



To	Hon David Seymour, Minister for Regulation		
Title	Regulatory Standards Bill: Possible approaches to embedding regulatory responsibility principles	Report number:	2024-016
Date	3 May 2024	Priority:	Medium
Action Sought	Discuss with officials	Due Date	8 May 2024
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Attachments	Yes	Security Level	IN CONFIDENCE

Executive Summary

1. This report and the attached slide pack are intended to support a discussion on potential modifications to the regulatory responsibility principles set out in the 2021 Regulatory Bill at your meeting with officials on 8 May.
2. At this meeting, we are keen to discuss with you possible approaches to providing for the regulatory responsibility principles - focusing on both the principles themselves, and the mechanisms by which they could be embedded throughout government systems and processes.
3. The slide pack covers:
 - how the work on principles fits within the broader work programme
 - broad outcomes derived from the key critical success factor, and some broad assumptions about how each can be achieved
 - key choices that would determine both the content of regulatory responsibility principles and how they could be applied
 - development of possible options based on these choices
 - background information on how principles are provided for across three pieces of legislation – the Public Finance Act 1989, Public Service Act 2020, Legislation Act 2019, and New Zealand Bill of Rights Act 1990.
4. Based on the outcome of our conversation with you, we propose to work up some more detailed options for embedding the regulatory responsibility principles (including any modifications to the principles themselves), for your consideration.

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Recommended Action

5. We recommend that you:
 - a. **discuss** this briefing and the attached slides at your meeting with officials on 8 May
 - b. **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

Hon David Seymour
Minister for Regulation



Purpose of report

6. This report and the attached slide pack are intended to support a discussion on possible approaches to embedding regulatory responsibility principles into government systems and processes at your meeting with officials on 8 May.

Background

7. We recently provided you with advice on alternatives to the courts, which identified **embedding of well-understood and widely accepted standards in relation to the content of regulation and the process for developing it** as a critical success factor for your Bill (T2024/763 refers). It outlined some initial thinking about modifications to the current principles in the Bill in light of that critical success factor, noting that we would come back with further advice.
8. We have also provided you with other advice relevant to the regulatory responsibility principles including:
 - a. Crown Law advice **9(2)(h)** in relation to the Regulatory Standards Bill 2021 (T2024/539 refers)
 - b. advice mapping the proposed principles against existing mechanisms (T2024/573 refers).

Analysis

Context

9. Building on the previous advice above, we are keen to discuss with you possible approaches to providing for the regulatory responsibility principles - focusing on both the principles themselves, and the mechanisms by which they could be embedded into government systems and processes.
10. We note that there are numerous interdependencies with work currently underway in other workstreams that will impact on how any principles will operate in practice. **Slide 1** has been provided to you previously and sets out work relating to the regulatory responsibility principles in the context of the broader work programme.
11. We have taken as our starting point the principles set out in the 2021 Bill. However, building on our previous advice on alternative mechanisms to the courts, we have proceeded on the basis that the courts will not have an explicit role in applying them as they do in the 2021 Bill.
12. **9(2)(h)**
[Redacted text]

Intended outcomes and assumptions

13. In this context, **Slide 2** identifies some broad outcomes derived from the key critical success factor, and sets out some broad assumptions about how each can be achieved. These assumptions focus primarily on ensuring the principles will be effective at driving increased regulatory quality, while managing some of the risks identified in the Crown Law advice.
14. One key assumption is that, based on experience with arrangements for fiscal responsibility, the principles need to be embedded throughout the system, via a set of mutually reinforcing statutory and non-statutory mechanisms (including statutory powers and duties).
15. We are keen to get your views on whether:
 - the outcomes fully capture your broad objectives in relation to the regulatory responsibility principles
 - you are comfortable with the assumptions set out below them
 - there are other considerations we should factor in.

