Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Bill makes amendments to enable the practical application of controls to all hazardous substances while protecting the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances.

The changes also provide for practical management of the transitional period for existing hazardous substances, during which controls under the Hazardous Substances and New Organisms Act 1996 (the **HSNO Act**) will be implemented to replace predecessor regulatory controls.

The amendments minimise the costs to business and Government, and reduce barriers to innovation by—

- enabling practical controls to be assigned to previously assessed existing hazardous substances by providing the Environmental Risk Management Authority (the **Authority**) with flexibility when assigning controls:
- streamlining the transfer process through removing the need to effect transfers by making an Order in Council:
- providing for a smooth transition by enabling the Authority to grant businesses exemptions from complying with transitional controls to proactively move to the HSNO controls prior to transfer of the substances they use, manufacture, or import:

- providing for a smooth transition by enabling the Authority to allow businesses to continue their compliance with transitional controls and move them to HSNO controls under a staged programme:
- enabling the assignment of cost-effective controls to all hazardous substances.

Clause by clause analysis

Clause 1 relates to the Title of the Bill. In this Bill, the Hazardous Substances and New Organisms Act 1996 is called "the principal Act".

Part 1
Preliminary provisions

Clause 2 relates to the commencement of the Bill. It comes into force on the day after the date on which it receives the Royal assent.

Clause 3 sets out the purpose of the Bill. Its purpose is—

- to facilitate the smooth transfer of hazardous substances from transitional controls to the appropriate control regime under the principal Act:
- to enable the Environmental Risk Management Authority (the **Authority**) to assign cost-effective controls to all hazardous substances.

Part 2
Amendments to principal Act and related provisions

Clause 4 amends section 19(2) of the principal Act to extend the list of persons to whom the Authority may delegate specified powers.

The clause enables the Authority to delegate the power to decide any application for any permission or licence under Part VI of the principal Act, or the revocation of any permission or licence under that Part, to—

- any employee of the Ministry of Agriculture and Forestry, any Medical Officer of Health, or any employee of any person specified in section 97, with relevant experience in the subject matter of the application or the permission or licence:

- if there is no employee with the relevant experience, any other person with the relevant experience, whether or not that person is a member of the Authority.

The clause also enables the Authority to delegate the power to decide any application for any licence under Part VI, or the revocation of any licence under that Part, to any test certifier approved under section 84 of the principal Act.

Clause 5 inserts into the principal Act *new section 77A*. This new section enables the Authority to ensure that the appropriate controls are imposed in each case where it approves a hazardous substance. Under this new section, the Authority may impose its own controls, and may vary controls imposed by regulations made under the Act, when approving a hazardous substance. The power conferred by this new section is independent of section 77 of the Act, which provides that the appropriate controls prescribed by regulations made under the Act attach to a substance once it is approved by the Authority.

Examples of the kinds of controls that may be imposed under this new section are—

- an obligation to obtain a permission under *new section 95A* (see *clause 6*) for general or particular use of the substance:
- an obligation to obtain a licence under *new section 95B* (see *clause 6*).

Clause 6 inserts into the principal Act *new sections 95A and 95B*.

New section 95A creates an authorisation, called a permission, which permits the general or particular use of a substance. A permission under this new section is required if the Authority makes it a condition of the Authority's approval of a substance (see *new section 77A* in *clause 5*).

In considering an application under this new section, the Authority must consider—

- any adverse effects involved in the use or uses of the substance to which the application relates; and
- the conditions (if any) that it thinks should be imposed as part of the permission.

Once granted, a permission complements the related approval of the substance and the holder is authorised to use the substance in accordance with the terms and conditions of the approval of the substance and of the holder's permission.

New section 95B creates a licence that authorises the possession of a hazardous substance. A licence under this new section is required if the Authority makes it a condition of the Authority's approval of a substance (see *new section 77A* in *clause 5*).

The Authority must grant a licence under this section if satisfied that the applicant—

- is a fit and proper person to possess the substance concerned; and
- meets the relevant test certification requirements under section 82 of the principal Act.

