
41. The Latin and Dzongkha terms should be in Italic fonts.

Pre-formulation of Subordinate Legislation

42. The proponent shall prepare a proposal on formulation of the new subordinate legislation, amendment or repeal of the existing subordinate legislations as per Schedule 5 and submit to the Management.
43. The Management shall review the proposal and direct the proponent to make necessary changes, if any.
44. Upon finalizing the proposal, the proponent shall then submit the proposal as an agenda in one of the Commission Meeting for approval.

Formulation of Subordinate Legislation

45. Upon approval of the proposal, the proponent shall proceed with formulation of a new subordinate legislation, amendment or repeal of the existing subordinate legislations as per the direction and timeframe set by the Authority.
46. The proponent shall seek approval from the Management for the formation of task-force members, if required.
47. The proponent may consult legal personnel from the beginning of formulating subordinate legislation to ensure legal principles are adhered.

48. After completing the preparation of the first draft, the proponent may conduct internal consultations.
49. The proponent shall make necessary changes after internal consultation, if any.
50. The proponent may conduct stakeholder consultation in line with the Public Consultation Guideline of Bhutan Electricity Authority 2022.
51. After finalizing the draft and completing consultations, the proponent shall submit it to the concerned Division at least 3 weeks in advance for legal vetting.
52. The proponent shall then submit the final draft to the Authority for approval.

Publication

53. The approved subordinate legislation shall be uploaded in the website and may also be distributed to the relevant stakeholders for information and necessary compliance.

Review of Subordinate Legislation

54. The proponent may review the subordinate legislation once every two years after its formulation.
55. The review report recommending necessary actions shall be submitted to the Authority in the form of Proposal.

Definitions

56. In this Manual, unless the context otherwise requires:
 - (1) “Act” means the Electricity Act of Bhutan 2001;
 - (2) “Authority” means the Electricity Regulatory Authority established in accordance to the Section 11 of the Electricity Act of Bhutan 2001;
 - (3) “Drafter” means officials of Authority involved in formulation of any subordinate legislation;
 - (4) “Licensee” means any person issued with a license in accordance to Part 3 of the Electricity Act of Bhutan 2001;
 - (5) “Proponent” means the concerned individual or Division who submits the proposal;
 - (6) “Regulation” means any subordinate legislation formulated by the Authority having enforcing power;

- (7) "Rules" means any subordinate legislation such as procedures, guidelines and codes formulated by Authority to assist in fulfilling the rights and obligations under the Act or regulation;
- (8) "Subordinate legislation" includes rules, regulations, codes, procedures and etc. formulated by the Authority under the Act.

Schedules

Schedule 1: Elements and layout of free-standing subordinate legislation

| Elements and layout of free-standing subordinate legislation | |
|--|--|
| <p>In exercise of the powers conferred by section....</p> <p>Title 1. This regulation is ...</p> <p>Commencement 2. This regulation come into force on...</p> <p>Application 3. This regulation [apply to or do not apply to] ...</p> <p>Revocation (provisions)</p> <p>Transitional and saving provisions (provisions)</p> <p>Substantive provisions (provisions)</p> | <p>Enacting Words It is a short paragraph that immediately precedes the provisions of the subordinate legislation.</p> <p>Title The Title is the name for the delegated legislation to be adopted. It appears immediately after the enacting words. The year of making is included in the title for regulations or other subordinate instruments expected to have ongoing legislative effect.</p> <p>Commencement (if needed) The default rule for coming into force is the date of the making of the subordinate legislation.</p> <p>If some other date is intended for the subordinate legislation to come into force, a provision is required expressly setting out the date or the manner of determining the date of its coming into force.</p> <p>Application or Scope (if needed) This is an optional section and is sometimes included to specify or limit the scope of the application of the subordinate legislation.</p> <p>Revocation or Cancellation Sometimes a subordinate legislation may revoke or cancel an existing piece of subordinate legislation.</p> |

| | |
|--|---|
| | <p>Transitional and saving provisions (if needed)</p> <p>Substantive Provisions</p> <p>The substantive sections of free-standing subordinate legislation consist of those provisions that are required for giving effect to the legislative intent of the instrument.</p> |
|--|---|

Schedule 2: Elements and layout of amending or repealing subordinate legislation

| Elements and layout of amending or repealing subordinate legislation | |
|--|---|
| <p>In exercise of the powers conferred by section</p> <p>Title</p> <p>1. This regulation is the Distribution Code (Amendment) Regulations, 2022.</p> <p>Commencement</p> <p>2. This regulation comes into force on ...</p> <p>Transitional and saving provisions (provisions)</p> <p>Substantive (i.e. amending or repealing) provisions (provisions)</p> | <p>Enacting Words</p> <p>It is a short paragraph that immediately precedes the provisions of the subordinate legislation.</p> <p>Title</p> <p>Same as in a free-standing subordinate legislation except that “(Amendment) [type of instrument], [YEAR]” is added after the name of the Act to be amended or, in case all that is being done is repeal, the word (Repeal) where (Amendment) appears in the example.</p> <p>Commencement (if needed)</p> <p>The default rule for coming into force is the date of the making of the subordinate legislation.</p> <p>If some other date is intended for the subordinate legislation to come into force, a provision is required expressly setting out the date or the manner of determining the date of its coming into force.</p> <p>Transitional and saving provisions (if needed)</p> <p>Substantive Provisions</p> <p>The amending sections follow exactly the sequence of the provisions of the subordinate legislation being amended. If only certain provisions are being repealed, the repeal provisions also follow the sequence of the subordinate legislation.</p> |

Schedule 3: Cover page (sample)



Electricity Regulatory Authority
Ministry of Energy and Natural Resources

Licensing Regulation for Solar Power Plant 2024

Schedule 4: Enactment date and signature



Electricity Regulatory Authority Ministry of Energy and Natural Resources

Foreword

It is with great commitment to advancing our regulatory framework that we present this new regulation, which aims to address [*specific area or issue the regulation covers*]. This regulation has been carefully crafted to enhance the effectiveness, transparency, and consistency of our [*relevant sector or field*], ensuring that we meet both current and future needs with precision and clarity.

In an evolving regulatory environment, it is crucial that our regulations not only comply with legal standards but also foster efficiency and fairness. This regulation represents a significant step in that direction, embodying best practices and a thorough understanding of the challenges and opportunities within [*relevant sector or field*].

We trust that this regulation will provide a solid foundation for [*specific outcomes or improvements expected from the regulation*]. It is our hope that it will serve as a vital tool in achieving our regulatory objectives and in fostering a transparent and well-regulated environment.

We extend our gratitude to all stakeholders who have contributed to the development of this regulation. Your insights and expertise have been invaluable in shaping a document that reflects our collective commitment to excellence and integrity.

Thank you for your dedication and continued support as we move forward with the implementation of this important regulation.

Signature of the Chairperson

Schedule 5: Proposal format

Proposal

- I. Describe the proposal
- II. Describe the issue that the proposal is expected to tackle
- III. What is the “Objective” of the Proposal and what is the expected outcome of the proposal?
- IV. What are the likely positive and negative impacts of the proposal?
- V. Who and what other subordinate Legislations would be affected, if any?
- VI. How will the Proposal be undertaken (in-house or outsourced)?
- VII. What is the estimated budget required for undertaking the proposed task?
- VIII. Any other subject as applicable to the Proponent.