

Version
as at 17 December 2022



**Biosecurity (National Kiwifruit Pathway Management
Plan—Kiwifruit Levy) Order 2022**
(SL 2022/39)

Cindy Kiro, Governor-General

Order in Council

At Wellington this 21st day of February 2022

Present:

Her Excellency the Governor-General in Council

This order is made under section 100L of the Biosecurity Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Biosecurity given after being satisfied of the matters in section 100L(5) of that Act.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Biosecurity (National Kiwifruit Pathway Management Plan—Kiwifruit Levy) Order 2022.

2 Commencement

This order comes into force on 1 April 2022.

Order: confirmed, on 17 December 2022, by section 15 of the Secondary Legislation Confirmation Act 2022 (2022 No 82).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

exported means exported to any place other than Australia, and **exports** has a corresponding meaning

exporter means any person who exports kiwifruit for sale

grower means a person whose business is, or includes, growing kiwifruit

GST means goods and services tax

kiwifruit means the fruit of any plant of the genus *Actinidia* other than the species *Actinidia arguta*

kiwifruit post-harvest operator means a business that provides services to the kiwifruit industry in relation to the harvesting, sorting, packing, and cool storage of kiwifruit before its distribution to market

levy means the levy imposed by clause 4

levy money means the money paid under this order as a levy

levy year means the period of 12 months that starts on 1 April and ends on 31 March

management agency—

- (a) means Kiwifruit Vine Health Incorporated; and
- (b) includes any successors to that society

National Kiwifruit Pathway Management Plan means the National Kiwifruit Pathway Management Plan made by the Biosecurity (National Kiwifruit Pathway Management Plan) Order 2022

tray equivalent means 3.6 kilograms of kiwifruit.

4 Levy imposed

A levy is payable to the management agency on kiwifruit that is grown in New Zealand and that is exported.

5 How levy may be spent

- (1) The management agency must spend all levy money paid to it on the administration and operation of the National Kiwifruit Pathway Management Plan, including (without limitation) on—
 - (a) implementing pathway management standards, programmes, and controls:
 - (b) research into pathway management:
 - (c) providing information to, and communicating with, the kiwifruit industry in relation to pathway management:
 - (d) pathway surveillance and monitoring:
 - (e) compliance and enforcement:
 - (f) audits:
 - (g) the management agency's administration costs.
- (2) The management agency may invest levy money until it is spent.

*Determination of levy***6 Basis for calculating levy**

- (1) The levy must be calculated—
 - (a) on the basis of cents per kilogram of kiwifruit exported; and
 - (b) at the point of export (being the point at which kiwifruit is loaded on board a ship or an aircraft for export).
- (2) Despite subclause (1)(b), the weight of the fruit may be determined at the point at which the fruit is graded and sorted for export.

7 Single rate of levy

A single rate of levy applies to the export of all kiwifruit.

8 Maximum rate of levy

The maximum rate of levy is 0.194 cents per kilogram (plus GST, if any).

9 Rate of levy payable

- (1) The levy is payable at 0.11 cents per kilogram for the 2022 levy year.
- (2) In respect of a levy payable in respect of a levy year after the 2022 levy year, the management agency must—
 - (a) include the setting of the levy rate as an agenda item for discussion at its annual general meeting; and
 - (b) permit all growers (whether or not those growers are members of the management agency) to—
 - (i) attend that meeting; and
 - (ii) have speaking rights in respect of the proposed levy rate; and
 - (c) set the levy rate before the beginning of the levy year to which it relates.
- (3) The management agency may set the levy rate at zero.
- (4) As soon as practicable after setting the levy rate, the management agency must notify both the levy rate and the levy year to which it applies—
 - (a) in the *Gazette*; and
 - (b) in the management agency's members' newsletter or other similar publication; and
 - (c) by post or email to all growers and exporters known to the management agency (whether or not those growers or exporters are members of the management agency).
- (5) If the management agency fails to set the levy rate in accordance with subclause (2), the levy rate payable for the previous levy year continues to apply.

Payment of levy

10 Grower responsible for payment of levy

The grower is the person responsible for paying the levy.

11 No exemptions from responsibility for payment of levy

There are no exemptions for growers from the responsibility for paying the levy under clause 10.

