

## Appendix Two.

# Regulatory Impact Statement:

### Quality Advice Statement:

The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry for the Environment. The Panel consider that the RIS partially meets the quality assessment criteria.

The RIS includes relevant information commensurate with the size and complexity of the problem and the magnitude of the impacts and risks of the policy options, and does enough to make the case for the recommended option. However, the RIS could be more convincing in explaining the possible impacts of the legislative gap in more detail, which would also make the need for change more compelling. The Panel view the RIS as sufficient to inform initial Government decisions on the options and proposals in this paper. We expect that any final policy decisions following consultation would be supported by further analysis of the impacts of the status quo.

# Overview of required information

## Regulatory Impact Statement

### Agency Disclosure Statement

This is a RIS to accompany the post consultation Cabinet Paper after public consultation on “proposal for transitional regulations under the Hazardous Substances and New Organism Amendment Act 2015”.

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment.

Previously controlled hazardous substances (such as potassium cyanide) may become accessible to the public as an unintended consequence of recent legislative changes. This regulatory impact statement assesses options that are aimed at reducing the resulting risk of harm to the environment and people.

The RIS analyses a number of regulatory options in order to address a legislative issue. The Hazardous Substances and New Organism reforms were intended to create streamlined hazardous substance controls while maintaining the same level of regulation. The emergence of gaps in the framework was not an intended consequence of the reform process. It is therefore necessary to ensure the identified gaps are removed in order to maintain the robustness and integrity of the reform.

There is a significant limitation in the analysis as the impact of the gaps is difficult to ascertain due to a lack of monitoring within the hazardous substances framework. We are unable to put a figure on the number of existing approvals that are affected by the identified gaps however, it is likely to number in the several thousand as there are more than 100,000 commonly used hazardous substances, controlled under approximately 60,000 approvals.

There were time constraints on the analysis as a decision on what option will best rectify the regulatory gaps is required urgently in order for the necessary regulations to be implemented prior to the commencement of the reforms. If this deadline is not met the integrity of the system will be severely weakened. The differences between the options outlined in the following analysis are primarily directed at the legal risk to the Government. These risks are not relevant to the wider public, this combined with the time constraints means the decision was made to publically consult on one option only.

The Environmental Protection Authority (EPA) has statutory responsibility for consulting on the proposal. Following consultation, EPA provided MfE with a briefing of the feedback received during the consultation period. Eleven submissions were received. Eight were in favour of the proposal and noted the consulted on option was the only viable option to continue business as usual. The three submissions opposed commented on aspects of an EPA Notice and not the content of the transitional regulation and therefore were not within scope of what was proposed. Since consultation Cabinet agreed to PCO drafting the proposed regulation .

*Phillipa Guthrey, Manager, Environmental Risk and Innovation*



[Signature of person]

8.2.17  
[Date]

## Status quo and problem definition

1. Under the current Hazardous Substances and New Organisms Act 1996 (the HSNO Act), persons can only import or manufacture hazardous substances in New Zealand subject to approvals granted by the Environmental Protection Authority (EPA). Approvals control how a substance can be used and stored. These are provided for in a range of regulations under the HSNO Act.
2. As part of the wider Health and Safety reform, the HSNO Amendment Act (the Amendment Act) was enacted. The Amendment Act splits the responsibility for hazardous substance controls:
  - a. Worksafe takes responsibility for all hazardous substance controls in the workplace, under the Health and Safety at Work Act 2015 (the HSW Act);
  - b. The EPA takes responsibility for setting the remainder of controls for hazardous substances (outside of the workplace) and primary controls, for all substances, such as labelling under the HSNO Act.
3. The split means Worksafe will promulgate new regulations (HSW HS regulations) under the HSW Act, while the EPA will create EPA Notices under the HSNO Act. These HSW HS regulations and EPA Notices will replace the bulk of existing HSNO regulations. The split is planned to come into force on 1 December 2017 (the commencement date).
4. The new hazardous substance classification system will be implemented, at a later date, to ensure New Zealand's regulation of hazardous substances is in line with the latest

version of the United Nation's Globally Harmonised System of Classification and Labelling of Chemicals.