The fit and proper person test will be prescribed by regulations made under the Act. Once granted, the licence authorises the possession of the substance specified in the licence in accordance with the terms and conditions of the holder's licence and of the approval of the substance.

Clause 7 amends section 125 of the principal Act to provide a right of appeal to a District Court against a decision of the Authority—

- under *new section 95A*, about the terms and conditions of a permission, or declining to grant the person a permission or revoking a permission held by the person:
- under *new section 95B*, about the terms and conditions of a licence, or declining to grant the person a licence or revoking a licence held by the person.

Clause 8 inserts into the principal Act *new section 142A*. The new section, which expires on the expiry of the transitional provisions in the principal Act, enables the Authority to grant exemptions from obligations and restrictions that would otherwise attach to a substance on its approval by the Authority under Part V of the principal Act. The Authority must be satisfied that—

- any adverse effects of the substance are being adequately managed; and
- the relevant requirements under Parts XI to XVI of the Act continue to apply.

Clause 9 amends section 154 of the principal Act to enable the Authority to grant exemptions from any requirements prescribed by the transitional provisions in Parts XI to XVI of the principal Act. Presently, the exemptions are limited to requirements prescribed by regulations referred to in those transitional provisions.

Clause 10 inserts into the principal Act *new sections 160A and 160B.*

New section 160A enables the Authority to transfer substances from the transitional regime to the HSNO regime. This will be achieved by a notice of transfer, which will not have to be printed in the Statutory Regulations series but will be subject to scrutiny by the Regulations Review Committee.

New section 160B is a complementary provision that enables the Authority to exercise the powers it has under section 77 of the principal Act and *new section 77A* to address any risks associated with transferring a substance from the transitional regime to the HSNO regime.

Clause 11 provides that the principal Act is also amended in the manner set out in the *Schedule* of the Bill. These amendments are consequential technical amendments.

Regulatory impact and compliance cost statement

Statement of the nature and magnitude of the problem and the need for Government action

The purpose of the Hazardous Substances and New Organisms Act 1996 (the **HSNO Act**) is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms. In respect of hazardous substances, the HSNO Act is designed to achieve its purpose by the Environmental Risk Management Authority New Zealand (the **Authority**) assigning controls (such as labelling, packaging, and storage requirements) which prevent or manage the risks of every hazardous substance in New Zealand.

Existing hazardous substances were previously subject to controls under separate Acts covering animal remedies, explosives, dangerous goods, pesticides, and toxic substances. Existing hazardous substances have their HSNO controls assigned on transfer, and the

HSNO controls replace any former controls (under previous legislation). All existing hazardous substances must be transferred by July 2006. New hazardous substances get their controls assigned via an approval from the Authority.

The Act came into force for hazardous substances on 1 July 2001. Operating experience since this time has revealed that the following operational aspects of the Act result in the identified unintended costs:

- the need to amend the HSNO control regulations to vary the default controls (which automatically apply to a substance of a certain hazard classification) on transfer (necessary for approximately 10% of existing hazardous substances) creates unnecessary costs to Government and makes controls difficult to understand for businesses (there are multiple places to check in determining the requirements that apply to a substance):
- the need to make a regulation to effect a transfer creates unnecessary costs for Government and delays, which in turn increase costs to businesses applying to import or manufacture hazardous substances:
- insufficient time (28 days) is provided for some businesses to cost-effectively implement changes necessary when HSNO controls replace the previous controls (on transfer):
- a dual regulatory requirement is an error in the legislation and creates costs to business with no safety or environmental benefit (facilities are required to maintain a dangerous goods licence and meet HSNO requirements after dangerous goods are transferred):
- the ability to vary controls specified in the HSNO Act does not allow the Authority to assign controls sourced from outside the HSNO control regulations where such controls would be more effective, more cost effective, or a more readily achievable means of controlling the risks posed by that substance. Assigning such controls at present may mean that these controls are not legally enforceable. Not assigning such controls creates costs to business and risks to health, safety, and the environment.

Collectively, these problems affect all existing hazardous substances (80 000) and an estimated 90% of new hazardous substances.

These unintended costs reflect a regulatory failure. Government intervention is required to remove these unintended costs.

