



Commodity Levies (Cereal Silage) 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 (Cereal Silage) 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

cereal silage means whole cereal or pulse crops grown and harvested for silage or processed and stored for animal feed

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 who grows cereal silage for commercial purposes

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 rate means the rate fixed under clause 13

levy year means the period that—

- (a) begins on 1 July 2018 and ends on 31 December 2018; and
- (b) for each subsequent year, the period of 12 months that begins on 1 January and ends on 31 December

mediator means—

- (a) a person appointed under clause 23; and
- (b) for a particular dispute, the mediator appointed to resolve the dispute.

Levy imposed

4 Levy on cereal silage

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

Paying levy

5 Growers primarily responsible for paying levy

Growers of cereal silage are primarily responsible for paying the levy.

6 Exemption

A grower is exempt from paying the levy in a levy year in respect of an area of land from which cereal silage is harvested if—

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

7 Conscientious objectors

- (1) A grower 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 of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to FAR.

8 When levy payable

- (1) The due date for payment of the levy on cereal silage harvested from an area of land is the date on which the cereal silage on that land is harvested.
- (2) The latest date for payment of the levy is the last day of the month following the due date for payment.

9 Additional levy for late payment

- (1) If a grower does not pay an amount of levy money by the required date, the grower must pay FAR,—
 - (a) for the first month, an additional levy of 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, an additional levy of 1% of the amount of the unpaid levy.
- (2) Any additional levy imposed by subclause (1) that remains unpaid is not itself subject to subclause (1).

*Setting levy rate***10 Basis for calculating levy**

FAR must calculate the levy on the basis of the area of land from which cereal silage is harvested.

11 Levy must be paid at single rate

The levy must be paid at a single rate.

12 Maximum levy rate

The maximum rate of the levy is \$25 per hectare of land from which cereal silage is harvested (excluding GST).

13 Fixing levy rate

- (1) The levy on cereal silage for the first levy year is \$10 per hectare of land from which cereal silage is harvested (excluding GST).
- (2) For each subsequent levy year, FAR must fix the levy rate 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.

14 Notifying levy rate

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

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

Spending levy money

15 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.

16 Purposes for which levy money may be spent

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

17 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

18 Returns

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

19 Growers must keep records

A grower who harvests cereal silage must, in each levy year, keep records of—

- (a) the area of land from which cereal silage is harvested; and
- (b) the date and amount of each levy paid.

20 FAR must keep records

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

- (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.

21 Records must be kept for 2 years

The records required by clauses 19 and 20 must be kept for at least 2 years after the end of the levy year to which they relate.

22 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;
 - (b) as required by law; and
 - (c) if every identifiable person to whom the information relates consents.

*Dispute resolution***23 Appointing mediators**

- (1) This clause applies to a dispute about—
 - (a) whether any 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 30.

24 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).

25 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.

26 Conferences must be held in private

Unless clause 27 applies, only the parties to a dispute may attend a conference with the mediator.

27 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.

28 Right to be heard

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

29 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.

30 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.

31 Mediation costs

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

32 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

33 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

34 Order revoked

The Commodity Levies (Cereal Silage) Order 2012 (SR 2012/162) 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 cereal silage harvested by growers. Growers are primarily responsible for the payment of the levy. The levy is payable to the Foundation for Arable Research Incorporated.

Before this order, a levy was imposed on cereal silage by the Commodity Levies (Cereal Silage) Order 2012. This order revokes and replaces that order. The revocation 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.