

## **Catch-all Controls Gazette Notice: Q&A: Version 2 effective 10 November 2020**

### **What are Catch-all controls?**

Catch-all controls apply to goods and technologies which are **not** regulated items under New Zealand's export controls regime for military and dual-use goods (those with civil and military uses)<sup>1</sup>, but which could be put to military or police uses or used to support military or police operations.

### **What is the basis for Catch-all controls?**

Section 97 of the *Customs and Excise Act 2018* (the Act) delegates authority for the operation of catch-all controls to the Secretary of Foreign Affairs and Trade. The Secretary is able to prohibit, by Notice in the Gazette, the exportation of goods described by any use to which they are or maybe intended, directly or indirectly, to be put, if the Secretary considers that prohibition of certain categories of goods is necessary in the public interest.

Catch-all prohibitions under the Act must describe goods by reference to one of the purposes listed in Section 97. These uses are replicated in paragraph 2 of the Gazette Notice.

### **When does the Gazette Notice enter into force?**

The [Gazette Notice](#) is in force from 9 October 2020.

### **What are the main elements of the Catch-all controls that have now been Gazetted?**

The upgraded controls:

- Carry over the existing prohibition on the export of items with an end-use related to weapons of mass destruction and their means of delivery.
- Establish a new prohibition on items for use in terrorist acts, as provided for in the Act.
- Carry forward the existing prohibition on items for military end-use, but remove the caveat that it only apply to countries under a UN arms embargo.
- Extend military use controls to items that "materially enable or support operations or functions of a military or internal security nature".
- Apply controls to all countries and products.
- Provide exemptions for exporters from needing to seek permits for low-risk countries and products; for goods supplied under government assistance programmes; and for parts, components and replacement items (unless incorporated into weapons or used for the production, maintenance or testing of weapons).
- Provide transition timeframes for the entry into effect of some controls to meet industry and research sector concerns.

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<sup>1</sup> Regulated items are listed in the New Zealand Strategic Goods List: [assets/Trade-General/Brokering-weapons-AND-Trading-weapons-and-controlled-chemicals/September-2019-NZ-Strategic-Goods-List-reviewed.docx](#)

### **What countries are exempt?**

Items consigned for **final** use in Australia, Canada, Iceland, Japan, Norway, South Korea, Switzerland, the UK, the United States or a member state of the European Union are exempt.

### **What if my goods are going via an exempt country but will be re-exported to a non-exempt country?**

If you are aware, or should [reasonably be aware](#), that the final destination of your goods will be a non-exempt country for a military use then the Catch-all controls will apply regardless of whether your goods transited or were re-exported from an exempt country.

### **What goods are exempt?**

Animals, food and beverage, or medical, health and sanitary products are exempt.

See also [exemptions](#) for certain parts, components and replacement items

### **Are goods we manufacture offshore exempt?**

Goods which you manufacture offshore, either through a subsidiary or by a contracted manufacturer, and which are then exported to a third country do not come under the catch-all controls.

If the goods are manufactured offshore, imported into New Zealand, and then subsequently re-exported to a non-exempt country they would be subject to the catch-all controls.

### **To whom does the term "Military" refer?**

"Military" includes any armed force, paramilitary force, police force, or militia.

### **What is the rationale for widening the meaning of military end-use?**

The previous scope was limited to items for incorporation into weapons, or for use in the production, maintenance or testing of weapons. This did not provide sufficient coverage of risks involved in facilitating or supporting the actual use of weapons, as well as military or police force activities, e.g. where they may support domestic oppression.

The new definition of military use or applications now encompasses activities that materially enable or support operations and activities of a military or internal security nature. For example the use of a commercial vehicles to support logistic operations.

Activities and operations that fall outside of a military or internal security nature, such as search and rescue or nation building activities (e.g. constructing roads or schools), are excluded.

### **How do I judge if an activity falls within the definition of military end-use or is exempt?**

If you are unsure you can seek your own legal advice, or you can contact the Export Controls team for a determination: [exportcontrols@mfat.govt.nz](mailto:exportcontrols@mfat.govt.nz) or +64 4 4398227.

### **What is meant by the term "primary system"?**

The term primary system means a complete single item (such as a complete radio) or group of items that together form a system. It can be viewed from the perspective of not being a part or component that makes up an item.

### **What is meant by the term "replacement item"?**

A replacement item could be a complete single item or one of a group of items that make up a system. The exemption for replacement items is for one for one replacement of lost, damaged or no longer operable items with a like item. It does not include items which constitute an upgrade of a system or have become obsolete. A replacement item could include a compatible and more advanced model because the original is no longer available.

A replacement item includes software upgrades. Software patches are exempt, but not where they are bundled with an upgrade. Items which would constitute an upgrade will require a permit.