Statement of the public policy objective

The public policy objective is to minimise the costs to business and Government, and to reduce barriers to innovation while serving the purpose of the Act by—

- facilitating the transfer of previously assessed existing hazardous substances from transitional controls to HSNO controls:
- providing for a smooth transition between transitional controls and HSNO controls:
- enabling the assignment of cost-effective controls to all hazardous substances.

Statement of the feasible options that may constitute viable means for achieving the desired objective

The feasible options are the status quo and amending the HSNO Act (the preferred option). There are no non-regulatory options to achieve the public policy objective.

The table below sets out the key features of the status quo and the preferred option.

Problem	Status quo	Preferred option (amend HSNO Act)
Varying default controls on transfer	Controls are varied by new transfer regulations (where variations reflect previous requirements) and by regulation amendments (where variations reflect previous practices that are not requirements).	Act amended so that the Authority may widely vary controls on transfer, allowing control variations that recognise previous practices as well as previous requirements.
	Government to effect regulation amendments.	Regulation amendments not required.
	Determining all requirements for a given substance requires checking the transfer regulation, multiple regulations, and multiple regulation amendments.	All requirements for a substance are presented in the transfer decision.

Problem	Status quo	Preferred option (amend HSNO Act)
Effecting transfer	Transfer is effected by making an Order in Council.	Act amended so that transfer is effected by decision of the Authority, promulgated by notice in the *Gazette* and the Authority's website (supplemented by informative forums where appropriate).
	Authority subject to regulation-making consultation requirements.	The consultative process is the same and the same controls are applied.
	The controls assigned after the Cabinet process are as per the Authority's transfer proposal.	
Transitional period	Businesses must comply with new requirements as soon as transfer is effective (after 28-day rule expires).	Act amended so businesses that demonstrate they are adequately managing risks of the substances on site may apply for a temporary exemption from HSNO requirements to provide time to implement changes.
Dual regulatory requirement	Businesses must comply with HSNO requirements and maintain a dangerous goods licence until July 2006.	Act amended so that the Authority may exempt any or all businesses from dual regulatory requirement.
		Individual businesses exempted by application to the Authority. All businesses exempted by publicly notified decision of the Authority.
Most cost-effective controls	Only controls from within the HSNO control regulations can be assigned to a substance.	Act amended so that the most cost-effective controls can be applied, even if they are not in HSNO control regulations.
	Where more cost-effective controls exist outside the HSNO control regulations, these cannot be assigned to a substance.	This includes fit and proper persons only to have access and case-by-case approvals, operation of which will depend on the substances to which these are applied.

Statement of the net benefits of the proposal and other feasible options

The net benefits of the proposal (presented below) are unquantifiable, but will result in large reductions in costs to business and reduced costs to Government. Unquantifiable health, safety, and environmental benefits will accrue due to improved compliance coming out of ease of understanding.

Net benefits to industry

The proposals will reduce costs to business and barriers to innovation by—

- making controls easier to understand for all hazardous substances (which will improve compliance with controls):
- avoiding delays in the availability of the rapid assessment for new hazardous substances by completing transfers sooner (rapid assessment is a fast, low-cost assessment for hazardous substances and is available where the new substance is similar to an existing approved or transferred substance; if transfers are completed sooner, the pathway is available earlier):
- providing reasonable time to implement changes where necessary (this is not quantifiable, but the scale of benefit is appreciable by considering the impact of an exemption which removes the requirement to re-label and repackage existing retail stocks of mineral turpentine which is sold in petrol stations, supermarkets, hardware store, assorted dairies, marine chandleries, and car accessory stores nationwide, mineral turpentine being but one of the 80 000 existing hazardous substances in New Zealand):
- avoiding a dual regulatory requirement (saves businesses $2.5 million per annum for 2 years):
- enabling the application of the most cost-effective controls where these are not contained in the HSNO control regulations (not able to be quantified, but will by definition reduce costs to business).

