



Regulatory Standards Act implementation: Updated draft of section 26 guidance to share with Attorney-General

Date	19 February 2026	Priority	High
Security classification	In confidence	Tracking number	MFR2026-032
Attachments	Annex 1: Updated draft guidance Annex 2: Updated draft guidance with tracked changes		

Action sought

Required from	Action	Deadline
Hon David Seymour Minister for Regulation	Agree to refer the draft guidance to the Attorney-General	23 February 2026

Contact for discussion if required

Name	Position	Phone number	1 st contact
Elisa Eckford	Lead Advisor, Policy	s 9(2)(a)	<input checked="" type="checkbox"/>
Pip van der Scheer	Manager, Regulatory Management System	s 9(2)(a)	<input type="checkbox"/>

Minister's office to complete

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's notes | <input type="checkbox"/> Withdrawn |

Comments

Annex 1 and Annex 2 are withheld consistent with section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege.

The final Guidance issued under section 26 of the Regulatory Standards Act 2025 is available at: <https://www.regulation.govt.nz/about-us/our-publications/guidance-issued-under-section-26-of-the-regulatory-standards-act-2025/>



Regulatory Standards Act implementation: Updated draft of section 26 guidance to share with Attorney-General

Date	19 February 2026	Priority	High
Security classification	In confidence	Tracking number	MFR2026-032

Purpose

This briefing provides you with:


- an updated draft of the guidance to be issued jointly by you and the Attorney-General under section 26 of the Regulatory Standards Act, for your review (attached as **Annex 1**).
- a draft of the guidance with changes tracked, to show what has changed from the previous version you reviewed (attached as **Annex 2**)
- suggested next steps to engage with the Attorney-General and other Ministers.

Recommended Action

The Ministry for Regulation recommends that you:

- | | | |
|---|--|-------------------------|
| a | agree to refer the draft guidance attached as Annex 1 to the Attorney-General along with this briefing, and seek her agreement to circulate it to Ministers | <i>Agree / Disagree</i> |
| b | agree that the Ministry for Regulation will test the guidance for workability with key agencies alongside Ministerial consultation | <i>Agree / Disagree</i> |
| c | agree that the Ministry will proactively release this paper at the appropriate time in accordance with Official Information Act 1982 and Privacy Act 2020 requirements. | <i>Agree / Disagree</i> |

s 9(2)(a)



Pip van der Scheer
Manager, Regulatory Management System
Ministry for Regulation
Date: 19 February 2026

Hon David Seymour
Minister for Regulation
Date:



Background

1. On 2 February, you provided further feedback on draft guidance to be issued jointly by you and the Attorney-General under section 26 of the Regulatory Standards Act (MFR2026-014 refers). This feedback included:
 - clarifying the discussion on ‘binding the Crown’ under sub-principle 9(a)(iii) *Every person is equal before the law*
 - reworking the examples under principle 9(c) *Taking of property*
 - removing the reference in the good lawmaking principles in 9(j) to (m) to ‘opportunities’ on the basis that government intervention should address identified problems not opportunities
 - listing specific alternatives to regulation, such as self-regulation, in sub-principle 9(j)(iv) *any options that are reasonably available for addressing the issue.*
2. The Crown Law Office (CLO) and Parliamentary Counsel Office (PCO) have also been undertaking a detailed review of the guidance over the past few weeks.

