

BIOSECURITY (BOVINE TUBERCULOSIS---CATTLE LEVY) ORDER 1998

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 18th day of December 1998

Present:

The Right Hon Jenny Shipley Presiding in Council

PURSUANT to section 90 of the Biosecurity Act 1993, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and on the recommendation of the Minister for Food, Fibre, Biosecurity and Border Control, makes the following order.

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ORDER

1. Title and commencement---(1) This order may be cited as the Biosecurity (Bovine Tuberculosis---Cattle Levy) Order 1998.

(2) This order comes into force on 14 January 1999.

2. Interpretation---(1) In this order, unless the context otherwise requires,---

``Act" means the Biosecurity Act 1993:

``Adult cattle" means a cattle beast that exceeds 27 kg dressed weight:

``Board" means the Animal Health Board (Incorporated):

``Cattle" means any animal of the Bovidae family:

``Licensed premises" means a licensed abattoir, licensed export slaughterhouse, or rural slaughterhouse, (within the meaning of the Meat Act 1981):

``President of the relevant District Law Society" means the President of the District Law Society of the district where the person who is in dispute with the Board resides.

(2) Any term or expression that is not defined in this order, but that is defined in the Act, has the meaning given to it by the Act.

3. Levy imposed---There is imposed on all adult cattle slaughtered in licensed premises a levy payable to the Board for the purposes of partially funding the implementation of the National Bovine Tuberculosis Pest Management Strategy.

4. Owner responsible for paying levy---The owner of any adult cattle at the time of slaughter is responsible for paying the levy.

5. Licensee of licensed premises to collect levy and pay it to Director-General---A licensee of licensed premises where adult cattle are slaughtered must collect the levy from the owner of the adult cattle slaughtered and pay the levy to the Director-General in accordance with this order.

6. Licensee of licensed premises may recover levy from owner---(1) A licensee of licensed premises who has paid levy money in respect of any adult cattle, and who was not the owner of the adult cattle when slaughtered, may recover from the owner of the adult cattle when slaughtered all or part of any levy money paid, either as a debt or by deducting it from any money in the licensee's hands belonging or payable to the owner.

(2) A licensee of licensed premises is not entitled to recover the cost of levy collection and estimated amounts.

7. Director-General to account to Board for all levy money---Except as provided in section 17 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997, all levy money received by the Director-General must be accounted for in full to the Board.

8. Basis for calculation of levy---The basis for the calculation of the levy is the number of adult cattle slaughtered in a licensed premises.

9. Levy to be paid at single rate---The levy is to be paid at a single rate.

10. Maximum rate of levy---The maximum rate of the levy is \$10 per head of adult cattle (exclusive of GST).

11. Board to fix actual rate of levy---(1) The actual rate of the levy is to be fixed by the Board, after consultation with members of the Board, at any meeting of the directors of the Board.

(2) In fixing the rate of levy, the Board must have regard to---

- (a) The expected total costs of implementing the strategy for the current financial year; and
- (b) The share of costs to be funded from the levy as established by the funding formula set out in Chapter 12.5 of the Board's proposal for a national pest management strategy for bovine tuberculosis notified in the Gazette on 16 November 1995; and
- (c) The expected number of adult cattle that will be slaughtered in licenced premises in that year.

12. Notification of rate of levy---As soon as practicable after fixing a rate of levy, the Board must notify the rate of the levy---

- (a) By notice in the Gazette; and
- (b) By notice in the publication *Straight Furrow* or, where that publication has ceased to be published, a publication for the time being specified for the purposes of this order by the Director-General by notice in the Gazette.

13. Levy returns---(1) The licensee of licensed premises where adult cattle are slaughtered must make a return to the Director-General of the adult cattle slaughtered there.

(2) The levy return---

- (a) Must be in the form determined by the Director-General after consulting the Board; and
- (b) Must be made to the Director-General within 10 days after the end of the period to which the return relates; and
- (c) In the case of a rural slaughterhouse, must be made in respect of quarterly periods ending with the last day of March, June, September, and December; and
- (d) In all other cases, must be made in respect of weekly periods.

14. Payment of levy---(1) The Director-General must make to licensees of licensed premises a written demand of any levy money payable.

(2) The Board may, if a levy return is not made to the Director-General within the time specified in clause 13 (2) (b), or if the Board is not satisfied that the information contained in a levy return is complete and correct,---

- (a) Estimate the levy money payable; and
- (b) Make a written demand or authorise the Director-General to make a written demand for the levy money estimated under paragraph (a).