Net benefits to society

Improved compliance due to improved understanding will result in health, safety, and environmental gains (these positive effects are unquantifiable). Environmental benefits are expected to accrue from the ability to better manage environmental risks (by varying controls) and the greater availability of the rapid-assessment pathway, making the introduction of better hazardous substances easier (eg, pesticides with lower ecotoxicity to non-target organisms). No environmental, social, or cultural costs have been identified.

Net benefits to Government

The primary benefit to Government is improved efficiency in assigning HSNO controls to all hazardous substances and ensuring compliance with these requirements. Efficiency gains will also

accrue to Government through not having to make multiple transfer regulations and regulation amendments.

Statement of the consultation undertaken

The following parties and departments were consulted in the development of the policy of the preferred option:

BASF Chemicals

EKA Chemicals

Local Government New Zealand

Business New Zealand

Resource Management Law Association

New Zealand Association for Animal Health and Crop Protection

New Zealand Chemical Industry Council

Department of Labour (Occupational Safety and Health Service)

Department of Conservation

Ministry of Agriculture and Forestry (New Zealand Food Safety Authority)

The Treasury

Ministry of Economic Development

New Zealand Customs Service

Ministry of Health

Department of Prime Minister and Cabinet

Department of Justice

Environmental Risk Management Authority.

All parties supported the actions identified within the hazardous substances strategy and agreed that the priority action is to remove the unintended costs discussed in this proposal.

Business compliance cost statement

The source of any compliance cost

The following sources of business compliance costs will reduce as a result of the proposal:

- the time costs of understanding controls:

- the Authority's fees, and time and information costs of making applications to import or manufacture new hazardous substances:
- the costs associated with the change from previous requirements to HSNO requirements:
- the costs of dual regulatory requirement:
- the cost of meeting controls.

The following sources of business compliance costs will increase as a result of the proposal:

- costs associated with applying for exemptions:
- costs associated with additional requirements (eg, demonstrating staff are fit and proper when using substances to which such controls are assigned).

The parties likely to be affected

Businesses that import, manufacture, store, use large quantities of, sell, or dispose of hazardous substances will be affected.

Estimates of compliance costs

Compliance costs associated with meeting the controls imposed by approvals will decrease as a result of the proposal as less time will be required to determine what these requirements are, and, in some cases, the controls themselves will be more cost-effective.

Compliance costs associated with applications for approval to import and manufacture new hazardous substances will decrease as a result of the proposal due to earlier availability of the rapid-assessment pathway (estimated to save businesses $0.5 million per annum in reduced fees for applications, which equates to $2 million per annum in compliance costs savings, as the Authority fee component of application costs are approximately 25% of total applicant compliance costs for an application).

Compliance costs associated with the change from previous requirements to HSNO requirements will reduce as the proposals providing for a smooth transitional period will allow changes to be put in place in cost-effective ways (eg, allowing time for existing stocks to be sold out rather than re-labelling and repackaging) and at cost-effective pace (rather than mandating that businesses meet HSNO

requirements 28 days after controls are finalised). These savings are unquantified but are of significant magnitude.

Form filling and correspondence compliance costs reductions will accrue to businesses (in addition to the direct cost savings identified in the regulatory impact statement) due to the removal of a dual regulatory requirement.

The compliance costs of meeting controls will reduce, by definition, where controls from outside the HSNO control regulations are assigned for reasons of cost-effectiveness.

Applying for exemptions will impose a compliance cost. Businesses are only expected to apply for exemptions for time to meet HSNO requirements (eg, selling existing stocks) where the benefits of obtaining the exemption outweigh the costs obtaining the exemption. Many businesses will be exempted by action of the Authority rather than in response to an application for an exemption.

Having staff determined as fit and proper will impose a form filling and correspondence compliance cost on businesses using the few substances to which the Authority may assign such a control (most of these substances are presently subject to controls under previous legislation).

The longer-term implications of the compliance costs for business

The majority of compliance cost reductions will be obtained after 1 April 2004, when previously assessed hazardous substances are transferred. Benefits of improved understandability will be ongoing.

An assessment of the risks associated with estimates and the level of confidence that can be placed on the compliance cost assessment

There is a high level of confidence in the estimates of business compliance cost reduction as these are based on actual data from the Authority and NZIER survey responses and operating experience with the Act.