Choices in approach

16. **Slide 3** sets out the key choices that we think help determine both the content of regulatory responsibility principles and how they could be applied.
17. In making these choices, as previously advised in T2024/763, we think it is useful to distinguish between two different types of principle - particularly when considering how to manage the risks of providing for them in primary legislation, and in relation to the mechanisms that we think will be most effective in embedding them:
 - those relating to the design and content of legislation (e.g. those concerned with the protection of liberties or personal property rights), which are more likely to cause issues with duplication, interpretation and trade-offs
 - those relating to good regulatory management practice (e.g. those concerned with processes for making, implementing and reviewing regulation), which need to avoid the creation of particularly onerous or impractical requirements for law-making.
18. We are keen to get your views on whether:
 - these cover the full range of choices we should be looking at
 - you have any immediate preferences in relation to these choices.

Indicative options and examples of possible approaches

19. **Slide 4** sets out how the different choices set out in Slide 3 give rise to a number of different possible options. These options should not be seen as mutually exclusive, but instead can be mixed and matched, reflecting our assumption (outlined above) that embedding the principles is best done via a series of mutually reinforcing mechanisms.
20. **Slide 5** provides some illustrative examples of how different choices can be grouped to give some different approaches to embedding the principles.



21. We are keen to get your views on whether:
- there are any options that are not currently covered that you would like to see included, particularly in relation to potential mechanisms
 - you have any initial views on what approaches you would like us to focus further work on.

How principles are expressed in other Acts

22. As background information, **Slide 6** provides an overview of how principles are provided for across four pieces of legislation – the Public Finance Act 1989, Public Service Act 2020, Legislation Act 2019, and New Zealand Bill of Rights Act 1990. **Annex 1** then compares the language used to express principles in these four Acts with the 2021 Regulatory Standards Bill.

Next steps

23. Based on the outcome of our conversation with you, we propose to develop some more detailed options for embedding the regulatory responsibility principles, for your consideration. Depending on the nature of your feedback, we will aim to provide this further advice to you by 17 May.