Main changes from previous version

3. In addition to addressing your feedback, the current draft attached as **Annex 1** reflects comments provided to us by CLO and PCO on 12 February, focusing in particular on the application of the principles of most direct interest to the Attorney-General’s portfolio (i.e. rule of law, liberties, taking of property, taxes, fees, and levies, the role of courts, and consultation).
4. **Annex 2** provides a tracked change version so you can see what changes have been made to the previous version.
5. CLO and PCO’s view is that the draft is generally shaping up well, and provides clear guidance on how the principles should be applied. There are a few, relatively minor issues that we are still working through with them. In addition, they have recommended that the examples of consistency/inconsistency in the guidance should be well-tested with agencies, since the examples will strongly influence how the guidance is interpreted and applied (and should therefore clearly help define the boundaries of the principles). However, CLO and PCO consider that the guidance (with included examples) is sufficiently well-developed to share with the Attorney-General and more broadly as a draft still under development.
6. In addition, CLO and PCO have noted that agencies’ ability to assess legislation in relation to the good lawmaking principles will rely on work that was done much earlier in the policy process and reflected in policy papers and in regulatory impact analysis (RIA) and/or Regulatory Analysis Summaries (RASs). CLO and PCO are therefore concerned about a potential mismatch between current RIA or proposed RAS requirements and what is required in the guidance – particularly through the transition period. Their view is that this part of the guidance would particularly benefit from consultation and road-testing with agencies who are responsible for policy development and who will be applying the guidance.
7. We note that the Ministry has undertaken considerable work to ensure RIA requirements (and the RAS template) are well aligned with consistency assessment requirements (and the CAS and summary of underpinning analysis templates). In addition, we have done some initial



testing of the guidance through completion of a worked example (MFR2026-006 refers), and made some small changes to the templates as a result. MBIE has also agreed to complete a CAS and summary of underpinning analysis for a real world example, and provide feedback on the guidance and the templates. However, we propose to undertake further testing of the templates and guidance during the next steps of the process, particularly in relation to the good lawmaking principles.

Economic underpinnings resource

8. In your feedback on MFR2026-014, you also requested that the Ministry review the material relating to cognitive bias in the economic underpinning resource that we propose to link to from the guidance. We are working to address your comments and will provide you with an updated version of the resource separately.

Next steps

9. We propose that you refer the guidance (along with this briefing) to the Attorney-General for her consideration and input, and seek her agreement to share the draft guidance with all Ministers. CLO and PCO have recommended allowing two to three weeks to allow for agencies to review the guidance and brief Ministers on it, and for testing the workability of the guidance with specific agencies. We also propose to re-engage the Legislation Design and Advisory Committee (LDAC) as part of this process.
10. The table below sets out a proposed process and dates for finalising the guidance, which updates timing set out in MFR2026-014.

Next step	Date
Draft guidance referred from you to the Attorney-General	By Monday 23 February
Draft guidance circulated to Ministers for feedback and tested with key agencies for workability (noting CLO's/PCO's view that two to three weeks should be allowed for this step)	By week of Monday 2 March (dependent on Attorney-General's agreement)
Final comments reflected in guidance	Mid to late March
Guidance considered by Cabinet	From late March
Guidance issued	April onwards (once Part 2 of Act comes into force).

11. Based on our previous advice, you agreed that we should share the draft guidance with the Regulations Review Committee at the same time as it is circulated for consultation with ministers (MFR 2026-014 refers). However, given that CLO and PCO consider the draft guidance to be legally privileged until it is finalised, we now recommend that we delay sharing the guidance until it has been agreed between you and the Attorney-General.



Proactive release

12. With your agreement, the Ministry will proactively release this paper at the appropriate time in accordance with Official Information Act 1982 and Privacy Act 2020 requirements to support transparency and public trust in decision-making processes.
13. The Ministry will not release draft guidelines while they are still in development.



Annex 1: Updated draft guidance

Annex 1 is withheld consistent with section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege

The final Guidance issued under section 26 of the Regulatory Standards Act 2025 is available at: <https://www.regulation.govt.nz/about-us/our-publications/guidance-issued-under-section-26-of-the-regulatory-standards-act-2025/>



Annex 2: Updated draft guidance with changes tracked

Annex 2 is withheld consistent with section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege

The final Guidance issued under section 26 of the Regulatory Standards Act 2025 is available at: <https://www.regulation.govt.nz/about-us/our-publications/guidance-issued-under-section-26-of-the-regulatory-standards-act-2025/>