The key issues relating to compliance costs identified in consultation

Reducing compliance costs has been identified as an issue in consultation. No increased compliance cost issues were identified in consultation.

Overlapping compliance requirements with other agencies

There are no overlapping compliance requirements introduced by the preferred option. One is removed.

The steps that were taken to ensure that compliance costs were minimised

The actions undertaken as part of the preferred option are to remove unintended costs to businesses (and Government) resulting from failures in previous Government interventions.

Hon Marian Hobbs

Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Act **2003**.

(2) In this Act, the Hazardous Substances and New Organisms Act 1996 is called "the principal Act".

Part 1
Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is—

(a) to facilitate the smooth transfer of hazardous substances from transitional controls to the appropriate control regime under the principal Act; and

(b) to enable the Authority to assign cost-effective controls to hazardous substances.

Part 2
Amendments to principal Act and related provisions

4 Delegation by Authority

Section 19(2) of the principal Act is amended by adding the following paragraphs:

"(h) the power to decide any application for any permission or licence under Part VI, or the revocation of any permission or licence under that Part, to—

"(i) any employee of the Ministry of Agriculture and Forestry, any Medical Officer of Health (as defined in section 2(1) of the Health Act 1956), or any employee of any person specified in section 97, with relevant experience in the subject matter of the application or the permission or licence; or

"(ii) if there is no employee with the relevant experience, any other person with the relevant experience, whether or not that person is a member of the Authority:

"(i) the power to decide any application for any licence under Part VI, or the revocation of any licence under that Part, to any test certifier approved under section 84."

5 New section 77A inserted

The principal Act is amended by inserting, after section 77, the following section:

"77A **Authority's power to impose controls and vary specified controls**

"(1) The Authority may, at the time it approves a substance for any purpose under this Act, impose as controls under this section any obligations and restrictions that the Authority thinks fit.

"(2) Without limiting anything in **subsection (1)**, the Authority may,—

"(a) in approving a substance, specify as a control under this section an obligation to obtain a permission under **section 95A** for general or particular use of the substance:

"(b) in approving a substance, specify as a control under this section an obligation to obtain a licence under **section 95B** for possession of the substance.

"(3) Obligations and restrictions imposed under this section are controls for the purposes of this Act, and such controls may—

"(a) be additional to other specified controls; or

"(b) vary other specified controls; or

"(c) be in substitution for other specified controls; or

"(d) combine other specified controls; or

"(e) delete other specified controls.

"(4) Before imposing a control under this section, the Authority must consider, against the controls that apply to the substance under section 77,—

"(a) the effect of the proposed control on the management, use, and risks of the substance; and

"(b) whether the proposed control is more cost-effective in terms of its effect on the management, use, and risks of the substance; and

"(c) whether the proposed control is more likely to achieve its purpose.

"(5) In this section, **other specified controls** means controls imposed by or under any other section of this Act, and includes controls imposed by regulations made under this Act."

6 New sections 95A and 95B inserted

The principal Act is amended by inserting, after section 95, the following heading and sections:

"Permissions and licences

"95A **Permissions**

"(1) This section applies if the Authority approves a substance subject to an obligation referred to in **section 77A(2)(a)** (namely that, before using the substance, a person must obtain a prior permission under this section for the general or particular use of the substance).

"(2) An application for a permission under this section must be made in a form approved by the Authority, and must be accompanied by the appropriate charge (if any) fixed under section 21.

"(3) In considering an application, the Authority must consider—

"(a) the adverse effects involved in the use or uses of the substance to which the application relates; and

"(b) the conditions (if any) that it thinks should be imposed as part of the permission.

"(4) The Authority may grant a permission subject to any conditions it may specify in the permission that are consistent with the approval of the substance.

"(5) The holder of a permission granted under this section is authorised to use the substance specified in the permission in accordance with the approval of the substance and the holder's permission.

"(6) A permission granted under this section must be in writing and in a form approved by the Authority.

"(7) The Authority may, at any time by notice in writing to the holder of a permission granted under this section,—

"(a) add or delete any conditions, or otherwise vary any conditions:

"(b) revoke a permission granted to the holder under this section.

