



Commodity Levies (Arable Crops) Order 2018

Patsy Reddy, Governor-General

Order in Council

At Wellington this 21st day of May 2018

Present:

Her Excellency the Governor-General in Council

This order is made under section 4 of the Commodity Levies Act 1990—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Agriculture given in accordance with sections 5 and 6 of that Act.

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Order**1 Title**

This order is the Commodity Levies (Arable Crops) Order 2018.

2 Commencement

This order comes into force on 1 July 2018.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

arable crops or crops—

- (a) means the following crops harvested:
 - (i) grain cereal, legume, and pulse grain crops:
 - (ii) herbage seed crops:
 - (iii) oilseeds:
 - (iv) crops grown for seed or for seed multiplication for use in New Zealand or overseas:
 - (v) hybrid and open pollinated vegetable and flower seeds; but
- (b) excludes the following crops:
 - (i) maize grain, maize silage, and cereal silage:
 - (ii) tree and fruit crops

collection agent—

- (a) means a person whose business is or includes buying arable crops from a grower for resale; and
- (b) includes—
 - (i) a person who buys arable crops grown under contract:
 - (ii) a person who buys arable crops for the purpose of resale as a constituent part of a compound

Director-General means the chief executive of the Ministry for Primary Industries

FAR means the industry organisation that, on the commencement of this order, was known as the Foundation for Arable Research Incorporated

grower means a person whose business is or includes growing arable crops

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 4

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

levy year means,—

- (a) for the first levy year, the period that begins on 1 July 2018 and ends on 31 December 2018; and
- (b) for all levy years other than the first and the last levy years, a period of 12 months that begins on 1 January and ends on 31 December

mediator means—

- (a) a person appointed under clause 25; and
- (b) for a particular dispute, the mediator appointed to resolve the dispute

selling price means the following prices (excluding GST) before the addition of any storage and freight charges and before the deduction of any costs, commission, or other charges:

- (a) in relation to arable crops grown for seed multiplication, the price that the arable crops would have attracted in field-dressed form in the locality in which the crops are grown:
- (b) in relation to arable crops that are processed before the first point of sale or used in feed lotting or intensive livestock farming or other similar activity within the grower's farming operation, the price that the crops would have attracted in field-dressed form in the locality in which the crops are grown:
- (c) in relation to any other arable crops, the price of the crops at the first point of sale.

Levy imposed

4 Levy on arable crops

- (1) This order imposes a levy on arable crops.
- (2) The levy must be paid to FAR.

Paying levy

5 Growers primarily responsible for paying levy

Growers of arable crops are primarily responsible for paying the levy.

6 Exemption

A grower is exempt from paying the levy in a levy year if—

- (a) the grower uses the arable crops in their farming operation; and
- (b) the amount of levy that would be payable on the arable crops in that levy year does not exceed \$50 (excluding GST).

7 Collection agent must pay levy and recover it from growers

- (1) A collection agent who buys arable crops from a grower—
 - (a) must pay the levy (including any GST payable on it) on the arable crops; and
 - (b) may recover the levy (and any GST payable on it) from the grower by—
 - (i) deducting the amount of levy from the collection agent's payment to the grower at the first point of sale; or

- (ii) recovering the amount as a debt due to the collection agent from the grower.
- (2) A collection agent who pays the levy to FAR may deduct from the levy a collection fee of not more than 1% of the amount of levy collected (excluding GST) plus the GST payable on the fee.

8 Conscientious objectors

- (1) A grower or collection agent who objects on conscientious or religious grounds to paying the levy in the manner provided for in this order may pay the amount concerned to the Director-General.
- (2) The Director-General must pay the amount to FAR.