Annex 1: Wording of principles in other Acts

Public Finance Act 1989, s 26G	Public Service Act 2020, s 12(1)	Legislation Act 2019, s 104(1)	New Zealand Bill of Rights Act 1990, ss 8-27	Regulatory Standards Bill 2021, s 6(1)
<p>The Government must pursue its policy objectives in accordance with the following principles (the principles of responsible fiscal management):</p> <p>(a) reducing total debt to prudent levels so as to provide a buffer against factors that may impact adversely on the level of total debt in the future by ensuring that, until those levels have been achieved, total operating expenses in each financial year are less than total operating revenues in the same financial year; and</p> <p>(b) once prudent levels of total debt have been achieved, maintaining those levels by ensuring that, on average, over a reasonable period of time, total operating expenses do not exceed total operating revenues; and</p> <p>(c) achieving and maintaining levels of total net worth that provide a buffer against factors that may impact adversely on total net worth in the future; and</p> <p>(d) managing prudently the fiscal risks facing the Government; and</p> <p>(e) when formulating revenue strategy, having regard to efficiency and fairness, including the predictability and stability of tax rates; and</p> <p>(f) when formulating fiscal strategy, having regard to the</p>	<p>In order to achieve the purpose in section 11, the public service principles are:</p> <p><i>Politically neutral</i></p> <p>(a) to act in a politically neutral manner; and</p> <p><i>Free and frank advice</i></p> <p>(b) when giving advice to Ministers, to do so in a free and frank manner; and</p> <p><i>Merit-based appointments</i></p> <p>(c) to make merit-based appointments (unless an exception applies under this Act); and</p> <p><i>Open government</i></p> <p>(d) to foster a culture of open government; and</p> <p><i>Stewardship</i></p> <p>(e) to proactively promote stewardship of the public service, including of—</p> <p>(i) its long-term capability and its people; and</p> <p>(ii) its institutional knowledge and information; and</p> <p>(iii) its systems and processes; and</p> <p>(iv) its assets; and</p> <p>(v) the legislation administered by agencies.</p>	<p>(1) A disclosure statement for a Government Bill, Government amendment, or secondary legislation must contain (or link to) the following:</p> <p>(a) information about—</p> <p>(i) the policy background of the Bill, amendment, or secondary legislation; and</p> <p>(ii) the main legislative quality procedures that have been carried out by or on behalf of the relevant policy agency in relation to the Bill, amendment, or secondary legislation; and</p> <p>(iii) any provisions of the Bill, amendment, or secondary legislation that, in the chief executive’s opinion, are unusual or involve matters that call for particular attention; and</p> <p>(b) the information about departures from the legislative guidelines or standards that is required by each notice under section 107.</p> <p>(2) However, the disclosure statement does not need to include the chief executive’s (or the policy agency’s) reasons or justifications for the decisions taken by the Government on the Government Bill, Government amendment, or secondary legislation.</p>	<p><i>Life and security of the person</i></p> <p>8 Right not to be deprived of life No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.</p> <p>9 Right not to be subjected to torture or cruel treatment Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.</p> <p>10 Right not to be subjected to medical or scientific experimentation Every person has the right not to be subjected to medical or scientific experimentation without that person’s consent.</p> <p>11 Right to refuse to undergo medical treatment Everyone has the right to refuse to undergo any medical treatment.</p> <p><i>Democratic and civil rights</i></p> <p>12 Electoral rights Every New Zealand citizen who is of or over the age of 18 years—</p> <p>(a) has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage and by secret ballot; and</p> <p>(b) is qualified for membership of the House of Representatives.</p> <p>13 Freedom of thought, conscience, and religion Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.</p> <p>14 Freedom of expression Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.</p> <p>15 Manifestation of religion and belief Every person has the right to manifest that person’s religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.</p> <p>16 Freedom of peaceful assembly Everyone has the right to freedom of peaceful assembly.</p> <p>17 Freedom of association Everyone has the right to freedom of association.</p> <p>18 Freedom of movement (1) Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand. (2) Every New Zealand citizen has the right to enter New Zealand.</p>	<p><i>Rule of law</i></p> <p>(a) be consistent with the following aspects of the rule of law:</p> <p>(i) the law should be clear and accessible;</p> <p>(ii) the law should not adversely affect rights and liberties, or impose obligations, retrospectively;</p> <p>(iii) every person is equal before the law;</p> <p>(iv) issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion;</p> <p><i>Liberties</i></p> <p>(b) not diminish a person’s liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person;</p> <p>Taking of property</p> <p>(c) not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless—</p> <p>(i) the taking or impairment is necessary in the public interest; and</p> <p>(ii) full compensation for the taking or impairment is provided to the owner; and</p>

