



To	Hon David Seymour, Minister for Regulation		
Title	Options for taking forward a Regulatory Standards Bill	Number	2024-038
Date	14 June 2024	Priority:	Medium
Action Sought	Agree to the recommended actions	Due Date	21 June 2024
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Attachments	Yes (Annex 1: Option analysis)	Security	IN CONFIDENCE

Executive Summary

1. This briefing provides you with three broad options for taking a new Regulatory Standards Bill forward in the context of:
 - the provisions of the 2021 Regulatory Standards Bill, which largely replicate the 2011 Bill of the same name
 - changes in the regulatory and regulatory management landscape since the 2011 Bill was first developed
 - advice from Crown Law 9(2)(h) [redacted] 9(2)(f)(iv) [redacted]
 - EXP's invitation for you to report back with a further paper refining your 9(2)(f)(iv) [redacted] (EXP-24-MIN-0003 refers).
2. At this stage, our analysis has been focused on narrowing down the large range of choices into a few broad packages - and understanding the likely magnitude of costs and benefits of these packages and the most material implementation considerations and risks.
3. On the basis of this analysis, the Ministry recommends that you proceed with a package (**Option 2**) that includes:
 - setting regulatory responsibility principles at a high level in primary legislation, with more detailed standards to be set in secondary legislation to give effect to those principles
 - requiring Ministers and agencies to report on the consistency of new legislative proposals with those standards, including providing information to support that assessment, and requiring Ministers to report to the House to justify any inconsistency
 - setting expectations for independent assessment/QA of agencies' assessment of consistency



- giving practical effect to the good lawmaking principles in the 2021 Bill through new statutory duties and powers to reinforce good regulatory practices
 - requiring agencies and/or Ministers to report to the House on how existing legislation will be reviewed for consistency over time, and the results of any such reviews
 - establishment of a stronger oversight role for the Ministry for Regulation in ensuring the system is working to improve the quality of legislation over time.
4. We have assessed this option along with two other options:
- **Option 1** - an enhanced status quo that includes bringing into force Part 4 of the Legislation Act 2019 (the disclosure regime)
 - **Option 3** - an approach based on certification of compatibility of legislation with principles set in primary legislation (the approach in the 2021 Bill)
5. In the Ministry's view, Option 2 is likely to be more effective than Option 1, and at least as effective as Option 3 in incentivising Ministers and agencies to ensure that new and existing legislation is consistent with agreed regulatory responsibility standards. 9(2)(h)
6. There are choices under Option 2 for a recourse mechanism to address complaints about the consistency of legislation with standards. Our recommended approach is for that mechanism to be located in the Ministry, for instance through creation of an independent statutory officer or Ministerially appointed Board, or through creation of a similar function as a Crown entity (less preferred largely for reasons of cost).
7. However, Option 2 could also be supported by:
- the non-statutory enhanced complaints functions described in Option 1 in this paper; and/or
 - the independent adjudicative Tribunal or ability to take action through the Courts for declarations of inconsistency as described in Option 3 (although noting that this option is not recommended by the Ministry 9(2)(h))
8. We note that all the options will have costs and other implications that are not covered in detail in this briefing (although Option 1 is likely to have the lowest cost). This is particularly the case in relation to options for recourse mechanisms. Once you have decided on your preferred approach to take forward for Ministerial consultation, we will do the detailed design work, analysis and consultation required to refine likely costs, benefits and risks and enable you to make further decisions on the details of a preferred package, and develop specific proposals to take to Cabinet.
9. We have made some broad assumptions in relation to all the options, including that:
- consistent with the 2021 Bill, standards should apply broadly to new and existing legislation, not just legislation that seeks to limit the use and exchange of private property (noting that administrative mechanisms or mechanisms in secondary legislation could be used to focus scrutiny on legislation that limits the use and exchange of private property)



- there should be some flexibility in how standards are applied to secondary legislation (in light of the very large amount of this legislation made each year). This could include particular scrutiny of types of secondary legislation likely to be problematic (for instance, because of its effect on the use and exchange of private property).
10. However, all the options can be amended to take a different approach to any of these choices, should you wish.
 11. In our options analysis, we have not included the creation of a new interpretative role for the courts as set out in clause 10 of the 2021 Bill (as opposed to the declaratory clause in clause 11). In our view, if such an interpretative role is sought, it is likely better considered as part of examination of whether property rights should be expressly protected in the Bill of Rights Act 1990, noting that the implications of such a change would need further consideration.
 12. We have also not included detailed consideration of mechanisms to strengthen parliamentary review and scrutiny of legislation in this briefing. However, we think that new or strengthened parliamentary mechanisms could significantly complement and enhance the effectiveness of the Bill's core provisions under most options. In particular, the transparency and political accountability that can be achieved through parliamentary options could provide significant incentives for Ministers and agencies, and it will be important to ultimately take these into consideration in refining the options. We propose to continue to work with PCO and others with a view to providing further advice on that in due course.

Recommended Action

13. We recommend that you:

Purpose

- a. **note** that this paper outlines broad options for a new Regulatory Standards Bill, incorporating:
 - i. regulatory responsibility standards
 - ii. mechanisms for embedding these standards in the policy development process
 - iii. mechanisms for assessing consistency with these standards in relation to new legislative proposals and existing legislation
 - iv. recourse mechanisms to consider and respond to complaints about inconsistency with standards

Noted

Objectives and scope

- b. **note** that these options:
 - i. provide for broad coverage of new legislative proposals and existing legislation, while enabling particular scrutiny of legislation that limits the use and exchange of private property

Noted



- ii. allow for flexibility in how secondary legislation is provided for *Noted*
Approach to identifying and assessing options

- c. **note** that we have developed three broad options comprising the different components that would likely form part of a new Regulatory Standards Bill: *Noted*
 - i. Option 1: An enhanced status quo based on the coming into force of Part 4 of the Legislation Act 2019 (the disclosure statement regime)
 - ii. Option 2: An approach combining assessment of the consistency of legislation with standards and the establishment of new statutory powers and expectations to reinforce good regulatory practice and design (Ministry preferred option)
 - iii. Option 3: An approach based on certification of compatibility of legislation with principles in primary legislation (the approach in the 2021 Bill)

- d. **note** that each of these options has a number of possible variations, particularly in relation to the choice of recourse mechanism(s) *Noted*
Broad options

- e. **note** the options analysis so far has focused on identification of costs and benefits at a high level and on identifying the most material implementation considerations and risks *Noted*

- f. **note** that the Ministry for Regulation recommends that you proceed on the basis of the approach set out in Option 2, as we think that this option best achieves your objectives 9(2)(h) *Noted*
[REDACTED]

- g. **agree** to proceed with Option 1 as the preferred broad option OR *Agree / Disagree*
- h. **agree** to proceed with Option 2 as the preferred broad option OR *Agree / Disagree*
- i. **agree** to proceed with Option 3 as the preferred broad option *Agree / Disagree*
- j. **agree** to provide further feedback on your preferred option(s) at your meeting with officials next week *Agree / Disagree*