*What is the problem?*

5. The implementation of the new classification system will no longer occur in time for the commencement date. This means the reissue will no longer occur for the commencement date. The delay in implementation was considered necessary for the EPA to complete the work required to meet the Government's goal of implementing all of the other changes in 2017. Without the delay in implementing the new classification system it would be difficult for the EPA to discharge their responsibility to implement the health and safety reforms by the commencement date.
6. On the commencement date, and until reissued, there will be some unintended regulatory gaps created by the split of controls between the HSW HS regulations and EPA notices for existing hazardous substance approvals. For the purpose of this document "regulatory gaps" mean the unintended deregulation of some highly hazardous substances due to the HSW and the HSNO Amendment Acts not aligning in relation to some existing hazardous substance approvals. These gaps create an increased risk of harm to people and the environment that was not intended.
7. For example, pursuant to existing regulations under the HSNO Act, approved handler controls are applied to highly hazardous substances to ensure they are only accessed by appropriately experienced and trained people. On the commencement date, these controls will move to the HSW HS regulations. However, they will not apply outside the workplace. This means there will no longer be a mechanism to prohibit access or restrict sale to the general public of these highly hazardous substances that currently trigger the approved handler requirements but will not in the future (including the active ingredient used in 1080 and potassium cyanide).
8. Controls in a new EPA notice (the HPC notice) will rectify these gaps. However this notice will not apply to existing hazardous substance approvals until the approvals are reissued.
9. There is no effective monitoring system to ascertain the likeliness of these gaps causing a problem in reality. Due to the lack of monitoring it is difficult to pinpoint the exact number of approvals this will affect in practise. The magnitude of the consequences is difficult to ascertain. It is possible that the temporary presence of these gaps will not make a difference to current practise as sellers and users of hazardous substances have the ability to recognise the dangers of highly hazardous substances being available to the

general public and refuse to on sell to the public. It is also possible that members of the public would not be interested in accessing these substances anyway. However, due to the large number of approvals and substances affected (several thousand substances, controlled under approximately 60,000 approvals) and the increased risk of harm to people and the environment the gaps create, we do not believe it is sufficient to rely on businesses self-regulating as the only safeguard to address this problem.

### *Original Intent*

10. Schedule 1 of the HSNO Amendment Act contains transitional arrangements for moving existing approvals to the new split system. It provides that, until existing approvals are reissued, users will need to comply with the approval's current controls, except in so far as they have been replaced by workplace controls in the HSW HS regulations. Where this is the case, people will need to comply with the new HSW HS regulations from the commencement date. Clause 4 (3), Schedule 1 of the Amendment Act then provides for a procedure allowing existing approvals to be efficiently reissued once to take account of the move to HSW HS regulations and EPA notices. It was intended this reissue will take place when an updated hazardous substance classification system is implemented. This update was also intended to take place at the same time as the move to HSW HS regulations and EPA notices to coincide with the commencement date.

### *Why is this now an issue?*

11. A special 'one time only use' mechanism in schedule 1, of the Amendment Act allows the EPA to reissue existing approvals under the new system and update to a new hazardous substance classification system. When the Amendment Act was drafted, it was intended that this power would be exercised to achieve both objectives simultaneously in time for the commencement date.
12. The efficient reissue mechanism can only be used once, due to the wording of the Amendment Act. When the Amendment Act was drafted it was not contemplated that the mechanism may require multiple uses. Due to the wording if it was used to reissue approvals in time for the commencement date it could no longer be used when the new classification system is implemented. If the mechanism is used prior to the new classification system being implemented, additional resource the EPA has not budgeted for would be required further down the track to complete a full consultation and risk assessment for each individual approval (estimated in the thousands). This would be a duplicative and resource intensive process (currently the EPA undertakes between 1 – 4 reassessments a year).

13. If the reissue mechanism was used twice the EPA would be outside the scope of their powers and would carry the risk that approvals could not be enforced, this would leave the EPA unable to prosecute breaches of affected approvals, further increasing the chance of harm to people or the environment.
14. There is also a legal risk present in the use of transitional regulations as the Amendment Act states that any transitional measures must be 'necessary' due to the coming into force of the Amendment Act. Any interim, transitional measures would need to satisfy this test in order to be valid.