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<p>interaction between fiscal policy and monetary policy; and</p> <p>(g) when formulating fiscal strategy, having regard to its likely impact on present and future generations; and</p> <p>(h) ensuring that the Crown's resources are managed effectively and efficiently.</p>			<p>(3) Everyone has the right to leave New Zealand.</p> <p>(4) No one who is not a New Zealand citizen and who is lawfully in New Zealand shall be required to leave New Zealand except under a decision taken on grounds prescribed by law.</p> <p><i>Non-discrimination and minority rights</i></p> <p>19 Freedom from discrimination</p> <p>(1) Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.</p> <p>(2) Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination.</p> <p>20 Rights of minorities</p> <p>A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.</p> <p><i>Search, arrest, and detention</i></p> <p>21 Unreasonable search and seizure</p> <p>Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.</p> <p>22 Liberty of the person</p> <p>Everyone has the right not to be arbitrarily arrested or detained.</p> <p>23 Rights of persons arrested or detained</p> <p>(1) Everyone who is arrested or who is detained under any enactment—</p> <p style="padding-left: 20px;">(a) shall be informed at the time of the arrest or detention of the reason for it; and</p> <p style="padding-left: 20px;">(b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and</p> <p style="padding-left: 20px;">(c) shall have the right to have the validity of the arrest or detention determined without delay by way of <i>habeas corpus</i> and to be released if the arrest or detention is not lawful.</p> <p>(2) Everyone who is arrested for an offence has the right to be charged promptly or to be released.</p> <p>(3) Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.</p> <p>(4) Everyone who is—</p> <p style="padding-left: 20px;">(a) arrested; or</p> <p style="padding-left: 20px;">(b) detained under any enactment—</p> <p>for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.</p> <p>(5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.</p> <p>24 Rights of persons charged</p> <p>Everyone who is charged with an offence—</p> <p style="padding-left: 20px;">(a) shall be informed promptly and in detail of the nature and cause of the charge; and</p>	<p>(iii) that compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment:</p> <p><i>Taxes and charges</i></p> <p>(d) not impose, or authorise the imposition of, a tax except by or under an Act:</p> <p>(e) not impose, or authorise the imposition of, a charge for goods or services (including the exercise of a function or power) unless the amount of the charge is reasonable in relation to both—</p> <p style="padding-left: 20px;">(i) the benefits that payers are likely to obtain from the goods or services; and</p> <p style="padding-left: 20px;">(ii) the costs of efficiently providing the goods or services:</p> <p><i>Role of courts</i></p> <p>(f) preserve the courts' role of authoritatively determining the meaning of legislation:</p> <p>(g) if the legislation authorises a Minister, public entity, or public official to make decisions that may adversely affect any liberty, freedom, or right of a kind referred to in paragraph (b),—</p> <p style="padding-left: 20px;">(i) provide a right of appeal on the merits against those decisions to a court or other independent body; and</p> <p style="padding-left: 20px;">(ii) state appropriate criteria for making those decisions:</p> <p><i>Good law-making</i></p> <p>(h) not be made unless, to the extent practicable, the persons likely to be affected by the legislation have been consulted:</p> <p>(i) not be made (or, in the case of an Act, not be introduced to the House of</p>