- k. **indicate** which recourse option(s) you would like to take forward to support your consultation on a preferred option:
 - i. the courts AND/OR *Yes / No*
 - ii. the establishment of a new adjudicative tribunal AND/OR *Yes / No*
 - iii. a statutory officer within the Ministry AND/OR *Yes / No*



- iv. a Ministerially-appointed board of experts within the Ministry AND/OR Yes / No
 - v. an independent Crown entity AND/OR Yes / No
 - vi. the use of non-statutory recourse mechanisms within the Ministry Yes / No
 - l. **agree** that a Regulatory Standards Bill should not include a new interpretative role for the courts as set out in clause 10 of the 2021 Bill *Agree / Disagree*
- Next steps*
- m. **agree** that, based on your feedback, officials should:
 - i. develop material to support consultation with your Ministerial colleagues on broad options *Agree / Disagree*
 - ii. undertake further detailed design work, analysis and consultation on your preferred option, in order to produce a draft Cabinet paper and Regulatory Impact Statement *Agree / Disagree*
 - n. **note** that we will continue to work with PCO and others on potential parliamentary mechanisms to support your objectives for the Bill *Noted*
- Proactive release recommendation*
- o. **agree** that this briefing will not be made public until proactive release of the final Cabinet paper, to ensure that you have sufficient time to consider and make decisions on the Bill. *Agree / Disagree*

Pip van der Scheer
Manager
Ministry for Regulation
Date: 14 June 2024

Hon David Seymour
Minister for Regulation
Date:



Purpose of briefing

14. This briefing provides you with options for taking a new Regulatory Standards Bill forward in the context of:
- the provisions of the 2021 Regulatory Standards Bill, which largely replicate the 2011 Bill of the same name
 - changes in the regulatory and regulatory management landscape since the 2011 Bill was first developed
 - advice from Crown Law **9(2)(h)**, **9(2)(f)(iv)**
 - **9(2)(f)(iv)** (EXP-24-MIN-0003 refers).
15. It provides you with a high-level analysis of the benefits and costs of different options, indicates the Ministry for Regulation's preferred option based on this analysis, and seeks your view on which option you would like to take forward.

Context

16. The coalition agreement between the New Zealand National Party and ACT New Zealand includes a commitment to legislate to improve the quality of regulation, ensuring that regulatory decisions are based on principles of good law-making and economic efficiency, by passing the Regulatory Standards Act as soon as practicable.
17. Prior to the Ministry for Regulation being established, the Treasury provided you with advice on:
- **9(2)(h)** Regulatory Standards Bill (T2024/539 refers)
 - advice that mapped the principles in the 2021 Bill against existing provisions, processes, and guidelines (T2024/573 refers)
 - possible alternatives to the new roles for the courts envisaged in the 2021 Bill (T2024/763 refers).
18. In addition to this, the Legislation Design Advisory Committee (LDAC) has provided advice on the Bill, including general thoughts on how best to give effect to responsible regulation standards, along with recommended mechanisms to strengthen parliamentary and executive expectations and processes.
19. The Ministry has discussed with you key assumptions and choices about key components of a Regulatory Standards Bill – in particular provision for principles (2024-016 refers) and mechanisms for individuals and businesses to seek recourse in relation to the impact of legislation on them (2024-015 refers).
20. The analysis and advice in this report builds on your feedback on these briefings and discussions.



Focus of briefing

This briefing focuses on giving effect to core parts of the 2021 Regulatory Standards Bill

21. This briefing focuses primarily on giving effect to what we have identified as the core parts of the 2021 Bill:
- establishing and embedding standards of responsible regulation (including in relation to impact analysis and policy advice processes)
 - assessment of the consistency of new and existing legislation against these standards
 - provision for recourse mechanisms – i.e. transparent mechanisms that enable people to get acknowledgement that legislation is not consistent with standards, or that the operation of a regulatory system is causing particular issues.

We intend to provide further advice on how parliamentary mechanisms could support a Bill...

22. This briefing does not include advice on parliamentary mechanisms that could be used to support the objectives of a Regulatory Standards Bill, noting that the Bill could provide for key requirements or processes for which Parliament would then need to provide supporting mechanisms.
23. We think that new or strengthened parliamentary mechanisms could significantly complement and enhance the effectiveness of the Bill's core provisions under most options. In particular, the transparency and political accountability that can be achieved through parliamentary options could provide significant incentives for Ministers and agencies, and it will be important to ultimately take these into consideration in refining the options. The Regulatory Responsibility Taskforce thought the same – their 2009 report included suggestions for supporting changes to Standing Orders and the role of the Regulations Review Committee. We recently met with the Office of the Clerk and Ombudsman's office to discuss potential parliamentary mechanisms and how they might be pursued. Among other things, we noted that there could be useful connections to be made with possible parliamentary changes linked to any shift to a four-year parliamentary term.
24. We propose to provide you with further advice on how parliamentary mechanisms could support your preferred option(s) and how these could be taken forward, including in a Bill, once you have agreed on a preferred option.

...along with other provisions that you may wish to include in the Bill

25. In addition, separate advice has been provided to you on powers to support regulatory reviews, including sector reviews. This will also be incorporated in our detailed design work in the development of the Cabinet paper.

Objectives and scope of options

Critical success factors

26. We have previously set out a number of critical success factors for implementation of a Regulatory Standards Bill, based on our understanding of your priorities for system improvements, including:



- embedding of well-understood standards in relation to the content of regulation and the process for developing it
- mechanisms to provide assurance about consistency of legislative proposals with these standards
- independent and expert review of existing regulation to assess consistency with these standards
- recourse for individuals and businesses to have their concerns about legislative design and the broader operation of regulatory systems heard and responded to
- clear accountability for particular legislation and the operation of specific regulatory systems
- transparency about any steps taken (or not taken) where regulation has been found to be unjustifiably inconsistent with standards.

Key assumptions

In identifying options, we have made some assumptions about what legislation is in scope...

27. There are some overarching choices around the scope of options to achieve these critical success factors.
28. One key choice is the degree to which options should consider a broad range of legislation, compared to a more specific focus on legislation that limits the use and exchange of private property.
29. The 2021 Bill applies broadly to new and existing legislation, not just legislation that seeks to limit the use and exchange of private property. However, the scope of a new Bill could be narrowed to only apply in cases where a potential limiting of property rights is proposed.
30. In our view, application of regulatory responsibility standards to a comprehensive range of legislation is most consistent with broader objectives around lifting regulatory quality. This would not preclude a particular focus being taken on policy and legislative proposals that seek to limit the use and exchange of private property (for instance through the RIA Cabinet Office Circular or certification/disclosure requirements). There is also a risk that seeking to narrow the Bill would make administration of the system more complex if, to know when it applies, it requires an agreed definition of private property, or what constitutes a limit on use and exchange of that property.
31. The Ministry therefore proposes that a new Regulatory Standards Bill provides for broad coverage of new legislative proposals and existing legislation, while allowing for administrative mechanisms or mechanisms in secondary legislation that could enable particular scrutiny of legislation that limits the use and exchange of private property.

