



Commodity Levies (Arable Crops) Order 2000

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 24th day of July 2000

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, 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 the Commodity Levies (Arable Crops) Order 2000.

2 Commencement

This order comes into force on 1 September 2000.

3 Interpretation

In this order, unless the context otherwise requires,—

arable crop, or **crop**, means mature seed grown in New Zealand that—

- (a) has been harvested from any plant that is not a tree; and
- (b) is intended—
 - (i) for sale in New Zealand or overseas; or
 - (ii) to be used in the grower's commercial farming operation (whether in the form in which it was harvested or in some modified form)

buyer, in relation to any quantity of arable crop, means the person who bought it from its grower

foundation means the industry organisation referred to in clause 4(2)

grower means a person who grows plants for the purpose of producing arable crop; and, in relation to any quantity of arable crop, means the person who grew the plants from which it was harvested

leviable value, in relation to any amount of arable crop, means the value of the crop determined in accordance with clause 10

levy means the levy imposed by clause 4

levy year means a calendar year; and includes the period 1 September 2000 to 31 December 2000 (both dates inclusive)

manager, in relation to a seed-testing laboratory, means the person for the time being responsible for its day-to-day operation

non-wholesaled quantity means any quantity of arable crop that is—

- (a) sold by its grower—
 - (i) in a form other than in the form in which it was harvested; or
 - (ii) to a person other than a processor, wholesaler, or retailer; or
- (b) used within the grower's commercial farming operation

seed-testing laboratory means a commercial facility in New Zealand where seeds are tested for purity and germination

tested seed means the seed of any plant that is tested at any seed-testing laboratory; and in particular includes any seed requiring to be tested that is grown principally for any 1 or more of the following purposes:

- (a) for providing or creating in New Zealand pasture, turf, lawn, recreational areas, roadside verges, or any 2 or more of those things; or
- (b) for producing export seed that is to be planted overseas principally for the purpose of creating pasture, turf, lawn, recreational areas, roadside verges, or any 2 or more of those things; or
- (c) for production in New Zealand of vegetables, forage crops, or crops used for soil conservation, or any 2 or more of those things; or
- (d) for the multiplication of seed grown principally for any of the purposes specified in paragraphs (a), (b), and (c)

wholesaled quantity means any quantity of arable crop sold by its grower, in the form in which it was harvested, to a processor, wholesaler, or retailer.

4 Levy imposed

- (1) A levy is imposed on all arable crop.
- (2) The levy is payable to the industry organisation known at the commencement of this order as the Foundation for Arable Research Incorporated.

5 Growers primarily responsible for paying levy

The grower of any quantity of arable crop is primarily responsible for paying the levy on it.

6 Seed-testing laboratory to pay levy on tested seed, and recover it from growers

The seed-testing laboratory responsible for testing any sample of tested seed for the first time must pay the levy on the full quantity of seed to which the sample relates, but may recover it from the grower.

7 Buyers to pay levy on wholesaled quantities of arable crops, except tested seed, and recover it from growers

- (1) The buyer of a wholesaled quantity of arable crop (except tested seed) must pay the levy on that quantity, but may recover it from the grower by reducing the amount otherwise payable to the grower.
- (2) The buyer of a wholesaled quantity of arable crop may, by deducting the fee from the levy money payable to the foundation in respect of the quantity, charge the foundation a fee of up to 5% of the amount of that levy for paying and recovering the levy.

8 Grower to pay levy on non-wholesaled quantities of arable crop, except tested seed

The grower of any non-wholesaled quantity of arable crop (except tested seed) must pay the levy on it.

9 Levy may be set at different rates

The levy may be set at different rates on different classes of arable crop.

10 Basis for determining levy

- (1) The amount of levy payable is to be determined on the leviable value of the arable crop, exclusive of any goods and services tax, and before the deduction of any costs and charges.
- (2) The leviable value is to be determined—
 - (a) in the case of tested seed entered for a first test, by reference to the unit price of the cultivar produced; and

- (b) in the case of all other arable crop—
 - (i) that is grown for seed multiplication by its grower, by reference to the unit price of the crop in field-dressed form in the locality where it was grown:
 - (ii) that is processed before the first point of sale, or used in the grower's farming operation, by reference to the unit price of the crop in field-dressed form in the locality where it was grown:
 - (iii) that is to be sold unprocessed, by reference to the sale price of the crop at the first point of sale.
- (3) The unit price of any quantity of arable crop is the price determined by the foundation after consultation with the New Zealand Grain and Seed Trade Association, or its successor.

11 Maximum rate of levy

The maximum rate of the levy is 1.5% of the leviable value exclusive of any goods and services tax.

12 Foundation to fix actual levy rate

- (1) The foundation must, after consultation with arable research groups, determine the actual rate of the levy for any levy year before 1 November in the previous levy year.
- (2) For the period 1 September 2000 to 31 December 2000, the foundation, after consultation with arable research groups, must determine the actual rate of levy before 1 October 2000 and publish that rate in the manner set out in clause 15.

13 Previous rate to apply

If the foundation has not set the actual rate of the levy for a levy year before 1 November in the previous levy year, the actual rate of the levy for that year is to be the actual rate of the levy most recently fixed by the foundation under clause 12.

14 Information to be supplied to foundation

Every grower, buyer, and seed-testing laboratory must supply to the foundation any information the foundation requests in writing for the purpose of calculating the levy.

15 Notification of levy rate

As soon as is practicable after fixing any rate of levy for a levy year, the foundation must publish that rate by notice—

- (a) in the foundation's newsletter to growers and persons required to collect levies under clauses 6 and 7; and
- (b) in the *Gazette*; and
- (c) in 1 or more publications with a wide circulation in rural areas.