"95B **Licences**

"(1) This section applies if the Authority approves a substance subject to an obligation referred to in **section 77A(2)(b)** (namely,

that a person must obtain a licence under this section before possessing the substance).

"(2) An application for a licence under this section must—

"(a) be made in a form prescribed by regulations referred to in **subsection (4)** or (in the absence of such regulations) in a form determined by the Authority; and

"(b) be accompanied by the appropriate charge (if any) fixed under section 21.

"(3) The Authority—

"(a) must grant a licence under this section if satisfied that the applicant—

"(i) is a fit and proper person to possess the substance concerned; and

"(ii) meets the relevant test certification requirements that apply to the substance under section 82; and

"(b) may make the licence subject to any conditions it may specify in the licence; and

"(4) Regulations made under section 76 or section 140, or both, may (without limitation)—

"(a) specify the criteria the Authority must consider in determining whether the applicant is a fit and proper person:

"(b) specify any other matters that the Authority may consider in determining whether to grant a licence under this section:

"(c) prescribe the form of an application for a licence under this section:

"(d) provide for the variation of licences under this section and provide for their revocation:

"(e) provide for any other matters necessary for the administration of licences under this section.

"(5) The holder of a licence granted under this section is authorised to possess the substance specified in the licence in accordance with the approval of the substance and the holder's licence."

7 Appeals

Section 125 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) A person may appeal to the District Court against—

"(a) a decision of the Authority, under **section 95A**,—

"(i) about the terms and conditions of a permission held by the person; or

"(ii) declining to grant the person a permission or revoking a permission held by the person; or

"(b) a decision of the Authority, under **section 95B**,—

"(i) about the terms and conditions of a licence held by the person; or

"(ii) declining to grant the person a licence or revoking a licence held by the person."

8 New section 142A inserted

The principal Act is amended by inserting, after section 142, the following section:

"142A **Exemptions from approval requirements**

"(1) Without limiting sections 160 and **160A**, the Authority may, from time to time, grant exemptions from any controls that would otherwise attach to a substance on its approval by the Authority under Part V.

"(2) The Authority may grant an exemption under **subsection (1)** only if satisfied that—

"(a) the adverse effects of the substance are being adequately managed; and

"(b) the relevant requirements under Parts XI to XVI continue to apply.

"(3) An exemption under **subsection (1)** may—

"(a) be granted to or in respect of 1 or more of the following:

"(i) any person or persons:

"(ii) any premises or class of premises:

"(iii) any substance or group of substances:

"(b) be expressed to apply either particularly or generally.

"(4) The Authority must notify an exemption granted under **subsection (1)** by—

"(a) specifying the effect, period, and conditions of the exemption in a public notice; and

"(b) if the exemption is granted to a person or in respect of any facility, notifying the person or the manager of the facility of the exemption.

"(5) The Authority may determine the form of public notices and other notifications under **subsection (4)**.

"(6) This section expires on the expiry of Parts XI to XVI and the Seventh Schedule in accordance with section 152, but exemptions granted under **subsection (1)** that have effect immediately before this section expires continue to have effect according to their tenor."

9 Exemptions from regulations

(1) The heading to section 154 of the principal Act is amended by adding the words "**and provisions of Parts XI to XVI**".

(2) Section 154 of the principal Act is amended by adding the following subsections:

"(4) Without limiting the provisions of subsection (1), the Authority may from time to time grant exemptions from any requirements prescribed by any provision of Parts XI to XVI that apply to any substance or group of substances.

"(5) The Authority may grant an exemption under **subsection (4)** only if satisfied that the risks of the substance or group of substances are being adequately managed.

"(6) Subsection (3), with the necessary modifications, applies to exemptions granted under **subsection (4)**.

"(7) The Authority must notify an exemption granted under subsection (1) or **subsection (4)** in relation to a substance by—

"(a) specifying the effect, period, and conditions of the exemption in a public notice; and

"(b) if the exemption is granted to a person or in respect of any facility, notifying the person or the manager of the facility of the exemption.