9 When levy payable

- (1) The due date for payment of an amount of levy on any quantity of arable crops is,—
 - (a) if the arable crops (including arable crops processed by the grower) are sold, the date on which payment for that quantity becomes due to its grower or is made to the grower (whichever is earlier); or
 - (b) if the arable crops are not sold, the date on which the crops were assigned for use within the grower's farming operation.
- (2) If an amount of levy payable for a month is \$2,000 or greater (excluding GST), the latest date for payment is the last day of the month following the due date for payment.
- (3) If an amount of levy payable for a month is less than \$2,000 (excluding GST), the payer may choose to combine the levy payment for the month with levy payments for 1 or more subsequent months in the same quarter, in which case the latest date for payment is as follows:

Combined levy

Combined levy that comprises payments for the first and second month of a relevant quarter and that is \$2,000 or more plus GST

Combined levy that comprises payments for the first and second month of a relevant quarter and that is less than \$2,000 plus GST

Combined levy that comprises payments for the second and third month of a relevant quarter (regardless of the amount)

Combined levy that comprises payments for the first, second, and third month of a relevant quarter (regardless of the amount)

Latest date for payment

Last day of the third month of the relevant quarter

Last day of the month following the close of the relevant quarter

Last day of the month following the close of the relevant quarter

Last day of the month following the close of the relevant quarter

- (4) To avoid doubt, the latest date for payment of a levy relating to the third month of a relevant quarter (regardless of the amount and whether it is part of a combined levy) is the last day of the month following the close of the relevant quarter.

- (5) In this clause, **relevant quarter** means (as applicable) the following dates:
- (a) 1 January to 31 March:
 - (b) 1 April to 30 June:
 - (c) 1 July to 30 September:
 - (d) 1 October to 31 December.

10 Additional levy for late payment

- (1) If a grower or collection agent does not pay an amount of levy money by the required date, the grower or collection agent must pay FAR,—
- (a) for the first month, a further 5% of the unpaid amount; and
 - (b) for each subsequent month that the amount (or part of the amount) remains unpaid after the required date, a further 1% of the amount of the unpaid levy.
- (2) Any additional levy imposed under subclause (1) that remains unpaid is not itself subject to subclause (1).

Setting levy rate

11 Basis for calculating levy

FAR must calculate the levy payable in a levy year on the basis of the selling price of the arable crops.

12 Levy may be set at different rates

FAR may set different rates of levies for different classes of arable crops.

13 Maximum levy rate

The maximum rate of the levy is 1.5% of the selling price.

14 Fixing levy rate

- (1) The levy on arable crops for the first levy year is—
- (a) 0.9% of the selling price for all grain and seed; and
 - (b) 0.6% of the selling price for all hybrid vegetable seeds.
- (2) For each subsequent levy year, FAR must fix the levy rate or rates before the start of the levy year in accordance with its decision-making rules.
- (3) If FAR does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate most recently fixed under this clause.

15 Notifying levy rate

As soon as practicable after fixing a levy rate for a levy year, FAR must notify that rate—

- (a) in its newsletter to growers and collection agents; and

- (b) in the *Gazette*; and
- (c) on its Internet site.

Spending levy money

16 FAR must spend levy money

FAR must—

- (a) spend all the levy money paid to it; and
- (b) invest all levy money until it is spent.

17 Purposes for which levy money may be spent

- (1) FAR may spend levy money for all or any of the following purposes relating to arable crops or growers:
 - (a) research and development:
 - (b) education and training:
 - (c) collection, collation, and publication of information:
 - (d) day-to-day administration of FAR.
- (2) FAR must not spend levy money on commercial or trading activities.

18 Consulting on spending levy money

- (1) Each levy year, FAR must consult growers on how it proposes to spend levy money.
- (2) FAR may use the following methods to consult growers:
 - (a) discussions with local arable research groups and grower research committees:
 - (b) annual meetings, seminars, and field days.

Returns, records, and confidentiality

19 Returns

- (1) FAR may request, in writing, from each grower and collection agent any information that FAR reasonably requires to determine the amount of levy payable by the grower or collection agent.
- (2) Each grower and collection agent must, as soon as is reasonably practicable after receiving a request from FAR, supply FAR with a written return of the information requested.

20 Growers must keep records

- (1) A grower who sells arable crops must, in each levy year, keep records of—
 - (a) each quantity of arable crops sold; and
 - (b) the price paid for each quantity of arable crops; and

- (c) the name and address of the buyer of each quantity of arable crops; and
 - (d) the amount of levies paid.
- (2) A grower who assigns any quantity of arable crops for use within the grower's farming operation or processes the arable crops before sale must, in each levy year, keep records of—
- (a) the quantity of arable crops assigned for use or processed (as the case may be); and
 - (b) in the case of arable crops assigned for use within the grower's farming operation, the purpose that the quantity of arable crops was assigned for.