...including how secondary legislation is provided for

32. There is also a choice about whether the assessment of consistency against regulatory responsibility standards extends to secondary legislation. In the Ministry's view, given the very large amount of secondary legislation made every year (upwards of 1,000 instruments), assessing all secondary legislation against the standards could be very costly and result in relatively little benefit in many cases. Instead, we propose that a new Bill provides some flexibility in how secondary legislation is provided for. For instance, the disclosure regime



set out in Part 4 of the Legislation Act 2019, once fully brought into force, would allow the Responsible Minister (likely to be the Minister for Regulation) and the Attorney-General to jointly issue notices specifying the classes of secondary legislation that disclosure requirements would apply to). This would provide more flexibility to identify and focus scrutiny on types of secondary legislation likely to be problematic (for instance, because of its effect on the use and exchange of private property).

33. The options analysis in this briefing proceeds on the basis that you agree with the assumptions above. However, all the options can be amended to take a different approach to any of these choices, should you wish.

Approach to identifying and assessing options

Broad approach

We have developed three broad packages based on different choices on the Bill's components...

34. In the options analysis below, we have focused on comparing three different possible approaches to achieving the critical success factors and addressing system weaknesses. Each of these options includes consideration of how the separate components of the Bill can work together to improve the quality of new and existing regulation:

- *standards* – each option considers how regulatory responsibility standards are established (e.g. via use of primary or secondary legislation, or through non-statutory mechanisms) and what they would cover, 9(2)(h)
- *mechanisms for embedding standards in the policy development phase* – each option considers how application of regulatory responsibility standards at the impact analysis stage can help ensure the consistency of the resulting legislation
- *mechanisms for consistency with standards in relation to new legislative proposals and existing legislation* – each option considers how legislation can best be assessed for consistency with standards, along with provisions for appropriate responses from the responsible Minister and agency to any inconsistency
- *recourse mechanisms relating to the quality of legislation and the impact of regulatory systems* - each option considers how to ensure there is an appropriate mechanism in place to hear and effectively respond to complaints about inconsistent legislation or poor implementation.

...but there are some different choices that can be made in relation to these components

35. We have chosen to present each option as a package, rather than in terms of these separate components, because of the dependencies between each component. However, this does mean there are some different choices that can be made within each of these three options in relation to the different components.
36. In addition, there will be broader supporting mechanisms that would apply to all options (for instance the sector reviews or the possible mechanisms to strengthen parliamentary scrutiny discussed above) that we have not factored into this options analysis.
37. While all options aim to create incentives for both Ministers and agencies to only propose legislation that is consistent with standards, the options reflect differences in Ministers' and



agencies' roles and responsibilities e.g. agencies' responsibilities to provide free and frank advice, Ministers' responsibility for justifying policy decisions, and collective Cabinet responsibility.

We are seeking your agreement to take one of three options forward...

38. The three broad options are:

- *Option 1:* An enhanced status quo based on the coming into force of Part 4 of the Legislation Act 2019 (the disclosure regime)
- *Option 2:* An approach combining assessment of the consistency of legislation with standards and the establishment of new statutory powers and expectations to reinforce good regulatory practice and design
- *Option 3:* An approach based on certification of compatibility of legislation with principles in primary legislation (the approach in the 2021 Bill)

39. Each of these options (along with possible variations) are described in more detail below.

...however, we are not yet seeking your agreement to a particular recourse mechanism

40. In relation to recourse mechanisms, we are presenting a range of mechanisms so you can indicate which one(s) you would like to take forward to Ministerial consultation (rather than providing you with one preferred option). To do this, we have made a number of assumptions based on our previous discussion, including that they would be available only:

- to those who are directly impacted by primary or secondary legislation or the operation of a regulatory system
- where a complainant has first raised their concerns with the responsible Minister/agency
- where there is no alternative mechanism to raise the same complaint (e.g. an existing specialist tribunal)
- in relation to enacted or made legislation rather than Bills or other draft legislation (to protect the orderly and effective conduct of the policy and decision-making processes)
- where the recourse mechanism deems that a threshold has been met to investigate the complaint (to help focus resource on those complaints that have the most significant impacts, and to avoid hearing complaints about vexatious or trivial matters).

41. We have also assumed that there are no binding remedies of any sort (e.g. compensation), that there is a high degree of transparency around any investigations and the outcomes, and that possible remedies include declarations or recommendations.

Option 1: Building on the status quo

Standards

42. Under this option, regulatory responsibility standards would be provided for through the disclosure statement provisions currently set out in Part 4 of the Legislation Act 2019, along with non-statutory expectations and guidance.

43. The disclosure statement provisions enable the setting of legislative guidelines or standards via a government notice, which can cover both the content and effect of legislation and the



process followed in its development. Part 4 has not yet been brought into force, but this must be done by 24 March 2026 (i.e. the fifth anniversary of the date on which the Secondary Legislation Act 2021 received the Royal assent) unless the legislation is amended.

44. More specifically, once these provisions come into force:
- under current s 107 of the Legislation Act, the Responsible Minister (likely to be the Minister for Regulation) and the Attorney-General must jointly issue notices (secondary legislation) that would set standards that proposed primary legislation or specified classes of secondary legislation must be assessed against
 - the House of Representatives would need to pass a resolution approving each notice (and therefore the standards) before it is issued
 - the Minister for Regulation could also issue directions to support consistency of disclosures by agencies under s 110 – for instance, in relation to how disclosure statements are set out, or providing for other things that departments have to disclose. These directions would need to be published and presented to the House of Representatives.
45. As part of this option, current administrative expectations and guidance set out in the Regulatory Impact Analysis (RIA) Cabinet Circular and the Government *Expectations of Good Regulatory Practice* could also be updated to fully cover off the good lawmaking principles (and other principles as appropriate) in the 2021 Bill.

Mechanisms for embedding standards in the policy development phase

46. Under this option, the RIA system would operate to apply some of the relevant standards to regulatory proposals. This is particularly the case for the ‘good lawmaking’ principles which cover similar territory to Regulatory Impact Statements (e.g. a requirement for a clear problem definition and case for change, cost benefit analysis and consultation with those likely to be affected by the proposal).
47. Another critical mechanism is the work of the Legislation Design Advisory Committee (LDAC), which promotes high quality legislation by providing advice on issues of legislative design and setting standards through the Legislative Guidelines (endorsed by Cabinet) and supporting material. It primarily operates through meetings with departments early in the development of policy and legislation and by scrutinising Government Bills that come before Parliament through making submissions to select committees.

Mechanisms for checking consistency of new and existing legislation with standards

48. Under this option, incentivising and assessing consistency of legislative proposals with regulatory responsibility standards would happen through requirements for departments to report to Parliament on any departures from legislative guidelines or standards set in notices.
49. More specifically, once these provisions come into force:
- the Chief Executive of the relevant department would be responsible for preparing disclosure statements that (amongst other things) assess whether or not proposed primary legislation departs from the regulatory responsibility standards set out in notices (and in any directions issued by the Minister for Regulation).