(3) Every licensee to whom a demand is made under subclause (1) must, within 18 days after the making of the demand, pay the amount demanded---

- (a) Into a bank account of the Ministry specified by the Director-General, for the benefit of the Director-General; or
- (b) With the approval of the Director-General, into an office of the Ministry specified by the Director-General.

(4) Every licensee to whom a demand is made under subclause (2) must pay the amount demanded---

- (a) Into a bank account of the Ministry specified by the Director-General, for the benefit of the Director-General; or
- (b) With the approval of the Director-General, into an office of the Ministry specified by the Director-General.

(5) An amount required by subclause (4) to be paid must be paid,---

- (a) If the licensee has not earlier under clause 15 disputed the validity of the estimate concerned, within 18 days after the making of the demand; or
- (b) If the estimate concerned has been confirmed or substituted under clause 15 (3) (c), within 18 days after the giving of the notice confirming it or substituting it for another.

15. Licensee may dispute estimate---(1) Within 10 days after the making of a demand under clause 14 (2) to the licensee of any licensed premises (other than a demand substituted for another under subclause (3) (c) (i) of this clause), the licensee may dispute the estimated amount demanded by written notice to the Board---

- (a) Containing or accompanied by any written evidence or argument the licensee wishes to bring to the Board's attention; and
- (b) Accompanied by a copy of the demand.

(2) If the demand was made by the Director-General, the licensee must give the Director-General a copy of the notice and the material accompanying it.

(3) Within 15 days of receiving a notice of dispute, the Board must---

- (a) Consider the matters raised in it; and
- (b) Undertake any audit of the licensee's operations the Board thinks appropriate and the licensee allows; and
- (c) By written notice to the licensee,---
 - (i) Withdraw the demand, and substitute another for it; or
 - (ii) Withdraw the demand, and indicate that no other will be

- substituted for it; or
(iii) Confirm the demand; and
(d) Give the Director-General a copy of the notice.

16. Purpose for which levy money to be spent---The only purposes for which the Board may spend levy money are disease control relating to cattle, vector control, and the payment of common costs (as these terms are defined in the Biosecurity (National Bovine Tuberculosis Pest Management Strategy) Order 1998 (S.R. 1998/179)).

17. Consultation on how levy money to be spent---Before the commencement of a financial year, the Board must consult with the following organisations (which are members of the Board) on how levy money is to be spent in that financial year:

- (a) The New Zealand Dairy Board:
- (b) The New Zealand Meat Board:
- (c) The Federated Farmers of New Zealand (Inc.).

SPART : Miscellaneous Matters

Miscellaneous Matters

18. Levy money to be held in separate trust accounts---(1) Funds from which payments of levy are made are to be held on trust in separate accounts.

(2) The licensee of licensed premises must deposit in the trust account an amount equal to the levy on any adult cattle slaughtered at the premises within 15 days after the day of slaughter.

SPART : Miscellaneous Matters

19. Records relating to levy to be kept---(1) A person who makes a levy return under clause 13 or pays levy money under clause 14 must keep accurate records of the payment and full particulars of the transaction to which the payment related.

(2) All such records must be preserved for a period of not less than 2 years from the date they are made.

SPART : Miscellaneous Matters

20. Remuneration of persons conducting compliance audit---A person appointed as an auditor under section 95B of the Act must be remunerated by the Board at a rate determined by the Minister after consultation with the Board.

SPART : Arbitration in Case of Dispute

Arbitration in Case of Dispute

21. Appointment of arbitrator in case of dispute---(1) If a dispute

arises as to---

(a) Whether or not any person is required to pay the levy; or

(b) The amount of the levy any person is required to pay,---

the parties may agree to submit the dispute to arbitration and that agreement is an arbitration agreement for the purposes of the Arbitration Act 1996.

(2) 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 and, whether by agreement or in accordance with the Arbitration Act 1996, the arbitrator is an arbitral tribunal for the purposes of the Arbitration Act 1996.

SPART : Arbitration in Case of Dispute

22. Procedures and other matters relating to resolution of disputes---Except as provided in clause 24, the provisions of the Arbitration Act 1996, including the provisions for procedures to be followed by an arbitral tribunal, apply to the resolution of all disputes submitted to arbitration in accordance with this order.

SPART : Arbitration in Case of Dispute

23. Payment of arbitration costs---The costs of the arbitration, including the arbitrator's remuneration, must, unless the parties agree otherwise, be determined in accordance with the Second Schedule of the Arbitration Act 1996.

SPART : Arbitration in Case of Dispute

24. Appeal to District Court---(1) Any 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 of the making of the decision concerned, or within any longer time as 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 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.

MARIE SHROFF,
Clerk of the Executive Council.

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

Date of notification in Gazette: 22 December 1998

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