21 Collection agents must keep records

A collection agent must, in each levy year, keep records of,—

- (a) for each grower from whom the collection agent bought arable crops,—
 - (i) each quantity of arable crops bought from the grower; and
 - (ii) the price paid for each quantity of arable crops; and
 - (iii) the grower's name and address; and
- (b) each amount of levy money paid to FAR and the date of each payment.

22 FAR must keep records

FAR must, in each levy year, keep records of, —

- (a) for each amount of levy money received,—
 - (i) the amount received; and
 - (ii) the date on which it was received; and
 - (iii) the name and address of the person who made the payment:
- (b) how the levy money was spent and invested.

23 Records must be kept for 2 years

The records required by clauses 20 to 22 must be kept for at least 2 years after the end of the levy year to which they relate.

24 Confidentiality of information

- (1) This clause applies to information obtained—
 - (a) under or because of this order; or
 - (b) under the Act in relation to this order.
- (2) A person must not disclose information to anyone other than an officer or employee of FAR unless the disclosure is—
 - (a) the giving of evidence in any legal proceedings taken in relation to this order; or
 - (b) required by law; or

- (c) the production of records or accounts under section 17(1) of the Act; or
 - (d) the production of any statement under section 25 of the Act.
- (3) FAR may disclose information—
- (a) for the following purposes:
 - (i) statistical or research purposes that do not involve the disclosure of personal information;
 - (ii) invoicing or collecting the levy; and
 - (b) as required by law; and
 - (c) if every identifiable person to whom the information relates consents.

Dispute resolution

25 Appointing mediators

- (1) This clause applies to a dispute about—
- (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) A party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked, the President, or a person authorised by the President, may appoint a person to resolve the dispute by mediation.
- (4) 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 32.

26 Remunerating mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) as 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 Arbitrators and Mediators Institute of New Zealand Incorporated, or a person authorised by the President, 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 must pay.
- (3) Each party must pay to the mediator the amount or amounts fixed and specified under subclause (2).

27 Conferences under control of mediator

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties by post or email; and
- (c) preside at the conference.

28 Conferences must be held in private

Unless clause 29 applies, only the parties to a dispute may attend a conference with the mediator.

29 Representatives

A mediator may allow a representative of a party to a dispute to attend a conference with the mediator if the mediator is satisfied that it is appropriate to do so in all the circumstances.

30 Right to be heard

Each person who attends a conference may be heard at the conference.

31 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 their own initiative,—
 - (a) seek and receive any evidence that they think desirable to resolve the dispute; and
 - (b) make any investigations and inquiries that they think desirable to resolve the dispute.
- (3) A mediator may require a person giving evidence at a conference to verify the evidence by statutory declaration.

32 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) A mediator who resolves a dispute under subclause (1) must give each party written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

33 Mediation costs

Each party must pay their own costs in relation to the mediation.

34 Appeal to District Court

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

*Compliance audits***35 Remunerating auditors**

FAR must remunerate a person appointed as an auditor under section 15 of the Act at a rate determined by the Minister of Agriculture after consultation with FAR.

*Revocation***36 Order revoked**

The Commodity Levies (Arable Crops) Order 2012 (SR 2012/161) is revoked.

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 July 2018, imposes a levy on arable crops grown in New Zealand for sale or to be used within the grower's farming operation. Growers are primarily responsible for the payment of the levy, but collection agents who buy arable crops from a grower must pay the levy. Collection agents may recover the levy from growers. The levy is payable to the Foundation for Arable Research Incorporated.

Before this order, a levy was imposed on arable crops by the Commodity Levies (Arable Crops) Order 2012. This order revokes and replaces that order. The revoca-

tion does not affect amounts of levy money that became payable under that order before the revocation.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2019, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act. If this order is confirmed, it will be revoked at the end of 30 June 2024 (the day before the sixth anniversary of the date on which it came into force), unless it is extended under section 13(2) of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 24 May 2018.

This order is administered by the Ministry for Primary Industries.