- the Chief Executive is not required to provide the Government's reasons or justifications for the decisions taken (although this does not prevent the responsible Minister for doing so). The Chief Executive would be required to act independently and would not be responsible to the relevant Minister in producing the disclosure statement.
 - the Responsible Minister and the Attorney-General could specify what classes of secondary legislation will also require a disclosure statement.
 - the Chief Executive of the relevant department would be responsible for publishing the disclosure statement to inform parliamentary and public scrutiny of the legislation.
50. The above provisions only apply to new legislative proposals. However, for existing legislation, the broad stewardship obligations for Chief Executives set out in the Public Service Act 2020 could be augmented by setting administrative requirements or expectations in relation to regular review of legislation (e.g. any proposed amendments to existing legislation could be required to show that the broader legislation complies with the standards, not just the amendment, as part of seeking Cabinet approval).
51. The requirement for agencies to disclose inconsistency with regulatory responsibility standards would support public and parliamentary scrutiny of legislation, which could bring pressure on Ministers/agencies to amend legislation to ensure consistency with the standards, and potentially act as a disincentive to propose non-consistent legislation in the first place.
52. This option could be further strengthened via some further non-statutory measures – for instance:
- an administrative requirement could be set (e.g. via a Cabinet Office Circular) for expert input to be brought to bear on assessment of potential inconsistencies and/or independent QA of disclosures (e.g. by the Ministry for Regulation)
 - RIA requirements could be aligned with the standards to ensure the impact analysis process supports the disclosure requirements (and vice versa)
 - as we have previously discussed with you, the Ministry for Regulation could be involved in the legislation programme prioritisation or development process, with a focus on consistency of new proposed legislation with the principles (noting that this would require further discussion with the Leader of the House and others)
 - regulatory reviews, such as the current ECE sector review, would provide a means to assess the consistency of existing legislation with the standards, as well as providing a potential means for recourse (see below).

Recourse mechanisms

53. This option could involve looking at ways in which existing recourse mechanisms could be strengthened and/or pathways for complaints to be clarified, rather than establishment of new mechanisms.
54. As previously discussed with you, there are already a number of existing mechanisms within the executive, Parliament and judiciary that people can use to raise concerns about the application/implementation of legislation, as well as the nature and impacts of legislation. They include mechanisms that specifically support the scrutiny of legislation by Parliament,



including the Regulations Review Committee (for secondary legislation) and the broader select committee process.

55. Individuals and businesses also have the ability to raise concerns with the agency or Minister responsible for legislation. However, it is not always clear to complainants which agency or Minister is responsible for a particular issue being faced by an individual or a business, or even whether it is an issue relating to the quality or impact of legislation.
56. The establishment of the Ministry for Regulation has also created an obvious ‘entry point’ for complaints about legislation – and the recent establishment of a rapid response function within the Ministry to help assess the nature of complaints and advise on how best to proceed with them may help individuals and businesses better navigate the system, while not cutting across individual agency and Ministerial accountability (as well as helping gather intelligence on where problems might lie to help inform future work such as regulatory reviews).
57. In addition, it’s important to include regulatory reviews themselves as providing a more general form of recourse - while these don’t respond immediately to specific complaints, they do include seeking feedback from parties affected by existing legislation (and complaints could potentially trigger a review if they were sufficiently concerning, or there were many complaints about the same issue or system).
58. A further option could be for the Ministry to issue some (administrative) guidance or requirements to help standardise how agencies deal with complaints about non-compliance of legislation with regulatory responsibility standards, or about the impacts of legislation. This guidance could be issued jointly with the Public Service Commission, reflecting overlaps with their responsibilities for departmental conduct and performance. As a further possibility, complainants could potentially apply to the Ministry where they were not satisfied with the process followed in the complaint (although it is unclear what the remedy would be in such cases).

Option 2: Establishing principles with supporting statutory powers and functions

Standards

59. This option would make stronger statutory provision for regulatory responsibility standards than Option 1 by specifying some principles at a high level in primary legislation, as well as allowing for more detailed principles to be set in secondary legislation.
60. In relation to a Regulatory Standards Bill, this would include:
 - stating a broad purpose for the Bill (e.g. “to encourage the development and maintenance of legislation and regulatory systems that are well-designed and fit-for-purpose”)
 - setting a few, enduring, high-level principles to give effect to that purpose derived from some well-understood and widely accepted ideas (e.g. in the LDAC Guidelines and Queensland’s Legislative Standards Act 1992), for instance:
 - that the legislation has sufficient regard to fundamental constitutional principles and values of New Zealand law
 - that the legislation has sufficient regard to rights and liberties of individuals



- that the development of the legislation has had sufficient regard to good law-making processes.
61. We would also recommend that whether a principle be added to consider whether legislation has sufficient regard to the institution of Parliament - PCO advises that this is an important aspect of legislative quality, and would assist to strengthen Parliament's scrutiny role (noting that Queensland's Legislative Standards Act has this as one of its fundamental legislative principles)¹.
62. The Minister for Regulation jointly with the Attorney-General would be required to issue notices setting out more detailed principles under each of these broad headings – for instance, relating to the rule of law, protection of liberties, restricting the taking of property, or ensuring sufficient consideration of the likely costs and benefits of any new proposal. These notices would need to be affirmed by the House.
63. As a complement to this approach, the good lawmaking principles in the 2021 Bill (which cover, for example, the need for sound problem definitions, cost benefit analysis and consultation) could be given practical effect via new statutory powers for, and expectations on, government, similar to those provided for under the Public Finance Act. This could include:
- establishment of an overarching duty or responsibility on the government to promote good regulatory practices (e.g. “the government is responsible for establishing internal processes and mechanisms to foster good regulatory practices”)
 - a power for the Minister for Regulation and the Attorney-General to issue instructions to agencies to support this duty – for instance requiring them to adopt common processes, mechanisms and related reporting requirements and standards intended to foster good regulatory management practices and support transparency – noting that it would be important to consider how this power interacted with the role of LDAC and the *Legislation Guidelines*.

Mechanisms for embedding standards in the policy development phase

64. As part of the above embedding of the good law-making principles, the expectations, guidance and tools that support the RIA system could be amended to clearly refer back to relevant principles in the Bill, or any instructions issued by the Minister for Regulation and Attorney-General. Similarly, we would expect that the LDAC would likely review its *Legislation Guidelines* so that they clearly refer back to principles in the Bill and provide support for application of these through its advisory role pre-introduction.

Mechanisms for checking consistency of new and existing legislation with standards

65. Similar to the 2021 Bill, this option would involve Ministers and agencies providing assurances that new legislative proposals are consistent with standards (set out above), or reporting to the House on the nature and reason for any inconsistency. For existing legislation, this option would similarly involve setting stronger and more specific

¹ Possible examples of this principle could relate to the proper delegation of legislative power, ensuring the exercise of a delegated legislative power is sufficiently subject to the scrutiny of Parliament (and the courts), Henry VIII clauses, exemption powers, and the appropriate division between an Act and secondary legislation.



expectations for responsible Ministers and agencies for ensuring consistency of their legislation with the principles.