### **What are the new rules around the supply of parts, components and replacement items?**

The new rules are explained below. They:

- Allow continuing support to primary systems which have **already** been exported, but a permit would be required where they are intended for the testing, development, production or maintenance of weapons.
- Allow continuing support to primary systems which will be exported **within** a year of the entry into force of the Gazette Notice (i.e. those where a contract for their supply is concluded with six months of the entry into force of the Gazette Notice), but a permit would be required where they are intended for the testing, development, production or maintenance of weapons.
- Allow continuing support to primary systems which will be exported a year **after** the entry into force of the Gazette Notice, i.e. where a permit has been obtained for the export of the primary system, but a permit would be required where the parts, components or replacement items are intended for the testing, development, production or maintenance of weapons.

- **Note:** The permit for the export of these primary systems will contain a condition that the subsequent supply of parts or components or replacement items, where exempted, is for as long as the situation at the time of approval stands. Any **significant** change in the security circumstances of the country may result in the need to re-consider the exemption for those parts or components or replacement items, and to withdraw it. For example civil war could break out in a country some time/or years after the original permit was issued.
  - If you become aware that there has been a significant change you should consult the Export Control Team.
  - You may be specifically advised by the Export Controls Team that the exemption has been withdrawn.
  - A notice may be posted on the Export Controls website advising that the exemption for a particular country has been withdrawn.
  - You may find Customs will hold your export until Export Controls approval has been given.
- Just because an exemption is withdrawn this does not mean that all exports will be prohibited. Rather, permits will be required and some exports may be possible.

#### **What are the new rules pertaining to transition exemptions for goods exports?**

Exports for which renewal of contract negotiations or pre-existing contract negotiations have yet to be completed, and those negotiations are concluded within six months of the promulgation of the Gazette Notice and the related exports are completed within one year of the promulgation of the Gazette Notice are exempt.

#### **What are the new rules pertaining to transition exemptions for research?**

Exports of research for which contracts/agreements existed prior to the promulgation of the Gazette Notice are exempt.

From the entry into force of the Gazette Notice, research organisations/researchers have one year to conclude any contract/agreement negotiations for research which is under discussion at the time of promulgation or existing contracts/agreements which would be considered for renewal in the one year period following entry into force. With regard to renewals the contract/agreement (not the research itself) must still be concluded within the one year period from the time of entry into force.

For contracts/agreements concluded during the one year period following entry into force of the Gazette Notice, exports of that research are exempt if completed within the five years following entry into force.

## **What process should exporters follow?**

If a person (the **exporter**) is aware, or should reasonably be aware, that any goods are or may be intended for use relating, directly, or indirectly, to any of the uses set out in paragraph 2 of the Gazette Notice, then the exporter should inform the Export Controls team.

This can be done by submitting an application form for either a single, multiple or general (ongoing unlimited) occurrence for export -

<https://www.mfat.govt.nz/en/trade/trading-weapons-and-controlled-chemicals/how-to-export-military-and-dual-use-goods/> - by email to the export controls mailbox: [exportcontrols@mfat.govt.nz](mailto:exportcontrols@mfat.govt.nz)

When making an application you should note in your email that this is a Catch-all controls application.

You will receive a response that either a permit is not required, or that the Catch-all controls do apply and the application will be assessed and processed. The application will then be either approved and a permit to export issued, or declined.

## **What does “reasonably aware” mean?**

“Reasonably aware” means that the exporter should take proactive steps to ascertain if the goods are ultimately intended for military or police use where this is not clear in the first instance.

You should ‘know’ your customer. While not an exhaustive checklist below are some questions that may be relevant:

- Have you had prior dealings or do you have an established relationship?
- Do they exist (e.g. check companies register) or are they a front company?
- Does their website, including contact details, check out?
- Do their premises exist (e.g. if you used Google Street View)?
- Are they a distributor?
- Are they a subsidiary - where is the head office located?

Particularly where the export is to a distributor you should seek information about established, intended or likely customers. Where there is a lack of clarity or a possibility, you could:

- Seek advice from the Export Controls team that the destination would not be problematic.
- Seek to have the distributor sign an undertaking that sales will not be made to the military or police unless with the prior consent of the New Zealand government.
- Seek to have the distributor sign an undertaking that sales will not be made where use is or may be intended for use relating, directly, or indirectly, to the development, production, or deployment of nuclear explosive devices, biological weapons, and chemical weapons, and their respective means of delivery.

Reluctance to sign an undertaking could indicate a potential risk around the export.

**Will the elements of the catch-all controls change in the future?**

A new Gazette Notice can be issued as necessary. While the fundamentals are unlikely to change, it may be that in implementing the controls some revisions are required.

**What if I am unsure whether an application is required?**

If you are unsure you can seek your own legal advice, or you can contact the Export Controls team: [exportcontrols@mfat.govt.nz](mailto:exportcontrols@mfat.govt.nz) or +64 4 4398227.

**What if I still have a question about the Catch-all controls?**

You are most welcome to contact the Export Controls team: [exportcontrols@mfat.govt.nz](mailto:exportcontrols@mfat.govt.nz) or +64 4 4398227