16 Levy must be paid monthly

Amounts of levy that become payable during any calendar month must be paid to the foundation before the 21st day of the next month.

17 When levy becomes payable

- (1) The levy on any tested seed is payable on the date that payment of the fee for testing it becomes due.
- (2) The levy on any quantity of arable crop (except tested seed) is payable,—
 - (a) if the crop is sold, on the date on which payment for that quantity becomes due to its grower; or
 - (b) if the crop is not sold, on the date the crop was assigned for use within the grower's commercial farming operation.

18 Levies to be spent by foundation

The foundation must spend or (pending expenditure) invest all levies paid to it.

19 Purposes for which levies may be spent

- (1) The foundation may spend levies for the following purposes:
 - (a) arable crop research and development;
 - (b) education, including the provision of information about technology relating to arable crops;
 - (c) day-to-day administration, promotion, and marketing of the foundation's activities.
- (2) The foundation must not spend any levies on commercial or trading activities.

20 Conscientious objectors

Any grower who objects on conscientious or religious grounds to the manner of recovery of levies by the foundation may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry, and the chief executive must ensure that it is paid to the foundation.

21 Non-disclosure of information

- (1) No officer or employee of the foundation may disclose (except to some other officer or employee of the foundation) any commercially sensitive information obtained—
 - (a) under this order; or
 - (b) in relation to this order, under the Commodity Levies Act 1990.
- (2) Subclause (1) does not affect or prevent—
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
 - (b) the giving of evidence in any legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) in relation to this order, under or in relation to the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent the foundation from disclosing any information (not being information relating to an identifiable individual) or from using any information for the purpose of determining the voting entitlements, and counting the votes, of members of the foundation.
- (4) Subclause (1) does not prevent the foundation from—
 - (a) disclosing any information (not being information relating to an identifiable individual) for statistical or research purposes; or
 - (b) disclosing or using information for the purpose of collecting levies; or
 - (c) disclosing or using any information with the consent of every identifiable individual to whom it relates.

22 Records

- (1) Every manager of a seed-testing laboratory must, in every levy year, keep records of the following matters and retain those records for 2 years after the end of that levy year:
 - (a) the grower of each quantity of tested crop; and

- (b) the variety of each such crop; and
 - (c) whether the test of the crop was a first or later test.
- (2) The foundation must, in every levy year, keep records of the following matters and retain those records for 2 years after the end of that levy year:
- (a) the amount of every levy paid to it; and
 - (b) the date on which the levy was received; and
 - (c) the person who paid the levy; and
 - (d) how (if at all) amounts of levy were invested; and
 - (e) how and when amounts of levy were spent.
- (3) Every buyer of wholesaled quantities of arable crop must, in every levy year, keep records of the following matters and retain those records for 2 years after the end of that levy year:
- (a) each wholesaled quantity of crop bought; and
 - (b) the price paid for it; and
 - (c) the name and address of its grower.
- (4) Every grower who sells a wholesaled or non-wholesaled quantity of arable crop must, in every levy year, keep records of the following matters and retain those records for 2 years after the end of that levy year:
- (a) each wholesaled or non-wholesaled quantity of crop sold; and
 - (b) the price paid for it; and
 - (c) the name and address of its buyer.
- (5) Every grower who assigns a quantity of his or her crop for use within his or her commercial farming operation must, in every levy year, keep records of the following matters and retain those records for 2 years after the end of that levy year:
- (a) the quantity of each such crop; and
 - (b) the purpose for which each such crop has been assigned.
- (6) Every manager of a seed-testing laboratory, buyer, or grower, who is required to keep and retain records under any of sub-clauses (1), (3), (4), and (5) must provide those records to the foundation on request for the purposes of enabling or assisting the determination of any amount of levy payable.

23 Remuneration of persons conducting compliance audit

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 is to be remunerated by the

foundation at a rate determined by the Minister of Agriculture after consultation with the foundation.

Mediation in case of dispute

24 Appointment of mediators

- (1) This clause applies to any dispute concerning—
 - (a) whether or not any person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to the dispute may ask the President of the Institute of Chartered Accountants of New Zealand to appoint a person to resolve the dispute by mediation; and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 31.

25 Remuneration of mediators

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Institute of Chartered Accountants of New Zealand (or a person authorised by the President to do so) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party is to pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

26 Time and place of conference

Every conference organised by a mediator of the parties to a dispute is to be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

27 Conference to be held in private

Except as provided in clause 28, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

28 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to a dispute to attend a conference of the parties organised by the mediator.

29 Right to be heard

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties to the dispute organised by a mediator, may be heard at the conference.

30 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

31 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, the mediator must give each of the parties written notice of the mediator's decision and the reasons for that decision.

32 Appeal to District Court

- (1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 31 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 of the making of the decision concerned, or within any longer time 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 every other party to the dispute.
- (4) Every party 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.

33 Revocation

- (1) The Commodity Levies (Arable Commodities) Order 1994 (SR 1994/282) is revoked.
- (2) Despite subclause (1), amounts of levy that become payable before 1 September 2000 to the foundation under the Commodity Levies (Arable Commodities) Order 1994 continue to be due and payable as if that order had not been revoked.

Marie Shroff,
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 1 September 2000, imposes a levy on arable crops grown in New Zealand for sale or to be used within the grower's commercial farming operation. It revokes and replaces, although it is to some extent wider than, the Commodity Levies (Arable Commodities) Order 1994, which was due to expire in December 2000.

The levy is payable to the Foundation for Arable Research Incorporated.

Unless earlier revoked, the order expires 6 years after it is made by virtue of section 13 of the Commodity Levies Act 1990.

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

Date of notification in *Gazette*: 27 July 2000.

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