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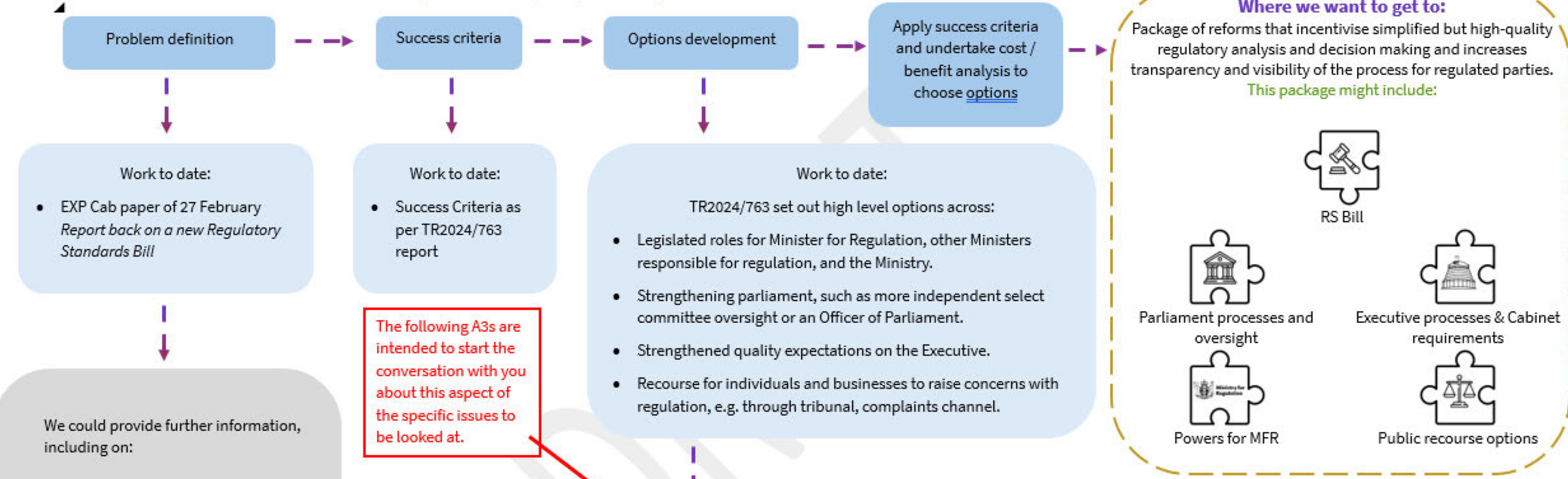
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		<p>(b) shall be released on reasonable terms and conditions unless there is just cause for continued detention; and</p> <p>(c) shall have the right to consult and instruct a lawyer; and</p> <p>(d) shall have the right to adequate time and facilities to prepare a defence; and</p> <p>(e) shall have the right, except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for 2 years or more; and</p> <p>(f) shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance; and</p> <p>(g) shall have the right to have the free assistance of an interpreter if the person cannot understand or speak the language used in court.</p> <p>25 Minimum standards of criminal procedure</p> <p>Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:</p> <p>(a) the right to a fair and public hearing by an independent and impartial court:</p> <p>(b) the right to be tried without undue delay:</p> <p>(c) the right to be presumed innocent until proved guilty according to law:</p> <p>(d) the right not to be compelled to be a witness or to confess guilt:</p> <p>(e) the right to be present at the trial and to present a defence:</p> <p>(f) the right to examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution:</p> <p>(g) the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty:</p> <p>(h) the right, if convicted of the offence, to appeal according to law to a higher court against the conviction or against the sentence or against both:</p> <p>(i) the right, in the case of a child, to be dealt with in a manner that takes account of the child's age.</p> <p>26 Retroactive penalties and double jeopardy</p> <p>(1) No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred.</p> <p>(2) No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.</p> <p>27 Right to justice</p> <p>(1) Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.</p> <p>(2) Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.</p> <p>(3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.</p>	<p>Representatives) unless there has been a careful evaluation of—</p> <p>(i) the issue concerned; and</p> <p>(ii) the effectiveness of any relevant existing legislation and common law; and</p> <p>(iii) whether the public interest requires that the issue be addressed; and</p> <p>(iv) any options (including non-legislative options) that are reasonably available for addressing the issue; and</p> <p>(v) who is likely to benefit, and who is likely to suffer a detriment, from the legislation; and</p> <p>(vi) all potential adverse consequences of the legislation (including any potential legal liability of the Crown or any other person) that are reasonably foreseeable:</p> <p>(j) produce benefits that outweigh the costs of the legislation to the public or persons:</p> <p>(k) be the most effective, efficient, and proportionate response to the issue concerned that is available.</p>
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1. Context: Current work programme

