



Commodity Levies (Potatoes) Order 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 6th day of May 2019

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 (Potatoes) Order 2019.

2 Commencement

This order comes into force on 10 June 2019.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent means a person whose business is or includes—

- (a) buying potatoes for resale, processing in New Zealand, or export:
- (b) selling, processing, or exporting potatoes on behalf of a grower

grower means a person whose business is or includes the commercial production of potatoes

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 money paid or payable under this order as a levy

levy rate means the rate set under clause 13

levy year means,—

- (a) for the first levy year, the period starting on 10 June 2019 and ending on 30 September 2020:
- (b) for the last levy year, the period starting on 1 October 2024 and ending on 9 June 2025:
- (c) in every other case, a 1-year period starting on 1 October and ending on 30 September

mediator means—

- (a) a person appointed under clause 24; and
- (b) for a particular dispute, a mediator appointed to resolve the dispute

notional process value, in relation to potatoes, means the amount of money that, in the opinion of PNZ, a grower would have received if, immediately before the potatoes were processed, the grower had sold the potatoes to a similar processor situated in the same locality

PNZ means Potatoes New Zealand Incorporated

potatoes means potatoes grown for commercial purposes in New Zealand for—

- (a) seed; and
- (b) processing; and
- (c) exporting; and
- (d) the fresh domestic market, which includes—
 - (i) markets where food is sold by horticultural producers selling their own horticultural produce only (farmers' markets); and
 - (ii) farm-gate sales

process, in relation to potatoes, means to perform any chemical or mechanical process.

Levy imposed

4 Levy on potatoes

- (1) A levy is imposed on potatoes grown by a grower.
- (2) The levy is payable to PNZ.

Paying levy

5 Growers primarily responsible for paying levy

- (1) Growers are primarily responsible for paying the levy.
- (2) No grower is exempt from paying the levy.

6 Collection agent must pay levy and recover it from growers

- (1) A collection agent must, at the first point of sale, pay the levy (and any GST payable on it) if the collection agent—
 - (a) buys potatoes from a grower for resale, processing, or export; or
 - (b) sells, processes, or exports potatoes on behalf of a grower.
- (2) A collection agent may recover the levy (and any GST payable on it) from a grower—
 - (a) by deducting the amount of the levy (and any GST payable on it) from the payment made to the grower; or
 - (b) by recovering the amount of the levy (and any GST paid in respect of it) as a debt due from the grower.
- (3) A collection agent must disclose to a grower the amount of levy money deducted under this order.
- (4) A collection agent who pays the levy to PNZ may deduct from the levy a collection fee of not more than 4% of the amount of levy collected (excluding GST) plus the GST payable on the fee.

7 Conscientious objectors

- (1) A grower or collection agent who objects on conscientious or religious grounds to the manner of recovery of levy money by PNZ may pay the amount concerned to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to PNZ.

8 When levy payable*When levy payable by growers*

- (1) If potatoes are sold directly to the public by growers, processed by growers, or exported by growers, the due date for payment of the levy by growers is 30 June.
- (2) The levy payable by growers is to be paid annually for the preceding 12 months.
- (3) The latest date for payment of the levy by growers is 30 September in the same calendar year.

When levy payable by collection agents

- (4) The due date for payment of the levy by a collection agent is the date on which the collection agent recovers the levy from the grower.
- (5) The latest date for payment of the levy by the collection agent is the 20th day of the month after the month in which the levy is recovered from the grower.

9 Additional levy for late payment

If a grower does not pay an amount of levy money by the required date, the grower must pay PNZ,—

- (a) for the first month, an additional levy of 10% 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 2% of the amount of the unpaid levy (including additional levies owing under this clause).

*Setting levy rate***10 Basis for calculation of levy**

- (1) The levy payable in a levy year must be calculated on the basis of the gross sales value at the first point of sale, except where—
 - (a) the commodity is exported, in which case the levy will be calculated on the price received by the grower after deduction of all offshore costs (including international freight); or
 - (b) the commodity is processed before the first point of sale, in which case the levy will be a percentage of the notional process value.
- (2) The value referred to in subclause (1) is, in each case, exclusive of GST.

11 Levy must be paid at single rate

The levy must be paid at a single rate.

12 Maximum levy rate

- (1) The maximum rate of levy for potatoes is 1% of, as applicable,—

- (a) the gross sales value at the first point of sale; or
 - (b) the price received by the grower after deduction of all offshore costs (including international freight); or
 - (c) the notional process value.
- (2) The maximum rate of levy is exclusive of GST.

