



Commodity Levies (Asparagus) Order 2000

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 8th day of May 2000

Present:

His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting on the recommendation of the Minister of Agriculture and on the advice and with the consent of the Executive Council, makes the following order.

Contents

1	Title	18	Consultation on how levies to be spent
2	Commencement	19	General purposes for which levies may be spent
3	Interpretation	20	Conscientious objectors
4	Levy imposed	21	Non-disclosure of information
5	Grower responsible for paying levy	22	Records
6	Periods in respect of which levy to be paid	23	Remuneration of persons conducting compliance audits
7	Amount of levy payable		
8	Returns		
9	When levy must be paid		
10	Additional levy payable where levy not paid in time		<i>Mediation in case of dispute</i>
11	Council to fix levy rate	24	Appointment of mediators
12	Previous rate to apply	25	Remuneration of mediators
13	Notification of levy rate	26	Time and place of conference
14	Maximum rate of levy	27	Conference to be held in private
15	Minimum amount of levy payable	28	Representatives
16	Single rate	29	Right to be heard
17	Levies to be spent by council	30	Evidence

31 Mediator may resolve dispute in
certain cases

32 Appeal to District Court

Order

1 Title

This order is the Commodity Levies (Asparagus) Order 2000.

2 Commencement

This order comes into force on 8 June 2000.

3 Interpretation

In this order, unless the context otherwise requires,—

asparagus means spears of the species *Asparagus officinalis* or of any plant that is a hybrid of that species

commercial asparagus grower means, for any levy year, the occupier of land totalling 500 m² or more that, as at 30 June of the levy year, is planted with asparagus grown for commercial purposes

council means the industry organisation specified in clause 4(2)

levy means the levy imposed by clause 4

levy year—

- (a) means a period of 12 months beginning on 1 April and ending on 31 March; and
- (b) includes the period beginning on 8 June 2000 and ending on 31 March 2001.

4 Levy imposed

- (1) A levy is imposed on all asparagus grown by commercial asparagus growers in New Zealand.
- (2) The levy is payable to the industry organisation known, on the commencement of this order, as the New Zealand Asparagus Council Incorporated.

5 Grower responsible for paying levy

Commercial asparagus growers are primarily responsible for paying the levy.

6 Periods in respect of which levy to be paid

The levy is an annual levy and is payable in respect of each levy year.

7 Amount of levy payable

Subject to the minimum amount of levy specified in clause 15, the amount of levy payable by a commercial asparagus grower in a levy year is the amount calculated in accordance with the following formula:

$$a \times r$$

where—

- a is the area of land in hectares (expressed to 2 decimal places in the case of any part hectare) occupied by the commercial asparagus grower and planted with asparagus as at 30 June of the levy year
- r is the rate of levy for the levy year fixed in accordance with clauses 11 and 12.

8 Returns

- (1) In respect of every levy year, a commercial asparagus grower must give the council written notice (in the form provided by the council, if provided) of—
- (a) the area of land in hectares (expressed to 2 decimal places in the case of any part hectare) occupied by the grower and planted with asparagus as at 30 June of the levy year; and
- (b) the amount of levy payable by the grower calculated under clause 7.
- (2) The notice must be given to the council on or before the latest date for payment of the levy specified in clause 9(2).

9 When levy must be paid

- (1) The due date for payment of the levy by a commercial asparagus grower in any levy year is 31 October of that levy year.
- (2) The latest date for payment of the levy by a commercial asparagus grower in any levy year is 28 February of that levy year.

10 Additional levy payable where levy not paid in time

Where any levy has not been paid on or before the latest date for payment under clause 9(2), the commercial asparagus grower must pay to the council—

- (a) the amount of the levy outstanding as at the latest date for payment; plus
- (b) 10% of that amount.

11 Council to fix levy rate

The council is to fix the actual rate of levy for each levy year at its annual general meeting in that levy year or at any special general meeting called for the purpose and held before 1 October of that levy year.

12 Previous rate to apply

If the actual rate of levy is not fixed by the council for a levy year, the levy for that year is payable at the levy rate last fixed under clause 11.

13 Notification of levy rate

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

- (a) in the *Commercial Grower*; or
- (b) if the *Commercial Grower* ceases to be published, in any publication that replaces it; or
- (c) if the *Commercial Grower* ceases to be published and no publication replaces it, in a publication specified for the purposes of this order by the Minister by notice in the *Gazette*.

14 Maximum rate of levy

The maximum rate at which the levy may be set is \$80 for every hectare of asparagus exclusive of any goods and services tax.