66. For new legislative proposals, this option could include:
- setting a statutory requirement for the Chief Executive of the administering agency to publish a report on any inconsistency with the principles
 - setting a statutory requirement for the responsible Minister to report to the House on why this inconsistency is justified
 - setting a statutory requirement for publication on the agency's website of all the key information and evidence supporting the agency's assessment of compliance with the principles (subject to any good reasons for withholding that information, e.g. commercial sensitivity or legal professional privilege)
 - providing a power for the Minister for Regulation and Attorney-General to set measures in secondary legislation to help ensure the quality of agencies' assessments of consistency. This could include, for instance, requiring expert input/quality assurance where needed to support the agency assessment of consistency with these principles (similar to current quality assurance of Regulatory Impact Statements) and/or requiring audits of the quality of assessments by an independent party.
67. In relation to existing legislation, it could include:
- strengthening the current stewardship responsibilities in the Public Service Act 2020 to explicitly state that CEs have a duty for regular review, maintenance and improvement of the legislation administered by their department (equivalent obligations should be placed on responsible Ministers to ensure this work is given sufficient priority within their portfolios)
 - setting a statutory requirement for responsible Ministers and/or agencies to develop and publicly report against plans to assess their stock of legislation against the regulatory responsibility principles and identify any inconsistencies. As part of this, Ministers could be required to report to the House on the justification for any inconsistencies of legislation with the principles
 - providing a power for the Minister for Regulation and the Attorney-General to set requirements or issue whole-of-government directions to government agencies in relation to how they fulfil this obligation (e.g. the timing of plans and reports and what they must contain).
68. To further strengthen the approach in relation to existing legislation, the Ministry for Regulation could play a stronger oversight role focused on the broader performance of regulatory systems. Mechanisms to support this could include:
- a requirement for the Ministry for Regulation to produce a regular report to Parliament assessing overall performance against the principles (similar to an audit function)
 - powers for the Ministry for Regulation to require provision of information from agencies to support this reporting (similar to provisions in the Public Finance Act 1989).

Recourse mechanisms



69. As part of this option, we have considered a number of potential options for a recourse mechanism sitting within the executive to consider complaints about the consistency of legislation with standards:
- a statutory officer could be established within the Ministry for Regulation similar to the Chief Archivist, Surveyor-General, or Director of Land Transport. The officer would be an employee - for example, the Chief Executive of the Ministry for Regulation or a specifically created role. There could also be a direct reporting line to the Minister for Regulation for the purposes of the officer exercising their independent functions (similar to the Commissioner of Crown Lands and the Valuer-General). The role would be supported by Ministry resources, and with a requirement to act independently when required by the Act
 - an independent board of experts could be appointed by the Minister (perhaps with consultation with other Ministers). This board would hear complaints and have members who could provide specific expertise (e.g. economic or legal) to inform this role. There is a potential structural model for this in the United Kingdom's Regulatory Policy Committee, which is a group of independent experts, with experience in business, law and economics, appointed by the Minister (noting that the Committee is focused on QA of regulatory impact analysis)
 - a mechanism separate to the Ministry for Regulation could be established – for instance, as a new independent Crown entity (similar to the Privacy Commissioner) or a Ministerially-appointed Board (similar to the Gambling Commission or the Film Board of Review) with responsibility for administering a complaints scheme that would determine whether legislation is inconsistent with the regulatory responsibility principles.
70. These mechanisms could all act as a strong incentive on Ministers and agencies to ensure the consistency of legislation for which they are responsible, particularly if there is a requirement for publication of declarations of inconsistency or findings from complaints.
71. Over time, any of these mechanisms could build up a set of (administrative) determinations and guidance that would help support Ministers and agencies to better understand and apply the responsible regulation principles for legislation for which they are responsible – similar to the body of work built up by the Ombudsman on the application of the Official Information Act 1982.
72. Any of these mechanisms would likely only be able to make recommendations to responsible Ministers and agencies. However, there could be a statutory requirement that Ministers and/or agencies had to make a public response to any recommendations (as well as a requirement on agencies to provide information to enable investigations). These requirements and powers are similar to ones that have been discussed in advice to you on monitoring and information/intelligence gathering functions to support the conduct of regulatory reviews (2024-041 refers).

Option 3: Building on the approach in the 2021 Regulatory Standards Bill

Standards

73. The 2021 Bill provides a benchmark for good regulation through a set of regulatory principles that all regulation should comply with, and requires certification of all new



legislation for consistency with the principles (and the review of the consistency of all existing legislation with the principles over time).

74. More specifically:

- the Bill sets out a number of principles of regulatory responsibility that Ministers/MPs agencies must certify all new legislation against
- the principles are also applied to existing legislation through a requirement that all public agencies must regularly review all their legislation for compatibility with the principles
- the Minister for Regulation can issue guidance in relation to application of the principles.

75. 9(2)(h)

[REDACTED]

76. A further option under this approach is to focus solely on the good law-making principles –

9(2)(h)

[REDACTED]

Mechanisms for embedding principles in the policy development phase

77. The 2021 Bill does not include a mechanism for embedding principles in the policy development phase. However, the good law-making principles have similar objectives to the existing expectation for the provision of good impact analysis for regulatory proposals (via the RIA requirements). As such, under this option, consideration could be given to:

- including a high-level statutory basis for RIA
- amending the RIA expectations, guidance, and tools to clearly refer to the relevant statutory principles
- aligning LDAC guidance with the principles.

Mechanisms for checking consistency of new and existing legislation with principles

78. The 2021 Bill requires responsible Ministers and agencies to formally certify whether legislation is compatible with regulatory responsibility principles set out in primary legislation, and provide a justification for any incompatibility. This certification must be presented to the House of Representatives and published on the agency's website. Agencies would have a statutory obligation to regularly review all legislation that they administer for compatibility with the principles.

79. More specifically:



- responsible Ministers and agencies (or responsible MPs in the case of non-Government Bills) are required to certify separately that new legislative proposals are compatible with the principles (by signing a certificate)
 - where there is any inconsistency, the Minister/MP (or sometimes Chief Executive in relation to secondary legislation) must state whether and why the inconsistency is justified in relation to whether the provision(s) is reasonable and can be demonstrably justified in a free and democratic society
 - if the inconsistency is not justified, the Minister/MP/Chief Executive must state why the legislation is still proceeding despite the lack of justification
 - the Minister/MP must table the certificate in the House as soon as possible after it is signed
 - agencies are required to regularly review all the legislation they administer for compatibility with the principles, and report their progress on this, along with the results of any reviews in their annual reports
 - the Minister for Regulation may issue guidelines in relation to the content of the certificate and agencies' obligation to review the legislation they administer (and to publish the outcome)
 - the courts play a monitoring as well as a recourse role by being given an explicit role to declare any statutory provision incompatible with the principles.
80. The additional provisions supporting the Ministry for Regulation to play a stronger oversight role could be a feature of this option as well – although it is unclear how this monitoring role would relate to that of the courts.

