



2 May 2022

Minister of Foreign Affairs

For action by

9 May 2022

## Russia Sanctions: Revocations, Amendments and Exemptions

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**BRIEFING** Decision Submission

**PURPOSE** To seek your approval for:

- A process to manage applications for revocation, amendment or exemption under section 13 of the Russia Sanctions Act 2022
- Delegation of your powers and functions to decide applications under section 13 of the Act to the Secretary of Foreign Affairs and Trade and provide consent for the Secretary to sub-delegate to officials.

## Tukunga tūtohua – Recommended referrals

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Minister of Trade and Export Growth

For information by

13 May 2022

## Taipitopito whakapā – Contact details

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NAME	ROLE	DIVISION	WORK PHONE
Andrea Smith <small>s9(2)(g)(ii)</small>	Deputy Secretary Legal Lead	Russia Sanctions Taskforce Russia Sanctions Taskforce	<small>s9(2)(a)</small>

## Mā te Tari Minita e whakakī – Minister's Office to complete

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<input type="checkbox"/> Approved	<input type="checkbox"/> Noted	<input type="checkbox"/> Referred
<input type="checkbox"/> Needs amendment	<input type="checkbox"/> Declined	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Overtaken by events	<input type="checkbox"/> See Minister's notes	

**Comments**

## Russia Sanctions – Revocations, Amendments and Exemptions

### Pito matua – Key points

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- We propose a process for consideration of applications for revocations, amendments and exemptions under the Russia Sanctions Act 2022 (the Act) including standardised application and assessment forms. A diagram of the process is attached as Annex 1 to this submission. Key forms are attached as Annexes 2 and 3.
- An Instrument of Delegation is attached as Annex 4 that, if you consent and approve, will delegate your powers and functions of revocation, amendment or exemption. We recommend that you at least delegate your functions and powers in relation to exemptions from the export prohibition and the tariff increase because these applications are likely to be time sensitive and technical.

The Annexes referred in this submission have been marked out of scope of MFAT's proactive release

Andrea Smith  
for Secretary of Foreign Affairs and Trade

### Tūtohu – Recommendations

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It is recommended that you:

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|---|--|-----------------|
| 1 | <b>Note</b> that section 13 of the Russia Sanctions Act 2022 provides for applications for revocation, amendment and exemption.  | <b>Yes / No</b> |
| 2 | <b>Note</b> that officials have prepared a process for consideration of applications for revocations, amendments and exemptions under the Act including standardised application and assessment forms.                                   | <b>Yes / No</b> |
| 3 | <b>Approve</b> the process for consideration of applications for revocations, amendments and exemptions under the Act including standardised application and assessment forms.   | <b>Yes / No</b> |
| 4 | <b>Note</b> that officials have prepared an Instrument of Delegation with which you can delegate your powers and functions under section 13 of the Act to the Secretary, and give consent to the Secretary to sub-delegate to officials. | <b>Yes / No</b> |
| 5 | <b>Sign</b> the Instrument of Delegation and <b>approve</b> the powers and functions that are to be included in the delegation by indicating your decision in the Schedule.  | <b>Yes / No</b> |
| 6 | <b>Note</b> that officials would consult you on any high profile applications or applications that raise significant policy issues.  | <b>Yes / No</b> |

Hon Nanaia Mahuta  
Minister of Foreign Affairs / Minita Take Aorere

Date:        /        /

## Russia Sanctions – Revocations, Amendments and Exemptions

### Pūrongo – Report

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1. On 24 March 2022, officials advised in our submission to you entitled '*Russia Sanctions – Approach Going Forward*' that advice on the process for revocations, amendments and exemptions under section 13 of the Act would be developed by mid-May.
2. The purpose of this submission is to seek your approval for the process by which applications for revocation, amendment or exemption under section 13 of the Act will be managed. We also seek your approval to the delegation of your powers and functions to decide applications under section 13 of the Act to the Secretary of Foreign Affairs and Trade, with consent to sub-delegate to officials.