- For regulated parties, increase the transparency of regulatory decision making
- Ensure new regulation is of high quality
- Improve the functioning of existing regulatory systems, including the stock of regulation
- Raises regulator capability to design and operate regulatory systems

Core process for policy development



The following A3s are intended to start the conversation with you about this aspect of the specific issues to be looked at.

We could provide further information, including on:

- What are the current gaps in the Regulatory Management System, and how do we compare to other OECD countries?
- What progress has been made since Productivity Commission's 2014 report on regulatory institutions and practices?
- What do regulatory agencies see as key barriers to good regulatory practice?
- What is the experience and observations from the perspective of regulated parties?

DRAFT Specific issues to look at within overall process as part of option development (includes but not limited to)

- Regulatory policy making process - current state and whether there are overlaps / ways to simplify.
- Powers and functions of Ministry for Regulation (including non-legislative means to have influence) - start with ComCom market studies
- How to raise the quality and performance of existing regulatory systems - including ensuring LEG can be revised and kept up to date.
- Provide advice on the principles in the Draft Regulatory Standards Bill - durability and role.
- The regulatory equivalent to the fiscal process - how to ensure highest value legislative change (and only) high value legislation is progressed? And how to raise visibility of the cost of regulation?
- Further work up of the key high-level ideas in the previous options paper -e.g. options in relation to a strengthening parliamentary oversight, citizen recourse through a tribunal or other mechanism.
- Role for existing disclosure regime (Part 4 Legislation Act) – ensure alignment and consider timing

These A3s focus on our thinking on the principles of good regulation and how they might be applied, but there are clear interdependencies across the other workstreams – particularly in relation to work on transparency mechanisms, Parliamentary scrutiny and recourse for individuals/businesses.

2. Intended outcomes and assumptions

Critical success factor

Embedding of well-understood and widely accepted standards in relation to the content of regulation and the process for developing it (ref T2024/763)

Outcomes

Principles are **effective** at changing behaviour throughout the system

Principles are **well-understood**

Principles can build **broad support** over time

Do these outcomes fully capture your broad objectives in relation to the regulatory responsibility principles?

Assumptions

Are you comfortable with these assumptions?

To be effective, principles should link to clear expectations and duties for the Executive, supported by well-defined accountability and transparency arrangements, and mechanisms to address any inappropriate deviation from them.

Based on experience with arrangements for fiscal responsibility, these expectations/duties will likely be most effective when they apply at multiple stages of the system, and mutually reinforce each other (through a mix of statutory and non-statutory mechanisms). Agencies also need to have the capacity and capability to fulfil these expectations or duties and exercise any powers.

Principles should reinforce (or at least not cut across) established concepts in law to avoid creating uncertainty or conflict.

Where there is already provision for the principles elsewhere in law, consideration should be given to reliance on and/or reference to these principles rather than making new provision for them in the Bill.

Consistency with international norms and New Zealand's international commitments is another key consideration.

Principles (and the ways they are applied) should be capable of gaining and holding broad support so that they can be enduring (i.e. unlikely to change significantly and less likely to be repealed over the short to medium term). At the same time, there needs to be sufficient flexibility to account for changes in societal expectations and New Zealand's circumstances.

To gain wide acceptance, principles will likely need to be practical to implement (e.g. avoiding imposition of overly onerous obligations) and to be consistent with accepted roles/expectations (e.g. not imposing on Parliamentary sovereignty).

In light of the above considerations, there are some choices to be made for the identification of options, including in relation to:

- the **coverage** of the principles - i.e. what aspects of regulatory quality they cover
- where principles are **located** - in primary legislation or embedded in other ways (e.g. secondary legislation, the Cabinet manual or circulars)
- the **flexibility** of the principles - whether the principles are expressed in absolute terms, or reflect that judgements are required to be made
- what **mechanisms** can be used to bring the principles into effect - e.g. statutory principles, disclosure requirements, new statutory powers/obligations
- the nature of impacts on existing **roles and responsibilities** - e.g. the degree to which existing roles and relationships are changed or strengthened, or new ones created

Are there any other considerations to factor in?

3. Choices in approach

Where should principles be located?

Principles can be provided for in different places (i.e. primary legislation, secondary legislation, or non-legislative instruments such as Cabinet Office Circulars/guidance) reflecting trade-offs between durability/flexibility, and management of potential risks in relation to the role of the courts.

Which mechanisms should be used to bring the principles into effect?

While the current Bill embeds standards via statutory principles against which a certification is required, there are additional or alternative approaches that could be considered, including embedding principles via the creation of new or strengthened statutory duties and obligations (e.g. on agencies or Ministers) and/or as part of strengthened disclosure and reporting requirements.

What should the principles cover?

Principles can be comprehensive, so they cover all aspects of regulatory quality, or more narrowly focused on priority areas (e.g. impacts on property rights). It is also helpful to think of the principles falling into two different categories:

- those relating to the design and content of legislation (e.g. concerned with the protection of liberties or personal property rights)
- those related to good regulatory management practice (i.e. concerned with processes for making, implementing and reviewing legislation)

How flexibly should principles be expressed?

