



Biosecurity (System Entry Levy) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 31st day of May 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 137 of the Biosecurity Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Biosecurity, makes the following order.

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Order

1 Title

This order is the Biosecurity (System Entry Levy) Order 2010.

2 Commencement

This order comes into force on 1 July 2010.

3 Interpretation

(1) In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

chief executive means the chief executive of the New Zealand Customs Service

Customs computerised entry processing system means the computer system maintained and operated by the New Zealand Customs Service under the Customs and Excise Act 1996

importation has the same meaning as in section 2(1) of the Customs and Excise Act 1996

importer has the same meaning as in section 2(1) of the Customs and Excise Act 1996

leviable importation means an importation on which a levy is payable in accordance with this order

levy means the levy imposed by clause 4

levy year—

- (a) means a period of 12 months beginning with 1 July and ending on 30 June; and
 - (b) includes the period beginning on the commencement of this order and ending on 30 June 2011.
- (2) In this order, a term or expression that is defined in the Act and used, but not defined, in this order has the same meaning as in the Act.

4 Levy imposed

- (1) A levy is imposed on all importations of goods for which an import entry has been made in the Customs computerised entry processing system (unless an exemption from the import entry transaction fee applies under regulation 24A of the Customs and Excise Regulations 1996), including—
- (a) import entries:
 - (b) simplified import entries:
 - (c) temporary import entries:
 - (d) private import declarations.
- (2) A levy is imposed on all importations of goods for which a document is lodged with the New Zealand Customs Service under regulation 26(2) of the Customs and Excise Regulations 1996 (including electronic cargo information reports).

5 Importers primarily responsible for paying levy

Each levy year, all importers are primarily responsible for paying the levy.

6 Chief executive must collect levy

The chief executive must—

- (a) collect the levy from an importer on behalf of the Director-General; and
- (b) pay the levy to the Director-General.

7 Basis of calculation of levy

- (1) The levy must be calculated on the basis of dividing—
- (a) the estimated annual costs incurred by the Ministry; by

- (b) the estimated total number of annual leviable importations that—
 - (i) are required to be entered under section 39 of the Customs and Excise Act 1996:
 - (ii) are deemed to have been entered under regulation 23 of the Customs and Excise Regulations 1996.
- (2) In calculating the levy in respect of any levy year commencing after 30 June 2011 (the **new levy year**), the Director-General must take into account—
 - (a) any shortfall in recovery of annual costs incurred by the Ministry in the levy year immediately preceding the new levy year; or
 - (b) any over-recovery of annual costs incurred by the Ministry in the levy year immediately preceding the new levy year.
- (3) In this clause, **annual costs incurred by the Ministry** means—
 - (a) the costs of obtaining and analysing data to develop and monitor risk profiles and place alerts:
 - (b) the costs of primary screening of sea and air cargo manifests for biosecurity risk goods:
 - (c) the costs of intervention monitoring programmes, slip-page surveys, and baseline auditing of the compliance of imported goods with import health standards:
 - (d) the costs of surveillance activities around sea and air ports and high-risk places related to preventing the establishment of pests and unwanted organisms that may be introduced by imported goods:
 - (e) the costs of facilitating the movement of consignments away from ports approved as places of first arrival:
 - (f) the costs of the 15 minutes of secondary risk assessment for consignments identified in primary screening and issuing authorisation of movement and biosecurity clearance documentation:
 - (g) the costs incurred by the Director-General in administering the levy:
 - (h) the costs incurred by the chief executive in collecting the levy.

8 Maximum rate of levy

The maximum rate of the levy is \$18 (inclusive of goods and services tax) per leviable importation.

9 Director-General must fix actual rate

(1) The actual rate of levy—

- (a) for the levy year ending on 30 June 2011 is fixed by the Director-General at \$12.50 (inclusive of goods and services tax) per leviable importation; and
- (b) for each subsequent levy year must be fixed by the Director-General after consulting persons he or she considers to be representatives of importers likely to be substantially affected by the levy.

(2) However, subclause (1)(b) does not apply unless the Director-General proposes to increase the levy.

10 Rate if no rate fixed before beginning of levy year

If the Director-General does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed under clause 9.