Recourse mechanisms

81. In line with the 2021 Bill, this option could provide an avenue by which affected individuals and businesses may apply to the courts for a declaration that a particular piece of primary or secondary legislation is incompatible with regulatory principles.
82. Under this option, courts could grant declarations of incompatibility where primary or secondary legislation is inconsistent with the regulatory principles. This new role would be limited to the making of declarations of incompatibility with the specified principles of the Bill and would explicitly exclude any power to make injunctive or compensatory orders. Initially, this would only apply to legislation passed after the Act comes into force. Following a transition period of 10 years, the jurisdiction would extend to all legislation (including Acts), irrespective of when it was enacted.
83. The intent of this option is to incentivise Ministers and agencies to comply with the principles to avoid declarations of incompatibility where the courts deem that the principles have been breached. 9(2)(h)

[Redacted text]

84. 9(2)(h)
- [Redacted text]



9(2)(h)

85. As an alternative to the courts, a new Regulatory Standards Tribunal could be established (possibly supported by the Ministry for Regulation) to carry out a similar role. Tribunals are a relatively flexible mechanism with their jurisdiction and powers prescribed in statute. Some tribunals, such as the Human Rights Review Tribunal, can make declarations of inconsistency, though this is an unusual feature for a Tribunal. 9(2)(h)
86. In addition, in establishing a tribunal, consideration would need to be given to:
- the skills and experience of decision-makers, for example whether expertise in policy, economics or regulation is required
 - how to ensure flexibility in relation to resourcing and process, given that anticipating the number and nature of complaints will be challenging
 - rights of appeal from determinations to the courts, and whether this can be limited (noting that tribunal decisions would likely end up in the courts either by design or via judicial review)
 - level of legal representation that will be allowed (e.g. to support a more informal process, a more restrictive approach to enabling legal representation could be beneficial)
 - the relationships between a tribunal, the new Ministry for Regulation Rapid Response Unit and regulatory reviews - including potentially requiring consideration of the complaint by the Unit before consideration by a tribunal. A tribunal could have the power to recommend a sector review where their determination found there were wider issues in the relevant regulatory system
 - the make-up of a tribunal – e.g. number of members and length of appointment.
87. As a further alternative, the statutory officer, independent board and Crown entity mechanisms discussed in Option 2 could also be an alternative to the courts under this option.

Options analysis

Assessment criteria

88. We have identified five criteria, consistent with the critical success factors previously agreed with you, to enable a high-level comparative analysis of each of the above options:
- *Effectiveness* – how effective will this option be at helping to increase the consistency of regulation with high standards of regulatory responsibility over time – including setting strong incentives for Ministers and agencies in relation to the consistency of both new legislative proposals and existing legislation?



- *Flexibility/adaptability* – how well can this option flex to respond to changes in parliamentary concerns/expectations, evolving views on good regulatory practices, and what kinds of regulation need most attention – noting that any option also needs sufficient durability? How well can this option respond to lessons learned about what works well (and what doesn't)?
- *Alignment with existing institutions and principles* – how does this option align with enduring and well-understood constitutional principles and norms? How well does it support/strengthen agency/Ministerial accountabilities and parliamentary scrutiny of legislation? How does it relate to other parts of the Regulatory Management System?
- *Legal implications* – 9(2)(h) [REDACTED]
- *Costs* - what is the likely magnitude of additional cost relative to the status quo, and where do these costs fall?

Key highlights of options analysis

89. **Annex 1** sets out an analysis of each of the three options (and some potential variations) against the criteria above. The discussion below highlights some key merits and drawbacks of the options in relation to the key components of the Bill. While we haven't attempted to describe detailed costs, we note that Option 1 is likely to be the least costly, followed by Option 2 and then Option 3 (although this depends significantly on the choice of recourse mechanism).
90. As noted above, we have considered different recourse mechanisms under each option for the purposes of the options development and analysis – however, we are seeking an indication of which mechanism(s) you would like to take forward for Ministerial consultation rather than a final decision on what mechanism you would want to be part of a preferred option package.

Standards

91. **Option 1** would enable the establishment of clear and transparent standards for legislation to be assessed against by responsible agencies, and the results of this assessment disclosed when legislation is introduced to the House. While parts of the disclosure statement regime are already in place, current requirements are administrative rather than statutory – bringing into force Part 4 as currently intended will allow for some strengthening of current requirements, particularly through the power to issue standards in notices that have the support of the House.
92. **Option 2** would also enable establishment of clear and transparent standards for legislation to be assessed against. Because some high-level, enduring principles would be established in legislation (as well as some additional statutory expectations in relation to good regulatory stewardship practice), this option could give the standards more prominence and standing than in Option 1, 9(2)(h) [REDACTED]. The effectiveness of principles relating to good lawmaking would be further enhanced by the provision of clear statutory roles and responsibilities to give effect to them. The fact that notices are issued in secondary legislation, but must be affirmed by Parliament means that that standards can evolve over time, but only with Parliament's agreement.



93. **Option 3**'s proposal to state the principles in primary legislation, as the 2021 Bill does, would give them a high degree of visibility (although their durability and impact would ultimately depend on whether there is broad buy-in to the principles across successive governments). 9(2)(h)

Mechanisms for checking consistency of new and existing legislation with principles

94. **Option 1** would largely rely on administrative expectations in the assessment of consistency – for instance in relation to requirements for agencies to seek expert input to help assess consistency and/or for independent QA of disclosures. This is likely to provide only relatively weak incentives for Ministers and agencies to ensure legislation complies with standards.

95. **Option 2** strengthens incentives on both Ministers and agencies to ensure consistency with regulatory responsibility principles by requiring specific actions to be taken by the Minister in relation to any inconsistency. It would also have measures to help ensure assessments of compliance are of an acceptable quality, and would ensure sufficient information is provided to support full public and parliamentary scrutiny of new legislative proposals. Option 2 further provides stronger accountability mechanisms for existing legislation by setting explicit expectations on Ministers and agencies to focus on ensuring the existing legislation they administer is consistent with those principles.

96. **Option 3** could also provide stronger incentives for both Ministers and agencies to ensure proposed legislation is consistent with regulatory responsibility principles than the status quo 9(2)(h)

as well as expectations that legislation would be reviewed for consistency by administering agencies over time. However, the 2021 Bill has no requirement to provide supporting evidence to accompany certification, as there is with disclosure statements, which could make certification less robust. It is also unclear how effective the courts would be as a monitoring/quality assurance mechanism, as their involvement would only be triggered in relation to specific proceedings, and the legislation relevant to those proceedings assessed for compatibility with the principles. 9(2)(h)

Recourse mechanisms

97. Under **Option 1**, improvements to the consistency of complaint processes across agencies would address some of the weaknesses of the status quo (e.g. differing processes across agencies, low public awareness/understanding, lack of tracking and central accountability for resolution of complaints). However, it is unlikely that agencies will be perceived by the public to have the necessary independence to consider complaints about legislation for which they have responsibility. This approach may also be problematic if it puts agencies in a position of having to explain or justify Ministerial or Cabinet decisions. This option would



not be as costly as other options, but it would still likely result in increased costs for agencies.

98. The recourse mechanisms proposed under **Option 2** would all have a degree of independence from responsible agencies and Ministers, reassuring individuals and business that their complaints will be carefully considered. However, some of these options are relatively costly, and may not be good value for money where the volume of complaints is relatively low, or reduces significantly over time. There would also need to be careful consideration given to the sorts of issues such a mechanism would consider - using a mechanism located in the executive to consider whether legislation is consistent with standards may be problematic if it involves value judgements that are more appropriately matters for Parliament.
99. The use of the courts in **Option 3** to declare legislation inconsistent would have a high degree of independence, 9(2)(h) [REDACTED]. As a result of the costs and formality of court process, some complainants may not have the resource to take their complaints. A more specific, and potentially less formal, tribunal could ensure that this recourse is available for all regulated parties while also maintaining a degree of perceived independence 9(2)(h) [REDACTED].