"(8) The Authority may determine the form of public notices and other notifications under **subsection (7)**."

10 New sections 160A and 160B inserted

The principal Act is amended by inserting, after section 160, the following sections:

"160A **Notices of transfer relating to transitional matters**

"(1) The Authority may from time to time, by notice in the *Gazette*, issue a notice of transfer relating to a certain substance or group of substances that are lawfully used for any purpose or purposes.

"(2) A notice of transfer may do 1 or more of the following:

"(a) provide that the substance or group of substances are no longer subject to the provisions of Parts XI to XVI:

"(b) deem the substance or group of substances to have been assessed and approved by the Authority under section 29 for the purpose or purposes specified in the notice:

"(c) deem the substance or group of substances to have the hazard classifications specified in the notice.

"(3) In every notice of transfer under this section, the Authority must specify 1 or more hazard classifications (as prescribed by regulations made under section 74) for each substance or group of substances concerned after considering the intrinsic properties and degree of hazard of the substance or group of substances.

"(4) Unless varied under **section 160B**, the controls prescribed for each substance or group of substances (as so classified) apply to the substance or group of substances.

"(5) Before issuing a notice of transfer under this section, the Authority must—

"(a) consider the best international practices and standards for the safe management of hazardous substances; and

"(b) do everything reasonably practicable on its part to advise all persons, who in its opinion may be affected by the notice of transfer, of the proposed terms of the notice of transfer; and

"(c) give those persons a reasonable opportunity to make submissions and comments to the Authority on the proposed terms of the notice of transfer; and

"(d) consider all submissions and comments received.

"(6) Section 141A, with the necessary modifications, applies for the purposes of a notice of transfer under this section.

"(7) A notice of transfer under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

"160B **Controls may be imposed for purposes of notice of transfer**

"(1) Before giving a notice of transfer under **section 160A**, the Authority may exercise the powers conferred by **subsection (2)** to enable it to address the risks that the Authority considers relevant.

"(2) For the purpose of **subsection (1)**, the provisions of sections 77 and **77A** are deemed to be incorporated in this section and, subject to **subsection (4)**, apply with the necessary modifications.

"(3) Before varying or deleting any controls for the purpose of **subsection (1)**, the Authority must consider the effects of the variation or deletion on all users and in doing so must have regard to the desirability of controlling hazardous substances consistently for all users.

"(4) **Section 77A(4)** does not apply for the purpose of **subsection (1)** if—

"(a) the control being varied on transfer relates to a previous management practice; or

"(b) the control being deleted on transfer existed under Parts XI to XVI but did not apply to the substance concerned, or did not exist under those Parts."

11 Other amendments to principal Act

The principal Act is amended in the manner set out in the **Schedule**.

s 11

Schedule
Other amendments to principal Act

Section 2(1)

Omit from the definition of **place of work** the expression "(2A)" and substitute the expression "(3)".

Section 20(2)(e)

Add the words ", including any associated permissions granted under **section 95A** and any associated licences granted under **section 95B**".

Section 77

Insert, after subsection (2):

"(2A) If regulations referred to in subsection (2)(a) are made, then, unless the Authority otherwise determines, the regulations do not affect any variations made by the Authority under subsections (3) to (5) before the commencement of the regulations."

Section 82(1)

Insert, after paragraph (a):

"(aa) any approval granted by the Authority under this Act; or".

Section 142

Omit from subsection (2) the words "any regulations made under this Act" and substitute the words "with regulations and notices of transfer made under this Act".

Omit from subsection (3) the words "this Act or regulations made under this Act" and substitute the words "or under this Act".

Section 152

Insert, after subsection (3):

"(3A) In the case of regulations made under section 160(1)(a), subsection (3) of this section applies despite the repeal of section 160(1)(a), (2), and (3) by **section 11** of the Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Act **2003**.

"(3B) Notices of transfer made under **section 160A** continue in force following the expiry of Parts XI to XVI and the Seventh Schedule."

Section 160

Repeal subsections (1)(a), (2), and (3).

Wellington, New Zealand: Published under the authority of the New Zealand Government—2003

5388V8
17-OCT-03
84bar1

Price code: J