### *Reissue Mechanism*

15. A special 'one time only use' mechanism in schedule 1, of the Amendment Act allows the EPA to reissue existing approvals under the new system and update to a new hazardous substance classification system. When the Amendment Act was drafted, it was intended that this power would be exercised to achieve both objectives simultaneously in time for the commencement date.
16. An example of an identified gap is seen in the current approved handler controls. These controls apply to highly hazardous substances to ensure they are only accessed by appropriately experienced and trained people. The controls will move from the current HSNO regulations to the HSW HS regulations; however, when moved they will no longer apply outside of the workplace. The existing approvals will have these specific aspects removed from them, while the rest of the approval remains valid in its current form until the reissue occurs. This means there will no longer be a mechanism to prohibit access or restrict sale to the general public of highly hazardous substances that currently trigger the approved handler requirements.
17. If the reissue mechanism was used prior to the commencement date there would no longer be a mechanism available to reissue approvals when the new hazardous substance classification system is ready for implementation. This would mean significant resource would be required when the new system is updated as the cost effective mechanism would no longer be available. This would mean undertaking a full consultation and risk assessment for each individual approval. However, the delay means there are regulatory gaps in the interim.
18. It is not possible to amend the HSNO Amendment Act to allow for multiple uses of this mechanism. The time that would be required to amend the primary legislation would mean an amendment would not be ready in time for the commencement date.

## Objectives

The objectives are to:

### 1. Minimise risk of harm to health and the environment from hazardous substances

This will be achieved if the following assessment criteria is fulfilled:

*1.1 All regulatory gaps are filled prior to the commencement date*

### 2. Maintain the EPA's ability to discharge their responsibilities under the HSNO Amendment Act

*2.1 Leave the reissue mechanism in schedule 1 of the HSNO Amendment Act available for use at a later date*

### 3. Meet the objective of the HSNO Amendment Act to prevent or manage the adverse effects of hazardous substances

*3.1 Meet the test of 'necessary' as required for transitional regulations under the HSNO Amendment Act*

## Options and impact analysis

19. Three options have been identified. Option two will be tested through feedback on the discussion document *Proposal for transitional regulations under the Hazardous Substances and New Organisms Amendment Act 2015*:

- option one: status quo – keep existing approvals in their current form on commencement day – no EPA Notices will apply to these approvals.
- option two: implement transitional regulations that allow for legal effect to be given to the relevant controls in the HPC Notice – all existing approvals will be required to comply with the HPC Notice controls prior to being reissued.
- option three: use the mechanism in schedule 1 of the Amendment Act to reissue existing approvals in time for the commencement date and assume some alternative mechanism can be utilised when the new classification system is implemented.

20. There were four variations of option two originally identified. However, each of these options required the implementation of transitional regulations and the differences between each are subtle. Option two, as worded above, would establish effective

transitional regulations that will meet the Government’s objectives. The alternative variations were discarded early on in our analysis. They will be briefly outlined to provide background information, supporting the robustness of option two. The decision to discard the three variations was made because the difference between them related to the level of legal risk to the Government. This means the impact on end users does not vary significantly, therefore it was not considered necessary to consult on all four variations as it would not generate public interest and would create unnecessary complexity for the public.

## Comparison of Options:

Objective	Minimises harm	EPA able to discharge responsibilities	Manages adverse effects
Option 1: Status Quo	No	Partially	No
<b>Option 2: Transitional regulations</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Option 3: use the reissue mechanism prior to the commencement date	Yes	No	No

## Option 1: maintain the status quo

### *Minimises harm?*

21. Under option one; the regulatory gaps will not be filled. There will be no interim measure in place and no reissuing of existing approvals prior to the commencement date. Therefore all regulatory gaps will remain and there will be increased risk of harm to people and the environment that was not intended as part of the reforms.

The gaps cannot be filled under this option because the Amendment Act states that the EPA Notices do not apply to approvals issued prior to the commencement date (existing approvals).<sup>1</sup> Until reissued, existing approvals will need to comply with their current controls (with the exception of any parts of the approval that have shifted to HSW HS regulations).<sup>2</sup> This means the provisions in the HPC Notice that fill the identified gaps, will not apply to existing approvals until the reissue occurs.

22. The reissue will not be undertaken in time for the commencement date because the mechanism available to complete this task can only be used once.<sup>3</sup> It is being used when a new hazardous substance classification system is implemented at a later date. This means, under the status quo the gaps will remain until this future date, also leaving the elevated risk of harm until this point.
23. It is difficult to pinpoint the exact number of approvals this will affect or the impact leaving the gaps would have in practise. This is because there is no centralised database monitoring approval numbers. The magnitude of the consequences is difficult to ascertain as we do not know how likely it is that members of the public will know the gaps are present or, whether such gaps would be taken advantage of.
24. For example, under existing HSNO Act regulations, approved handler controls (AH controls) are applied to highly hazardous substances to ensure they are only accessed by appropriately experienced and trained people. On the commencement date, AH controls will move to the HSW HS regulations. However, they will not be applied outside the workplace. This means there will no longer be a mechanism to prohibit access or restrict sale to the general public of highly hazardous substances that currently trigger approved handler requirements.
25. It is possible that the temporary presence of these gaps will not make a difference to current practise as sellers and users of hazardous substances have the ability to recognise the dangers of highly hazardous substances being available to the general public and refuse to on sell to the public. It is also possible that members of the public would not be interested in accessing these substances.
26. However, we do not recommend leaving the framework in this vulnerable state as there is an unknown level of risk that human health and the environment will be negatively