Ministry for Regulation preferred option

100. On the basis of our analysis of the options, the Ministry recommends that you proceed with Option 2. In our view, Option 2 provides more robust measures to ensure adherence with regulatory standards, along with stronger accountability and transparency mechanisms compared to Option 1, 9(2)(h) [REDACTED].
101. Additional relative benefits of Option 2 include greater effectiveness in embedding and incentivising consistency with regulatory responsibility standards than the status quo, and a better balance between ensuring certainty of high-level enduring principles set in primary legislation and flexibility providing for more detail in notices.
102. There are choices under Option 2 for a recourse mechanism to address complaints about the consistency of legislation with standards. Our recommended approach is for that mechanism to be located in the Ministry, for instance through creation of an independent statutory officer or Board, or through creation of a similar function as a Crown entity (less preferred largely for reasons of cost).
103. However, Option 2 could also be supported by:
- the non-statutory enhanced complaints functions described in Option 1 in this paper
 - the independent adjudicative Tribunal or ability to take action through the Courts for declarations of inconsistency as described in Option 3 9(2)(h) [REDACTED].



Consideration of new interpretative role for the Courts

104. In our analysis of the options, we have not included the creation of a new interpretative role for the courts as set out in clause 10 of the 2021 Bill (as compared to the declaratory role provided for in clause 11). 9(2)(h) [REDACTED]
105. In our view, if such an interpretative role is sought, it would be better considered as part of examination of whether property rights should be expressly protected in the New Zealand Bill of Rights Act 1990, noting that the implications of such a change and the risks associated with it would need further consideration. 9(2)(h) [REDACTED]

Engagement with other agencies

106. We have engaged with the Department of the Prime Minister and Cabinet, Ministry of Business Innovation and Employment, Parliamentary Counsel Office, Public Service Commission, Crown Law Office and the Ministry of Justice, who have provided helpful feedback to support development of this advice. We have reflected their feedback in this briefing wherever possible.
107. Much of their feedback acknowledged the need for further detailed work to be done on the costs and implications of detailed options, noting that these have the potential to be significant.
108. More specifically, agencies raised strong concerns 9(2)(h) [REDACTED]
109. In addition, PCO noted that, as it develops, this work needs to make stronger connections with the role of the Attorney-General and LDAC as part of the institutional framework for ensuring quality legislative outcomes (and with PCO's as an agency). The key aim is to ensure the best combined use of mandates and levers for impact, and to limit the risk of potentially inefficient overlaps.
110. It also noted its view that parliamentary mechanisms could achieve a key shift in political and other accountabilities, and so a corresponding shift in incentives for Ministers and agencies. In its view, strengthening Parliament's ability in practice to hold the executive to account for legislative quality would be important to achieve the full impact of the executive recourse mechanism options. It would be useful to assess further how the Bill could prompt or support the development of these parliamentary mechanisms.

Next steps

111. We understand that you wish to consult with a small group of key Ministers on your preferred option(s). We recommend engaging with the Minister of Justice, the Minister for



Courts, the Minister of Finance, the Attorney-General and the Prime Minister, and can provide you with material to support this engagement.

112. In addition, once you have decided on your preferred approach to take forward for Ministerial consultation, we will do the detailed design work, analysis and consultation required to refine likely costs, benefits and risks and enable you to make further decisions on the details of a preferred package, and develop specific proposals to take to Cabinet.
113. As noted above, as part of this, we will also continue to work with PCO and others on mechanisms to strengthen parliamentary review and scrutiny of legislation in this briefing, with a view to providing further advice on that in due course.
114. Alongside this, further advice is due to be provided on improving the regulatory process and statutory powers for the Ministry over the next few weeks. These workstreams have complementary outcomes with work on the Bill (e.g. new powers will need to be provided for in the Bill). Further advice on the Bill will reflect these overlaps.

Annex One: Options Analysis Table

<p>Option 1 – Building on the status quo</p> <p>This option includes the coming into force of Part 4 of the Legislation Act 2019, along with consideration of non-statutory improvements to the current system. This option would strengthen existing recourse mechanisms (including the recently created mechanisms in the Ministry for Regulation) rather than creating any further new mechanisms.</p>	
<p><i>Effectiveness</i></p>	<ul style="list-style-type: none"> • This option could improve the transparency of key government design and process choices for new/proposed legislation. A statutory requirement for agency Chief Executives to disclose consistency with regulatory responsibility standards set out in notices would create clearer expectations and more of an incentive to ensure new legislative proposals are consistent with those standards. This option also enables coverage of a broader range of standards than other options, without the risks of court involvement. • This option could help address some of the weaknesses with existing transparency and complaint mechanisms (e.g. limited QA and parliamentary ownership, differing processes across agencies, low public awareness/understanding, lack of tracking and central accountability for resolution of complaints). • However, this option’s effectiveness is limited by its focus on agency rather than Ministerial responsibility for consistency of legislation with standards. Concerns about agency self-assessment of new legislation could be mitigated by requiring independent expert input into assessment or independent QA through administrative mechanisms. • Provision for assessing consistency of existing legislation through administrative requirements is likely to provide only relatively weak incentives for Ministers and agencies to ensure it complies with standards. • For recourse mechanisms, using existing mechanisms are unlikely to be as effective, and may not produce the same level of public buy-in and confidence as other options. Responsible agencies may not have strong incentives or the necessary capability, or be perceived to have the necessary independence, to robustly assess complaints about whether their legislation is inconsistent with standards. • There is the ability for the Ministry’s new rapid response function to support complainants to better navigate existing recourse mechanisms, addressing possible capability challenges for individuals/businesses to complain. Better support for complainants is also likely to improve the process and outcome of the complaints process and could create some efficiencies for responsible agencies.
<p><i>Flexibility/ adaptability</i></p>	<ul style="list-style-type: none"> • The requirement for parliamentary endorsement of the resolution that sets the principles promotes parliamentary buy-in, increases legitimacy and improves the likely longevity of the core principles. • This is a reasonably flexible option that allows the standards reported against to be relatively responsive to changes in parliamentary concerns/expectations, evolving views on good regulatory practices, and what kinds of regulation need most attention.

Annex One: Options Analysis Table

<p><i>Alignment with existing institutions and principles</i></p>	<ul style="list-style-type: none"> • This option is most aligned to existing institutions and principles, as it focuses on strengthening existing mechanisms and processes. It provides good opportunities to link into wider policy process requirements and expectations, such as RIA and the Legislation Guidelines. • It is consistent with existing constitutional arrangements, including roles of Parliament, executive and the courts.
<p><i>Legal implications</i></p>	<ul style="list-style-type: none"> ■ 9(2)(h) [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted]
<p><i>Costs</i></p>	<ul style="list-style-type: none"> • This option would be the least costly relative to Options 2 and 3. • Agencies would face some increased costs complying with new requirements under this option – both in relation to assessing consistency with principles and implementing standardised review functions.