Choices can be made in relation to the strictness of the intended obligation imposed by each principle (e.g. a compulsory requirement or a "best practice" approach), and how much discretion is given in applying each principle - to manage tensions between principles, the fluid nature of some principles, and the risks from court involvement. There is also a question of how far provision should be made for adjustment of obligations over time.

To what extent are changes to institutional roles and relationships being contemplated?

The current Bill explicitly provides a new role (and is likely to create other new roles) for the courts via application of the principles. In previous advice, we have discussed alternative approaches that could include strengthening the role of Parliament in holding the Executive (and itself) to account for legislative quality.

Do these cover the full range of choices we should be looking at?
Do you have any immediate preferences in relation to these choices?

4. Indicative options

Choices	Coverage	Location	Flexibility	Mechanisms	Roles/relationships
Options	Comprehensive coverage of legislation design and regulatory management considerations	All principles set out in primary legislation	Principles stated as strict legal rules	Statutory principles that legislation is certified against	New role for the courts in holding Parliament/the Executive to account
	Principles focused on a number of problem areas that have most impact on regulatory quality or occur most frequently	Some high-level principles set out in primary legislation, with provision for more detailed principles to be provided for via secondary legislation	Some discretion provided in how principles should be applied	Other statutory provision (e.g. obligations/powers, disclosure/reporting requirements)	Strengthening of Parliament's ability to scrutinise legislation and hold the Executive to account
	Principles targeted to a few key pain points (e.g. property rights)	Principles set out in non-statutory expectations/guidance	Principles provided for at the level of guidance/best practice	Non-statutory provisions (e.g. Cabinet Office Circulars, guidance)	Strengthened regulatory oversight within the Executive and stronger obligations for departments/Ministers

These options can be mixed and matched (i.e. they are not mutually-exclusive) - depending on your preferences on how you want the principles themselves to be provided for, as well as your preferred mechanisms for their application - to create a mutually-reinforcing package. However, some combinations will likely not work as a package.

5. Examples of possible approaches to embedding principles

Possible starting point	Purpose of Bill	Setting of principles	Mechanisms for embedding principles	
Principles sit solely in primary legislation (based on 2021 Regulatory Standards Bill)	Bill sets out a purpose relating to the definition and application of statutory principles	Bill sets out a comprehensive set of principles relating to both the design and content of legislation and good regulatory management practice	Principles are embedded via responsible agencies' and Ministers' certification of compatibility of legislative proposals against the principles	Agencies are also required to regularly review their existing legislation for compatibility with the principles
Principles sit at all levels	Bill sets out a broad purpose e.g. to encourage the development and maintenance of legislation and regulatory systems that are well-designed and fit for purpose	Bill sets out a few, broad, high-level principles e.g. that the legislation has sufficient regard to fundamental constitutional principles and values and the rights and liberties of individuals	More detailed principles relating to the design and content of legislation are embedded via an enhanced statutory disclosure regime - principles are set out in notices (secondary legislation) issued by the Minister for Regulation	More detailed principles relating to good regulatory management practice are embedded via new statutory duties/expectations for the Executive and new statutory powers for the Ministry for Regulation
Principles sit outside primary legislation	Bill sets out a broad purpose e.g. to encourage the development and maintenance of legislation and regulatory systems that are well-designed and fit for purpose	Bill sets out a broad expectation that principles will be set by the Minister for Regulation (administratively or in secondary legislation)	Principles are embedded via administrative requirements and guidance	

All these approaches would be supplemented via other mechanisms such as sector reviews, recourse mechanisms, and/or strengthened Parliamentary processes, along with incentives/mechanisms to support compliance (e.g. audit, publication of non-compliance)

Are there any options not covered that you would like to see included?
Do you have any initial views on what approaches you would like us to focus further work on?