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<sup>1</sup> Clause 4 (2), Schedule 1, Hazardous Substances and New Organisms Amendment Act 2015

<sup>2</sup> Clause 3, Schedule 1, Hazardous Substances and New Organisms Amendment Act 2015

<sup>3</sup> Clause 4 (3), Schedule 1, Hazardous Substances and New Organisms Amendment Act 2015

impacted as members of the public who do not have the correct knowledge on how these highly hazardous substances should be stored or handled may inadvertently expose themselves, others or the environment to harmful levels of toxicity.

*EPA able to discharge their responsibilities?*

27. The reissue mechanism would be available to use when the new hazardous classification system is implemented. This would mean the EPA will still be able to update the classification system and ensure the New Zealand system is aligned with international best practises.
28. However, until the reissuing of existing approvals occurs the EPA will no longer have enforcement abilities and will not be able to prosecute for breaches that fall within the gaps of existing approvals. This means the EPA will no longer be able to discharge all responsibilities they have previously been able to, and are intended in the future. This means if an individual access these highly hazardous substances and causes harm to themselves, others or the environment, the EPA's ability to prosecute will be restricted.

*Manages adverse effects?*

29. The test of being 'necessary' is only required to be met by proposed transitional regulations under the HSNO Amendment Act and is not applicable to this option. However, maintaining the status quo will mean there is no ability to monitor or place controls on affected substances once they are in the possession of the public. This means there will be no ability to manage any consequences that may result from public use of these substances. By maintaining the status quo the likelihood of adverse effects will be increased as there will be no mechanism for such effects to be managed under. This increases the risk of harm to individuals and the environment rather than managing the risk.

## **Option 2: implement transitional regulations allowing for legal effect to be given to controls in the HPC Notice**

30. This option differs significantly from option one as it requires additional regulations; however in doing so the identified gaps will be filled and there will be regulatory certainty.

31. This option will implement transitional regulations to give legal effect to the controls in the HPC notice that will bridge the regulatory gaps. By giving legal effect to specific aspects of the HPC notice, those particular controls would be given equivalent legal status as the new HSW HS regulations without needing to reissue any existing approvals twice.

32. This option is the final variation of four different transitional regulations. As discussed above the difference between each is subtle and lends itself to the level of legal risk to the Government rather than varying the level of difference to end users. The level of risk arises when applying the statutory test that requires transitional regulations to be 'necessary due to the coming into force of the Amendment Act'. For thoroughness the four variations are set out in the following table (option d is the preferred option).

	Meets the 'necessary test' under objective 3	Comments
a) transitional regulations to reissue all existing approvals twice.	Unlikely	<ul style="list-style-type: none"> <li>Transitional regulations would be used on all existing approvals. It would fill the gaps but the underlying reason for 'saving' the reissue mechanism would be primarily for administrative convenience.</li> <li>It would be difficult to defend administrative convenience as being within the scope of 'necessary'.</li> </ul>
b) transitional regulations to reissue existing approvals affected by the HPC notice before the commencement date (attach <u>all</u> EPA Notices)	Possibly	<p>It is targeted at filling the legal gaps by only using transitional regulations for affected approvals, instead of all existing approvals. Due to this targeted intention it could be considered 'necessary'</p> <ul style="list-style-type: none"> <li>But by attaching all EPA Notices, its scope is widened beyond what is necessary to fill the gaps. It would be difficult to defend the scope of this option as being within the scope of 'necessary'.</li> </ul>
c) transitional regulations to reissue existing approvals affected by the HPC notice before the commencement	Possibly	<ul style="list-style-type: none"> <li>It is targeted at filling the legal gaps like option b. Scope is narrowed by only attaching the EPA notice required to fill the gaps. Does not raise the same concerns as b) by widening the scope.</li> <li>Still at risk of being considered an administrative convenience and not 'necessary'.</li> </ul>

date (attach <u>only</u> HPC Notice controls)		
d) transitional regulations to give legal effect to relevant HPC Notice controls	Yes	Will be analysed in detail below.