11 Notification of rate of levy

(1) No notification of the rate of levy is required for the levy year ending on 30 June 2011.

(2) For each subsequent year, the Director-General must, before the beginning of a levy year, notify the rate of levy by notice in the *Gazette*.

12 When and how levy payable

(1) The chief executive must send a written demand for the levy payable to the importer or, if another person is responsible for the importation, to that person.

(2) The importer or the person responsible for the importation, as the case may be, must pay the levy.

(3) The levy, plus any goods and services tax payable on the levy, is payable at the same time as the import entry transaction fee payable under regulation 24A(1) of the Customs and Excise Regulations 1996.

13 Purposes for which levy must be spent

All levy money paid to the Director-General must be spent on—

- (a) the costs of obtaining and analysing data to develop and monitor risk profiles and place alerts:
- (b) the costs of primary screening of sea and air cargo manifests for biosecurity risk goods:
- (c) the costs of intervention monitoring programmes, slip-page surveys, and baseline auditing of the compliance of imported goods with import health standards:
- (d) the costs of surveillance activities around sea and air ports and high-risk places related to preventing the establishment of pests and unwanted organisms that may be introduced by imported goods:
- (e) the costs of facilitating the movement of consignments away from ports approved as places of first arrival:
- (f) the costs of the 15 minutes of secondary risk assessment for consignments identified in primary screening and issuing authorisation of movement and biosecurity clearance documentation:
- (g) the costs incurred by the Director-General in administering the levy:
- (h) the costs incurred by the chief executive in collecting the levy.

14 Consultation on how levy spent

- (1) The Director-General must, before the beginning of each levy year (except the levy year ending on 30 June 2011), consult persons he or she considers to be representatives of importers likely to be substantially affected by the levy on how the levy money is to be spent.
- (2) However, subclause (1) does not apply to levy years ending on or after 30 June 2012, unless the Director-General proposes to make significant changes to the way in which the levy money is to be spent during those years.
- (3) The Director-General must use the following process to consult the representatives of importers:
 - (a) he or she must send to the representatives a proposed budget for the levy year's expenditure; and

- (b) he or she must give the representatives an opportunity to make submissions to him or her on the proposed budget.

Miscellaneous

15 Records

- (1) The Director-General must, for each levy year, keep records of—
 - (a) the rate at which the levy was collected; and
 - (b) each amount of levy money paid to him or her by the chief executive; and
 - (c) how the levy money was spent.
- (2) The chief executive must, for each levy year, keep records of—
 - (a) each amount of levy money paid to him or her and the person who paid the amount; and
 - (b) the amounts paid to the Director-General and the dates of the payments.
- (3) The Director-General or the chief executive, as the case may be, must ensure that the records referred to in subclauses (1) and (2) are retained for 2 years after the close of the levy year to which they relate.

16 Remuneration of auditors

A person appointed as an auditor under section 141B of the Act must be remunerated by the Director-General at a rate determined by the responsible Minister.

Arbitration in case of dispute

17 Appointment of arbitrator

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

18 Application of Arbitration Act 1996 to dispute

- (1) 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.
- (2) This clause is subject to clause 17.

19 Payment of arbitration costs

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

20 Appeal to District Court

- (1) A 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 after the making of the decision concerned, or within any longer time that a District Court Judge allows.
- (3) The Registrar of the District 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.

*Revocations***21 Revocations**

The following orders are revoked:

- (a) Biosecurity (Gypsy Moth Levy) Order 2004 (SR 2004/352):
- (b) Biosecurity (Risk Screening Levy) Order 2006 (SR 2006/217):
- (c) Biosecurity (Shipping Container Levy) Order 2006 (SR 2006/218).

Rebecca Kitteridge,
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 2010, imposes a levy on goods imported into New Zealand. The levy must be collected by the chief executive of the New Zealand Customs Service, on behalf of the Director-General of the Ministry of Agriculture and Forestry.

This order revokes and replaces the Biosecurity (Gypsy Moth Levy) Order 2004, the Biosecurity (Risk Screening Levy) Order 2006, and the Biosecurity (Shipping Container Levy) Order 2006.

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

Date of notification in *Gazette*: 3 June 2010.

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