6. Examples of principles expressed in other Acts

Legislation	Public Finance Act Principles of responsible fiscal management	Public Service Act Principles and values of public service	Legislation Act Disclosure requirements for government-initiated legislation	New Zealand Bill of Rights Act Human rights and fundamental freedoms
Nature of principles	<p>The principles are not strict legal rules but have inherent flexibility through the way they are expressed – e.g. what is prudent, what is enough of a buffer, or only needing to “have regard to” certain matters.</p> <p>Providing further flexibility, the government is explicitly allowed to depart from the principles, so long as it is temporary and the government explains why.</p>	<p>The principles and values are expressed at a high level that leaves room for interpretation as to how they are applied.</p>	<p>The Act requires the identification of legislative guidelines or standards relating to the process and content of legislation.</p> <p>The guidelines or standards themselves are not set out in the Act but must be identified in a notice issued by joint Ministers (the notice is secondary legislation but must also be approved by a vote of the House)</p>	<p>The rights draw on/reflect NZ’s commitment to the International Covenant on Civil and Political Rights.</p> <p>The rights are not absolute. They are subject to justified limitations (using legal tests that established internationally). Further, enactments that fail that test cannot be treated as invalid by a court.</p>
How principles are given effect	<p>The government is expected to pursue its policy objectives in accordance with the principles but this is given concrete effect only through:</p> <ul style="list-style-type: none"> requiring the government to produce a fiscal strategy report for the House that explains how the government’s long-term fiscal objectives and short term fiscal intentions accord with the principles (and if not, the reasons for the departure) the House scrutinising the report in accordance with Standing Orders 	<p>The Act makes public service chief executives responsible for upholding the principles, but the Act is careful to say this responsibility is only owed to the Public Service Commissioner or the Responsible Minister.</p> <p>The Act is also very careful to say that the public service values are given effect only through minimum standards set by the Public Service Commissioner</p>	<p>The guidelines and standards are given concrete effect through:</p> <ul style="list-style-type: none"> requiring, for any government Bill or substantive amendment paper, the government to report to the House on departures from the specified legislative guidelines or standards requiring departmental chief executives to publish that report in accordance with the guidelines and other Ministerial directions at the time the relevant Bill or amendment is introduced into the House 	<p>The Act requires:</p> <ul style="list-style-type: none"> a court to prefer interpretations of legislation that are consistent with these rights the Attorney-General to alert the House to any Bill that appears inconsistent with these rights the government to respond to any court declaration of inconsistency through a report to the House.
Statutory powers supporting the principles	<ul style="list-style-type: none"> Power for the Treasury to obtain information from government agencies to support its statutory reporting responsibilities Power for the Minister of Finance to make regulations, or Treasury to issue instructions, relating to the reporting and control of public money 	<ul style="list-style-type: none"> Power for the Public Service Commissioner to set minimum standards of integrity and conduct for public servants to support the public service principles and values Power for the Public Service Commissioner to provide the House with a report every three years on the state of the public service, which may include an assessment of whether the public service principles are being upheld 	<ul style="list-style-type: none"> Power for joint Ministers to issue a government notice setting of the legislative guidelines or standards, other matters that are to be disclosed, and how it is to be published Power for one of those Ministers to issue directions on additional or more specific information that is required and how it is to be formatted. 	<p>The Act contains no statutory powers but is supported by administrative requirements which allow:</p> <ul style="list-style-type: none"> Ministry of Justice or Crown Law to review Bills on behalf of the Attorney-General before the Bill receives Cabinet approval Parliamentary Counsel to qualify its certification of draft secondary legislation where it could be inconsistent with the rights

All the above examples have common features of flexibility, considerable effort to try to signal / ensure that these are not matters for the courts to involve themselves in, including through making direct connections to Parliamentary and Executive roles and processes, and supporting powers / duties within the Executive to help give effect to the expected reporting.