*Minimises harm?*

33. This option has the ability to fill all regulatory gaps without reissuing any approval twice. This can be done by giving the controls, required to fill the gaps in the HPC Notice, legal effect. All provisions that fill the gaps will need to be complied with prior to the commencement date and the reissuing of approvals. This means there will be no increased risk of harm to people or the environment as a result of the changes to the current hazardous substance regulatory framework. This means that members of the public and the environment will be protected from exposure to highly hazardous substances.

*EPA able to discharge their responsibilities?*

34. This option would leave the reissue mechanism for when the new hazardous substance classification system is implemented as no reissuing would occur before this time. This means the EPA would fulfil their responsibility to ensure New Zealand is aligned to international best practise.

35. This option also means the EPA's ability to enforce controls and prosecute breaches remains intact for all existing approvals. Any misuse or sale to a member of the public could result in prosecution, whereas under the status quo there would be no such ability. This means the EPA will maintain the same level of enforcement as before the changes.

*Manages adverse effects?*

36. Implementing transitional regulations to give legal effect to the controls in the HPC notice, instead of reissuing any approval twice will meet the test of being 'necessary'. This option will give the particular controls within the HPC notice equivalent legal status as the new workplace controls regulated by Worksafe. By giving legal status to these provisions,

they will act as a holding mechanism. This would complement the Amendment Act, rather than circumvent or override it, until the new classification system is implemented and the reissue can occur. Accordingly, it meets the necessary test with the least level of legal risk. This means that adverse effects of hazardous substances will be managed under the transitional regulations without there being a legal risk of the regulations being outside the scope of the Amendment Act.

### **Option three: use the mechanism in the Amendment Act to reissue approvals for the commencement date and develop an alternative mechanism to reissue when the new classification is implemented**

37. Similar to option 2, this option would fill the regulatory gaps. There are two key differences; first, this option does not require transitional regulations and secondly, it would not leave the re-issue mechanism available for future use.
38. Option three was considered unviable and thus discarded early on in the analysis. This is because the option relies on the assumption that an alternative mechanism can be implemented. In reality, an alternative mechanism is not expected to be found. Further amendment to the HNSO Act would be required to allow approvals to be reissued again. It is unlikely further Amendments to the HSNO Act would be politically palatable given the current Amendment Act was implemented recently (2015).
39. This is not viable as no alternative statutory vehicle is being contemplated by Government. As a consequence the new classification system would not be implemented meaning the New Zealand regulatory system for hazardous substances would not be using the most recent, internationally accepted system.

## **Consultation**

### *Agency comments*

40. The EPA and MfE have worked collaboratively to develop the consultation material. The EPA is in full support of the preferred option. EPA officials first presented the preferred option as an option going forward when original discussions were held.
41. MBIE and Worksafe are both involved in the collaborative approach to the health and safety reforms. Both agencies are comfortable with the preferred option as it will provide

robust alignment between EPA Notices and the Worksafe regulations they are required to work in tandem with.

### *Consultation*

42. A consultation document on the proposal for transitional regulations under the Hazardous Substances and New Organisms Amendment Act 2015 was released for public consultation on 3 April 2017, with submissions closing on 12 May 2017. The consultation document and submission form were made available on the Environmental Protection Authority (the EPA) website and sent to interested parties on the importers and manufacturers register, the Liquefied Petroleum Gas industry, and to those who submitted on the HPC Notice consultation. Comments were received and considered by the EPA in assessing the proposal for transitional regulations.
43. A total of 11 submissions were received.
44. Positive impacts noted by submitters in support of the proposal included, that it would enable business as usual for most operators. The opportunity to improve the current accessibility of requirements through well written EPA Notices, and cross-references in the HSW HS regulations, were seen favourably. The proposal was seen by some to improve the clarity of what regulatory controls will apply from the commencement date.
45. The impacts of not proceeding with the proposal were broadly identified as increased confusion about the hazardous substances regime, inadequately qualified people using ecotoxic (pesticides) substances inappropriately, and the risk of gaps occurring if EPA Notices are not in force at the commencement date.
46. Many submissions, both in support and disagreement with the proposed transitional regulations, focused on the importance of raising public awareness of their compliance obligations. This was raised in the context of the need for further public consultation on new controls, and communication of new control requirements.
47. The key concerns raised in submissions concerned new qualifications requirements. The perceived issues related to qualifications lapsing and confusing obligations, which may lead to people and businesses acting in a non-compliant manner. This confusion would extend to non-workplaces. It was suggested that a comprehensive publicity programme to educate householders on their obligations would be required. There would also need to be enforcement of non-workplace compliance.
48. Two submitters requested that the transitional regulations to be reviewed by appropriate organisations in their final draft before promulgation. It was suggested this should include being available on the EPA and WorkSafe websites, as well as being made available to Local Government New Zealand to inform Territorial and Regional Authorities.