### Process for managing applications

3. The process for managing applications under section 13 has been designed to make it simple for applicants to understand and follow, and it will also provide for consistency in approach for similar applications. Applicants begin the process by sending a completed template form to [sanctionsexemptions@mfat.govt.nz](mailto:sanctionsexemptions@mfat.govt.nz). This is then analysed by officials and the analyses, along with a recommendation, is provided to the decision-maker who then makes a decision whether to grant the request. Once the decision is made, officials provide the applicant with the outcome of their application and if required, action the revocation, amendment, or exemption in accordance with the decision. The register is also updated accordingly.
4. As required by the Act and recognised good decision-making principles, a decision criteria for applications under section 13 is based on the following considerations:
  - The purpose of the Russia Sanctions Act 2022 and Russia Sanctions Regulations 2022;
  - Risk of revocation/amendment/exemption benefitting a designated person or entity;
  - The harm to affected persons if revocation/amendment/exemption is not granted;
  - The accuracy of facts and law;
  - The relevance of factors material to the application; and
  - Principles of natural justice.
5. If you agree to delegate some or all of your powers and functions under section 13 of the Act to the Secretary and permit his sub-delegation to officials, the process will be managed and the decision undertaken by a Tier 2 or 3 Manager.
6. The process for managing applications for revocation, amendment or exemption is detailed in the diagram attached as Annex 1.
7. Annex 2 provides a template application form that will be available on the Ministry of Foreign Affairs and Trade's (MFAT) website. Applicants may use this when applying for a revocation, amendment, or exemption under the Act. The template also provides a privacy statement and details of how to submit the form for consideration.
8. Annex 3 provides decision criteria for the decision-maker to use when assessing applications.

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9. We have not included a timeframe for responding as this is likely to vary based on the complexity of the application. Any exemptions will be published in the register on the MFAT website<sup>1</sup>.

### Delegation of powers and functions

10. Where an Act does not specifically prohibit a Minister's delegation of their powers and functions (and the Russia Sanctions Act does not contain such a provision), it is not unusual for Ministers to delegate some or all of their statutory powers and functions to Chief Executives, and permit sub-delegation to officials. The key reason this occurs is to balance the need for Ministers to make the most important decisions with the need to ensure the efficient operation of the Act.
11. As an example, your colleague Hon Damien O'Connor, Minister for Biosecurity, has permitted delegation of some of his powers and functions under the Biosecurity Act 1999 to the Director-General of the Ministry for Primary Industries (MPI), and sub-delegation by the Director-General to other officials within MPI. These delegations include sections 134(3), 145(1) and 145(2) which relate to responding to certain circumstances during biosecurity responses and emergencies. These are more technical and operational provisions which are appropriate for MPI staff to attend to.
12. Turning now to the Russia Sanctions Act, officials expect that applications for revocations and amendments will be rare given the limited extent of dealings between New Zealand persons and currently sanctioned persons, and because of the policy objectives of the regime. For example, an application for revocation of the prohibition on dealing with assets of sanctioned persons, regulation 10 of the Russia Sanctions Regulations 2022 (the Regulations), by either of those two parties would be most unexpected, not least because this regulation goes to the heart of the sanctions imposed.
13. Officials expect applications for exemptions are also likely to be rare, especially given the exceptions which are already in place in regulation 12 which permit New Zealand persons to deal with assets and services of sanctioned persons in certain circumstances. The area most likely to see applications for exemptions is in relation to the export prohibition (regulation 13) and the tariff increase (regulation 16).
14. Because of the breadth of the export prohibition, there is potential for the capture of some goods that do not represent a threat in any way so could reasonably be exempt from the prohibition. This makes requests for exemptions to regulation 13 more likely. This risk was identified in our submission to you of 14 April entitled "*Russia Sanctions – Regulations for Trade Measures*".
15. Officials expect these applications will involve a technical consideration of the type and intended use of a specific product, and will be time sensitive if, for example, a product is stopped at the border. Conversely, they are unlikely to raise significant issues of policy or involve high profile applicants. Officials therefore recommend that you at least permit delegation (and sub-delegation) of the consideration of these exemption applications to officials.
16. For other kinds of applications under section 13, you may wish to delegate these functions and powers to officials on the basis that officials will consult you if they raise significant

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<sup>1</sup> We note that section 13 of the Act also provides for persons to request that the Minister ask the Secretary of Foreign Affairs to amend or revoke a designation notice issued under section 11 of the Act. At this stage we have omitted reference to designation notices from this process. No designation notices have yet been issued under the Act. Further, officials assess it is unlikely that such a request would be made as any notice would simply provide further clarification on prohibitions contained in the Regulations. If this changes, however, officials will consider changing the process to include designation notices.

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issues of policy or high profile applicants. And, even if you delegate your powers and functions you are still at liberty to exercise them yourself should you wish.

17. Under Schedule 6, clause 5 of the Public Services Act 2020, a Minister can delegate, in writing, to a chief executive all or any of the Minister's functions and powers under any enactment. Clause 2 of the same Schedule provides that a chief executive can delegate, in writing, any of the functions or powers of the chief executive (including functions or powers delegated to the chief executive) to officials. Schedule 6, clause 2 (2)(a) provides that delegation of functions or powers delegated to the chief executive by a Minister requires the prior approval of that Minister.
18. An Instrument of Delegation is attached as Annex 4 to provide you, in accordance with the Public Services Act 2020, the option to delegate your functions and powers in relation to applications under section 13 of the Act to the Secretary and give consent for his sub-delegation to officials.

Proactively released by the Ministry of Foreign Affairs and Trade