13 Setting levy rate

- (1) PNZ must set the levy rate for the first levy year by any means by which it can lawfully make a decision.
- (2) For each subsequent levy year, the levy rate must be set by a vote at PNZ's annual general meeting.
- (3) If a levy rate is not set under subclause (2) before the beginning of a levy year, the levy for that year is payable at the rate last set under this clause.

14 Notifying levy rate

- (1) If any levy rate set under clause 13 differs from the levy rate applying in the previous year, PNZ must, as soon as practicable after setting the rate, notify the new levy rate—
 - (a) in the *NZGROWER*; and
 - (b) in the PNZ email newsletter; and
 - (c) by direct mail to all growers and collection agents known to PNZ; and
 - (d) in the *Gazette*.
- (2) If the *NZGROWER* ceases to be published, the levy rate must be notified in—
 - (a) any publication that replaces it; or
 - (b) if no publication replaces it, a publication that the Minister of Agriculture specifies for the purposes of this order by notice in the *Gazette*.

Expenditure of levy money

15 PNZ must spend levy money

PNZ must—

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

16 Purposes for which levy money may be spent

- (1) PNZ may spend levy money for any or all of the following purposes relating to potatoes:
 - (a) research and development:
 - (b) market development and promotion:
 - (c) development of quality assurance:

- (d) education and training:
 - (e) information and communication:
 - (f) grower representation:
 - (g) day-to-day administration of PNZ:
 - (h) protection or improvement of plant health:
 - (i) readiness and response to biosecurity threats.
- (2) PNZ must not spend levy money on commercial or trading activities.

17 Consulting on spending levy money

PNZ must consult on how to spend levy money by consulting—

- (a) growers at PNZ's annual general meeting, or at a special general meeting; and
- (b) elected grower representatives.

Returns, records, and confidentiality

18 Returns

- (1) A payment of levy money to PNZ by a grower or collection agent must be accompanied by a written return that—
- (a) states the value of the potatoes to which the payment relates; and
 - (b) identifies the grower of the potatoes.
- (2) PNZ may request, in writing, from a grower or collection agent any information that is required for determining the amount of levy payable and that is kept in accordance with clause 20 or 21, as applicable.
- (3) As soon as is reasonably practicable after receiving a request under subclause (2), a grower or collection agent must supply PNZ with a written return of the information requested.

19 PNZ must keep records

PNZ must keep records of the following for each levy year:

- (a) each amount of levy money paid to it; and
- (b) the date on which each amount of levy money was received; and
- (c) the person who paid each amount of levy money; and
- (d) how (if at all) levy money was invested; and
- (e) how levy money was spent.

20 Growers must keep records

- (1) A grower who pays levies directly to PNZ must keep records of—
- (a) the amount of the levy paid; and

- (b) the sales that the levies were deducted from.
- (2) A grower whose levies are paid by a collection agent must keep records of—
 - (a) the amount of the levy paid; and
 - (b) the sales that the levies were deducted from; and
 - (c) the name and address of the collection agent.

21 Collection agents must keep records

Collection agents must keep records of—

- (a) the amount of the levy paid; and
- (b) the sales that the levies were deducted from; and
- (c) the name, trading name, and address of the grower.

22 Records must be kept for at least 2 years

The records required by clauses 19 to 21 must be kept for at least 2 years from the date of payment of the levy to which they relate.

23 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 PNZ 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) PNZ may disclose information—
 - (a) for statistical or research purposes that do not involve the disclosure of personal information; or
 - (b) for the purpose of invoicing or collecting the levy; or
 - (c) if every identifiable person to whom the information relates consents; or
 - (d) as required by law.

Dispute resolution

24 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 the dispute by agreement; or
 - (b) the mediator resolves the dispute under clause 31.

25 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).

26 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.

27 Conferences must be held in private

Unless clause 28 applies, only the parties to a dispute may attend a conference with the mediator.

28 Representatives

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

29 Right to be heard

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

30 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.

31 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.

32 Mediation costs

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

33 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision may appeal to the 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 process for the enforcement of the mediator's decision.

*Compliance audits***34 Remunerating auditors**

PNZ 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 PNZ.

*Revocation***35 Order revoked**

The Commodity Levies (Potatoes) Order 2013 (SR 2013/142) 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 10 June 2019, imposes a levy on potatoes grown by growers. The levy must be paid to Potatoes New Zealand Incorporated by growers, or by collection agents who sell or export potatoes from growers.

Before this order, a levy was imposed on potatoes by the Commodity Levies (Potatoes) Order 2013. This order revokes and replaces that order. The revocation does not affect amounts of levy money that become 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 2020, unless confirmed earlier 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 on 9 June 2025 (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*: 9 May 2019.

This order is administered by the Ministry for Primary Industries.