



Biosecurity (Gypsy Moth Levy) Order 2004

Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 11th day of October 2004

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 137 of the Biosecurity Act 1993, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following order.

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Order

1 Title

This order is called the Biosecurity (Gypsy Moth Levy) Order 2004.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

gypsy moth means the organism that has the scientific name *Lymantria dispar*

importer means a person who imports any shipping container or used vehicle into New Zealand

levy year—

- (a) means a period of 12 months beginning on 1 July and ending on 30 June; and
- (b) includes the period beginning on the commencement of this order and ending on 30 June 2005

shipping agent means a person whose business is or includes importing shipping containers or used vehicles for importers

shipping container includes a standardised device used to contain or hold goods while being—

- (a) loaded for carriage by sea; or
- (b) carried by sea; or
- (c) unloaded after carriage by sea

vehicle means a bus, car, truck, utility vehicle, or van.

4 Levy imposed

- (1) A levy is imposed on all shipping containers and used vehicles imported into New Zealand.
- (2) The levy is payable to the Director-General.

5 Importers primarily responsible for paying levy

Each levy year, all importers are primarily responsible for paying the levy.

6 Director-General must collect levy

- (1) The Director-General must collect the levy—
 - (a) in the case of any shipping container or used vehicle imported through a shipping agent, from the shipping agent;
 - (b) in any other case, from the importer.
- (2) The Director-General is not entitled to recover the cost of collection.

*Determination of levy***7 Basis of calculation of levy**

The levy must be calculated on the basis of dividing—

- (a) the estimated annual cost of a surveillance programme for gypsy moth; by
- (b) the estimated number of shipping containers and used vehicles to be imported annually into New Zealand.

8 Maximum rate of levy

The maximum rate of the levy (exclusive of goods and services tax) is \$1 per shipping container or used vehicle.

9 Director-General must fix actual rate

The actual rate of levy—

- (a) for the levy year ending on 30 June 2005 is fixed by the Director-General at \$0.65 (inclusive of goods and services tax) per shipping container or used vehicle; and
- (b) for each subsequent levy year must be fixed by the Director-General after consulting persons he or she considers to be representatives of importers likely to be substantially affected by the levy.

10 Rate if no rate fixed before beginning of levy year

If the Director-General does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed under clause 9.

11 Notification of levy rate

- (1) For the levy year ending 30 June 2005, the Director-General must, as soon as practicable after fixing the rate of levy, notify

- it in the *Biosecurity* magazine published by the Ministry of Agriculture and Forestry.
- (2) For each subsequent year, the Director-General, before the beginning of a levy year, must notify the rate of levy—
 - (a) in the *Biosecurity* magazine; and
 - (b) by notice in the *Gazette*.
 - (3) If the *Biosecurity* magazine ceases to be published, the levy rate must be notified in—
 - (a) any publication that replaces it; or
 - (b) if no publication replaces it, a publication specified for the purposes of this order by the Director-General by notice in the *Gazette*.

Payment of levy

12 When and how levy payable

- (1) The Director-General must send a written demand of the levy payable to a shipping agent or, where there is no shipping agent, to an importer.
- (2) An importer or a shipping agent, as the case may be, must pay the levy payable.
- (3) A shipping agent may recover the levy (and any goods and services tax paid in respect of it) from an importer by recovering the amount of the levy (and any goods and services tax paid in respect of it) as a debt due from an importer.
- (4) A shipping agent is not entitled to charge a collection fee for paying and recovering the levy.
- (5) The levy, plus any goods and services tax payable on the levy, must be paid by the 20th day of the month after the month in which the demand is received.

13 Purposes for which levy must be spent

All levy money paid to the Director-General must be spent on a surveillance programme for gypsy moth.

14 Consultation on how levy spent

- (1) The Director-General must, before the start of each levy year (excluding the levy year ending 30 June 2005), consult persons he or she considers to be representatives of importers

likely to be substantially affected by the levy on how the levy money is to be spent.

- (2) The Director-General must use the following process to consult the representatives of importers:
 - (a) he or she must send to the representatives a proposed budget for the levy year's expenditure; and
 - (b) he or she must give the representatives an opportunity to make submissions to him or her on the proposed budget.

Miscellaneous

15 Records

- (1) The Director-General must, for each levy year, keep records of—
 - (a) the rate at which the levy was collected; and
 - (b) each amount of levy money paid to him or her and the person who paid the amount; and
 - (c) how the levy money paid to him or her was spent.
- (2) The Director-General must ensure that the records referred to in subclause (1) are retained for 2 years after the close of the levy year to which they relate.

16 Remuneration of Auditors

A person appointed as Auditor under section 141B of the Act must be remunerated by the Director-General at a rate determined by the responsible Minister.

Arbitration in case of dispute

17 Appointment of arbitrator

- (1) This clause applies to any dispute about—
 - (a) whether or not a person is required to pay the levy; or
 - (b) the amount of the levy payable.
- (2) The parties to a dispute may agree to submit the dispute to arbitration.
- (3) If the parties are unable to agree on the appointment of an arbitrator, the arbitrator must be appointed in accordance with the First Schedule of the Arbitration Act 1996.
- (4) For the purposes of the Arbitration Act 1996,—

- (a) an agreement under subclause (2) is an arbitration agreement; and
- (b) the arbitrator (whether appointed by agreement or under subclause (3)), is an arbitral tribunal.

18 Application of Arbitration Act 1996 to dispute

Except as provided in clause 17, the provisions of the Arbitration Act 1996 (including the provisions for procedures to be followed by an arbitral tribunal) apply to the resolution of a dispute submitted to arbitration under this order.

19 Payment of arbitration costs

The costs of the arbitration (including the arbitrator's remuneration) must, unless the parties agree otherwise, be determined under the Second Schedule of the Arbitration Act 1996.

20 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by an arbitrator may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days after the making of the decision concerned, or within any longer time that a District Court Judge allows.
- (3) The Registrar of the Court must—
 - (a) fix the time and place for the hearing of the appeal and notify the appellant and the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on all parties to the dispute.
- (4) Any party to the dispute may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the 28th day after its notification in the *Gazette*, imposes a levy on shipping containers and used vehicles that are imported into New Zealand.

The order provides that—

- a levy is imposed on all shipping containers and used vehicles imported into New Zealand:
- the Director-General has fixed the levy rate at \$0.65 (inclusive of goods and services tax) for the levy year ending 30 June 2005:
- the Director-General must fix the levy rate for each subsequent levy year after consulting with certain persons:
- importers are primarily responsible for paying the levy:
- an importer or a shipping agent must pay the levy payable:
- a shipping agent is entitled to recover the levy as a debt due from an importer:
- the Director-General must collect the levy:
- the levy must be calculated on the basis of dividing the estimated annual cost of a surveillance programme by the estimated number of shipping containers and used vehicles to be imported annually into New Zealand:
- the levy may not exceed \$1 per shipping container or used vehicle:
- the levy money must be spent on a surveillance programme for gypsy moth:
- if a dispute arises as to whether or not a person is required to pay a levy or the amount of levy to be paid, the parties may agree to submit the dispute to arbitration:

- the parties' agreement to submit the dispute to arbitration is treated as an arbitration agreement and the provisions of the Arbitration Act 1996 apply:
- either party may appeal the decision of an arbitrator to the District Court.

The levy replaces the charge on shipping containers under the Forest Produce Import and Export Regulations 1989 that were revoked by the Forests (Notice of Intention to Export Indigenous Timber) Regulations 2003.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 14 October 2004.

This order is administered in the Ministry of Agriculture and Forestry.