Annex One: Options Analysis Table

<p>Option 2 – Establishing principles with supporting statutory powers and expectations</p> <p>This option would focus on strengthening incentives, accountability and transparency across the system (drawing from elements of the Public Finance Act 1989 and Public Service Act 2020). This option would include a new recourse mechanism within the executive (e.g. a Statutory Officer which could be an employee of the Ministry, independent Board, or a Crown entity/Commissioner).</p>	
<p><i>Effectiveness</i></p>	<ul style="list-style-type: none"> • This option is likely to be more effective than the status quo, by providing stronger transparency and accountability measures in primary legislation and clear statutory roles and responsibilities which will act as a greater incentive on responsible agencies and Ministers. • In comparison to Option 1, this option includes explicit provision for the Minister responsible for the legislation to respond where new legislative proposals appear to be inconsistent with standards. • In relation to existing legislation, this option provides stronger accountability mechanisms by setting explicit expectations on Ministers and agencies to focus on ensuring the existing legislation they administer is consistent with those principles over time. • This option would also have measures to help ensure assessments of compliance are of an acceptable quality and would ensure sufficient information is provided to support full public and parliamentary scrutiny of new legislative proposals. • A key strength of proposed recourse mechanisms under this option is that they could provide a high degree of independence (depending on the type of mechanism preferred) from responsible agencies/Ministers. The mechanisms proposed are likely to undertake more robust reviews than agencies (because of stronger incentives, capacity and capability) and more confidence to complainants (and the public) that complaints will be fully considered. • Strengthened or expanded parliamentary mechanisms could provide additional incentives and accountability to enhance the effectiveness of this option.
<p><i>Flexibility/ adaptability</i></p>	<ul style="list-style-type: none"> • This option allows for a balance between the certainty and visibility of high-level, enduring principles set in primary legislation, and flexibility in the notices that provide more detail on the particular standards that apply to support those principles. • There is also more flexibility for agencies and Ministers to determine how they will ensure existing legislation is consistent with standards relative to Option 3. • A statutory officer would provide more flexibility to scale to different volumes of complaints compared to a Commission/er, especially if the role is appointed within the Ministry for Regulation.
<p><i>Alignment with existing institutions and principles</i></p>	<ul style="list-style-type: none"> • This option focuses on strengthening existing agency and Ministerial accountabilities, and supporting stronger parliamentary scrutiny of regulation. • This option is consistent with existing constitutional arrangements, including roles of Parliament, executive and the courts. • As with Option 1, there are good opportunities to link into and reinforce wider policy process requirements and expectations, such as RIA and the Legislation Guidelines. LDAC would likely evolve its Legislation Guidelines to reflect and support the principles. • Establishing a new statutory officer, independent board (perhaps hosted by the Ministry), or a Crown entity/Commissioner, would help ensure the necessary

Annex One: Options Analysis Table

	<p>capabilities are held to consider complaints. There would need to be some thought given to how these mechanisms intersect with the responsibilities of the Ministry for Regulation and LDAC.</p> <ul style="list-style-type: none"> • There would need to be careful consideration given to the sorts of issues such a recourse mechanism would consider - using a mechanism located in the executive to consider whether legislation is consistent with standards may be problematic if it involves value judgements that are more appropriately matters for Parliament.
<p><i>Legal implications</i></p>	<p>■ 9(2)(h) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p><i>Costs</i></p>	<ul style="list-style-type: none"> • Recourse mechanisms considered under this mechanism range from having significant extra costs (for instance if a new Crown entity is established) to more modest extra costs (for instance, if a statutory officer is appointed). Costs will be highly dependent on the volume of complaints and how they are dealt with. • Agencies would likely face increased costs complying with new requirements under this option particularly in relation to periodic reviews of existing legislation. Agencies may need to change policy development processes to ensure there is sufficient time and capability to assess compliance and make any adjustments in light of this.

Annex One: Options Analysis Table

<p>Option 3 - Building on the approach in the 2021 Regulatory Standards Bill</p> <p>This option is based on the approach in the 2021 Regulatory Standards Bill and focuses on incentivising consistency with regulatory responsibility standards primarily via certification against principles in primary legislation.</p> <p>Option 3 focuses on judicial recourse mechanisms, by providing a role for the courts or a new dedicated adjudicative tribunal.</p>	
<p><i>Effectiveness</i></p>	<ul style="list-style-type: none"> • This option would give regulatory responsibility standards a high degree of visibility (although their durability would depend on whether there is broad buy-in to the principles across successive governments). • This option would likely set stronger incentives for both Ministers and agencies to ensure proposed legislation is consistent with regulatory responsibility principles than Option 1. • However, in the 2021 Bill, there is no requirement for supporting evidence to accompany certification, as there is with disclosure statements, which could make certification less robust. • Stronger review requirements for existing legislation may improve the timeliness of review of the stock of legislation, subject to Ministerial prioritisation and agencies having the requisite resources to carry this out. • Having an independent recourse mechanism would improve public/complainant confidence that complaints are being considered robustly. • It is unclear how effective the courts would be as a monitoring/quality assurance mechanism – as involvement would only be triggered in relation to specific proceedings, and the legislation relevant to those proceedings assessed for compatibility with the principles. A broader, more integrated role could likely be played by a specific tribunal which would solely be focused on regulatory standards complaints. • Accessing the courts is likely to require legal representation or an ability to navigate technical court processes, which is likely to increase the cost of making a complaint, and there may be significant waiting time. This is likely to limit the types of individuals and businesses that can access the scheme, and the usefulness of any recourse. • A specific tribunal would allow for a less formal process, less costs for complainants and therefore enable a broader range of individuals and businesses to access the scheme. A tribunal would also have the benefit of very strong actual and perceived independence from agencies and Ministers.
<p><i>Flexibility/ adaptability</i></p>	<ul style="list-style-type: none"> • Having principles in primary legislation means they are much less flexible to respond to changes in regulatory best practice, social expectations, and our understanding of how the system operates. • This option also provides little flexibility for agencies to determine how best to ensure existing legislation is compliant with standards and over what timeframe. This may be problematic given the amount of resource involved in reviewing regulatory systems for compliance.
<p><i>Alignment with existing institutions and principles</i></p>	<ul style="list-style-type: none"> • Assuming the principles are provided for wholly in primary legislation and cover the same ground as the good lawmaking principles in the 2021 Bill, consideration would need to be given to how these would align with RIA requirements, and be given effect to early enough in the process to impact on the consistency of resulting legislation.

Annex One: Options Analysis Table

	<ul style="list-style-type: none"> • 9(2)(h) [REDACTED] ■ [REDACTED]
<p><i>Legal and associated risk</i></p>	<ul style="list-style-type: none"> • 9(2)(h) [REDACTED] ■ [REDACTED] ■ [REDACTED]
<p><i>Costs</i></p>	<ul style="list-style-type: none"> • Regardless of the choice of mechanism, this option would likely create significant increased costs for departments in both complying with new requirements, ■ 9(2)(h) [REDACTED] • Ensuring compliance with legislation may require agencies to change their policy development process to enable more time and expertise. • 9(2)(h) [REDACTED]