15 Minimum amount of levy payable

The minimum amount of levy payable is the amount that would be calculated under clause 7 on 1 hectare.

16 Single rate

The levy is to be paid at a single rate.

17 Levies to be spent by council

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

18 Consultation on how levies to be spent

(1) The council must consult commercial asparagus growers on how it proposes to spend levies and provide details as to the previous 12 months' expenditure—

- (a) at every annual general meeting of the council; and
- (b) at any special meeting of the council called according to the rules of the council for this purpose.

(2) For the purposes of subclause (1), the council must, at any such meeting,—

- (a) present a budget for the proposed expenditure of levies to be collected in that levy year; and
- (b) present accounts as to the expenditure of levies collected in the previous levy year; and
- (c) allow reasonable time in the agenda of the meeting for commercial asparagus growers to discuss expenditure of levies.

19 General purposes for which levies may be spent

The council may spend levies for the following purposes:

- (a) product research and development;
- (b) market research and development;
- (c) promotion of asparagus;
- (d) quality assurance;
- (e) education;
- (f) day-to-day administration of the council.

20 Conscientious objectors

Any grower who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry; and in that case the chief executive must ensure that it is paid to the council.

21 Non-disclosure of information

- (1) Subject to subclauses (2) and (3), no officer or employee of the council may disclose (otherwise than to some other person who is an officer or employee of the council) any information obtained—
 - (a) under or because of this order; or
 - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Nothing in subclause (1) affects or prevents—
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
 - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or
 - (c) the giving of evidence in any legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) under the Commodity Levies Act 1990 in relation to this order.
- (3) Nothing in subclause (1) prevents the council from—
 - (a) disclosing or using any information (not being information relating to an identifiable person) obtained from a ballot held before the commencement of this order; or
 - (b) disclosing or using any information (not being information relating to an identifiable person) for statistical and research purposes; or
 - (c) disclosing or using any information for the purpose of collecting levies; or
 - (d) disclosing or using any information with the consent of every identifiable person to whom it relates.

22 Records

- (1) Every commercial asparagus grower must, in every levy year, keep records of the following matters and retain those records for at least 2 years after the end of that levy year:
 - (a) the area of land occupied by that grower and planted in asparagus grown for commercial purposes;
 - (b) the amount of levy paid;
 - (c) the name of the entity that paid the levy.
- (2) The council must, in every levy year, keep records of the following matters and retain those records for at least 2 years after the end of that levy year:

- (a) the amount of each levy paid to it in that year and, in relation to each amount,—
 - (i) the day on which it was received; and
 - (ii) the name of the entity that paid it; and
 - (iii) the area of land to which the levy relates;
 - (b) how (if at all) levies paid to it in that year were invested;
 - (c) how and when all levies spent by it in that year were spent.
- (3) Nothing in this clause requires any person to keep a nil record.

23 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the council at a rate determined by the Minister after consultation with the council.

Mediation in case of dispute

24 Appointment of mediators

- (1) If a dispute arises as to—
- (a) whether a person is required to pay a levy; or
 - (b) the amount of levy payable,—
- any party to the dispute may ask the President of the New Zealand Society of Chartered Accountants to appoint a person to organise and preside at a conference of the parties to the dispute, and attempt 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.
- (2) The mediator's appointment is ended if—
- (a) the parties to the dispute resolve it themselves; 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 New Zealand Society of Chartered Accountants (or a person authorised by the President to do so) is to—

- (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 is to 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 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 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) 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 settle the dispute, whether or not they confer directly,—
- the mediator may resolve the dispute for them, and give each of them a written notice of the mediator's decision and the reasons for that decision.
- (2) The parties must comply with a decision of the mediator under subclause (1).

32 Appeal to District Court

- (1) Any party to a dispute who is dissatisfied with a decision made by a mediator under clause 31 may appeal to a District Court against the decision.
- (2) An appeal is to 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 is to—
- (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.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed.

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 8 June 2000, imposes a levy on asparagus grown commercially in New Zealand.

The levy is payable to the New Zealand Asparagus Council Incorporated and is calculated on the basis of the area of land used by the grower to grow asparagus. The levy is additional to the levy imposed by the Commodity Levies (Asparagus) Order 1995 (SR 1995/310) which is payable to the New Zealand Vegetable and Potato Growers Federation Incorporated. The levy payable to the New Zealand Vegetable and Potato Growers Federation Incorporated is used to fund the generic work undertaken by the Federation for all vegetable growers. The levy payable to the New Zealand Asparagus Council is intended to fund activities specifically related to asparagus, including research, promotion and industry development.

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*: 11 May 2000.

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