12 When and how levy must be paid

- (1) The due date for payment of a levy is the date on which the kiwifruit reaches the point of export (*see* clause 6(1)(b)).
- (2) The latest date for payment of the levy is the 90th day after the due date for payment.
- (3) The levy must be paid to the exporter (*see* clause 13).
- (4) An exporter may recover the amount of any levy payable, and any GST payable on it, from the grower as a debt due to the exporter by the grower.
- (5) An exporter who buys kiwifruit directly from a grower or exports kiwifruit on a grower's behalf may recover the amount of the levy, and any GST payable on it, by deducting the amount from the exporter's payment to the grower.

13 Exporter responsible for collecting levy

- (1) The exporter is responsible for collecting the levy.
- (2) The exporter must pay the levy to the management agency.

14 Exporter must make returns to management agency

- (1) An exporter must, when paying the levy to the management agency, provide a completed return in a form approved by the management agency.
- (2) The return must include, in relation to the levy being paid,—
 - (a) the quantity of kiwifruit exported; and
 - (b) the date or dates on which the kiwifruit was exported; and
 - (c) the amount of levy paid per kilogram, or tray equivalent, of kiwifruit exported on behalf of each grower; and
 - (d) the name or names of the grower or growers.

15 Exporter may not charge recovery fee

The exporter is not entitled to charge a fee for recovering the levy.

Miscellaneous

16 Records

- (1) A grower must keep records, for each levy year, of—

- (a) the quantity of kiwifruit produced and sold; and
 - (b) the name of the kiwifruit post-harvest operator or exporter that the grower uses; and
 - (c) the amount of levy money paid to the exporter in accordance with clause 12 or the Director-General in accordance with clause 17, as the case may be; and
 - (d) the quantity of kiwifruit to which the levy paid relates.
- (2) An exporter must obtain and keep records, for each levy year, of—
 - (a) the quantity of kiwifruit exported; and
 - (b) the amount of levy money paid, in respect of each grower, to the management agency in accordance with clause 13; and
 - (c) the name of each grower of kiwifruit exported; and
 - (d) the values and classes of kiwifruit exported; and
 - (e) every Customs declaration in respect of the kiwifruit exported.
- (3) The management agency must keep records, for each levy year, of the following:
 - (a) each amount of levy money paid to it; and
 - (b) for each amount of levy money,—
 - (i) the date on which the money is received; and
 - (ii) the name of the person who paid the money; and
 - (c) for all levy money paid to it, how the money has been spent or invested.
- (4) Records must be kept for at least 2 years after the levy year to which the records relate.
- (5) Every grower and exporter who is required to keep records must provide the management agency with information from the records as soon as is reasonably practicable after receiving a request, by post or email, from the management agency for the information.

17 Conscientious objectors

- (1) A 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 Director-General.
- (2) The Director-General must pay the amount to the management agency.

18 Remuneration payable to auditor

- (1) An auditor appointed under section 100P of the Act is entitled to receive remuneration (as provided for under section 100P(8) of the Act) for the auditor's fees and allowances.

- (2) The fees and allowances are payable by the management agency at a rate agreed to by the Minister and the management agency that the Minister is satisfied is reasonable.

Arbitration in case of dispute

19 Appointment of arbitrator

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) The parties to a dispute may agree to submit the dispute to arbitration.
- (3) If the parties to a dispute are unable to agree on the appointment of an arbitrator, the arbitrator must be appointed in accordance with the rules in Schedule 1 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.

20 Application of Arbitration Act 1996 to dispute

Except as provided in clause 19, 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.

21 Payment of arbitration costs

The costs of the arbitration (including the arbitrator's remuneration) must, unless the parties agree otherwise, be determined under the rules in Schedule 2 of the Arbitration Act 1996.

22 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by an arbitrator may appeal to the 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.

Michael Webster,
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 April 2022, imposes a levy on kiwifruit that is grown in New Zealand and that is exported. The levy must be paid by growers. A grower is defined in *clause 3* as a person whose business is, or includes, growing kiwifruit. The levy is payable to the management agency (which is defined in *clause 3* as meaning Kiwifruit Vine Health Incorporated and including any successors to that society). The management agency must spend the levy money on the administration and operation of the National Kiwifruit Pathway Management Plan, which is made under clause 4 of the Biosecurity (National Kiwifruit Pathway Management Plan) Order 2022.

This order must be confirmed by an Act before the close of 30 June 2023. If it is not confirmed, it will be revoked on the close of that date. *See* subpart 3 of Part 5 of the Legislation Act 2019.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 24 February 2022.

Notes

1 *General*

This is a consolidation of the Biosecurity (National Kiwifruit Pathway Management Plan—Kiwifruit Levy) Order 2022 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Confirmation Act 2022 (2022 No 82): section 15