49. One submitter suggested that all synthetic refrigerants be classified as ecotoxic. The submission pointed to the known effects of synthetic greenhouse gases and suggested adopting an approach the same as the European Union's F gas regulations.
50. The intent of the proposed transitional regulations is to give immediate effect to gap filling controls in the HPC Notice for existing hazardous substance approvals. Many of the substantive issues raised in submissions are being dealt with in the development of the HPC Notice.
51. From the commencement date, the controls database on the EPA website will be updated to reflect the actual controls that need to be complied with, i.e. the approval will:
- list the HSNO controls that apply, including any relevant new controls from the HPC Notice;
  - not list the HSNO workplace controls that no longer apply; and
  - cross-refer to the HSW HS Regulations for workplace controls.
- This action will mitigate the confusion that submitters noted could arise from this proposal.
52. Qualification requirements have been consulted on in the development of the HPC Notice. The HPC Notice discussion document proposes a 'grandfathering' clause to ensure continuity in the certification regime for qualifications and location certificates. Individual EPA Notices also include transitional provisions for new controls. The comments raised in relation to qualifications will be considered in the development of the HPC Notice.
53. The public have had opportunity to participate in the development of all of the EPA Notices. New controls on individual approvals contained in EPA Notices have been included in the relevant Notice consultations. It is proposed that Group Standards will be reissued before the commencement date; these will be made available to the public by way of exposure draft. The Group Standards will cross-refer to EPA Notices.
54. Ecotoxicity under HSNO does not include ozone depleting substances. Synthetic refrigerants that are not classified as class 9 substances or captured under international HSNO agreements are controlled under the Ozone Layer Protection Act. The re-classification of synthetic refrigerants is out of scope for the transitional regulations.

## Conclusions and recommendations

52. It is necessary for the identified issue to be addressed. If no change is made some highly hazardous substances will no longer be regulated. Such an outcome would undermine the simplified and robust regulatory system the health and safety reforms aimed to achieve.
53. Option two, implementing transitional regulations allowing for legal effect to be given to controls in the HPC Notice, is the preferred option. This is because it has the ability to fill all of the identified gaps with the lowest level of legal risk.

54. A mechanism is required prior to the commencement date. If no mechanism is in place prior to this date (currently planned for 1 December 2017) then option one will be implemented by default.

## Implementation

55. To implement the proposed transitional regulations the EPA will update the Chemical Classification and Information Database (CCID) on their website to reflect the legal status of the HPC notice. This database is the primary tool for approval users to ascertain their obligations from and will provide users with the necessary information in time for the commencement. This will be set up so users can enter the name or approval number of a substance and will be able to see what they are required to comply with; either under existing HSNO approvals or the transitional regulations, presented in one place. This will be updated prior to the commencement date.

56. The explanatory material will provide information on what HPC Notice controls will need to be complied with in relation to existing approvals. However this will not require any extra implementation or reissuing work prior to the commencement date.

## Monitoring, Evaluation and Review

57. The EPA will monitor the number of non-compliance issues that are raised with them during this interim time. They will also monitor the responses within industries on an ongoing basis. There is no specific monitoring system in place to ascertain the effectiveness of the transitional regulations however the EPA will continue to work with users who raise any concerns. The annual *Monitoring the Effectiveness of the Hazardous Substances and New Organisms (HSNO Act)* report will document any key shortcomings or concerns that are raised in the implementation of the transitional measures.

58. The proposed regulations will be effective if the EPA has the continued ability to prosecute breaches under the legislation. They will not be effective if something that has always been considered a breach of controls is no longer one (eg the sale of potassium cyanide to members of the public). If enforcement responsibilities can still be discharged, to ensure that risk of harm to people and the environment is minimised, without such enforcement being considered outside the scope of the Amendment Act, then the transitional regulations will be effective.