



## Commodity Levies (Potatoes) Order 2013

Jerry Mateparae, Governor-General

### Order in Council

At Wellington this 13th day of May 2013

Present:

The Right Hon John Key presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries 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 2013.

### 2 Commencement

This order comes into force on 18 June 2013.

### 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

**FOB value**, in relation to any potatoes exported from New Zealand for which a customs entry is made, means the free on board value of the potatoes specified in the declaration in, attached to, or forming part of the customs entry

**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 year** means,—

- (a) for the first levy year, the period starting on 18 June 2013 and ending on 30 September 2013;
- (b) for the last levy year, the period starting on 1 October 2018 and ending on 12 May 2019;
- (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 27; 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 in New Zealand for the domestic fresh market, processing, export, or seed

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

#### *Levy imposed*

#### **4 Levy imposed**

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

#### *Responsibility for payment of 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 Responsibility of collection agents for payment of levy**

- (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.

**7 Collection fee**

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 (exclusive of GST) plus the GST payable on the fee.

*Determination of levy*

**8 Rate of levy**

The levy must be paid at a single rate.

**9 Basis for calculation of levy**

- (1) The levy payable must be calculated as a percentage of—
- (a) the gross sales value at the first point of sale, if the potatoes are sold by the grower; or
  - (b) the notional process value, if the potatoes are processed prior to the first point of sale; or
  - (c) the FOB value, if the potatoes are exported.
- (2) The value referred to in subclause (1) is, in each case, the value before the deduction of any costs or charges and exclusive of GST.

**10 Maximum rate of levy**

- (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 notional process value; or
  - (c) the FOB value.
- (2) The maximum rate of levy is exclusive of GST.

**11 PNZ must set 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.

## **12 Notification of rate of levy**

- (1) If any levy rate set under clause 11 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 Horticulture New Zealand 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 for Primary Industries specifies for the purposes of this order by notice in the *Gazette*.

### *When levy payable*

## **13 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.

## **14 When levy payable by collection agents**

- (1) 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.
- (2) 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.

**15 Additional levy if levy not paid in time**

- (1) If any amount of the levy (or GST payable on that amount) has not been paid by the close of the latest day for payment, 10% of the amount of the levy not paid at the end of the first month must be paid to PNZ, in addition to the amount otherwise payable.
- (2) A further 2% of the amount owing (including any previous penalties) is payable at the end of each additional month in which the amount remains unpaid.

*Expenditure of levy money***16 Levy money to be spent by PNZ**

PNZ must—

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

**17 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.
- (2) PNZ must not spend levy money on commercial or trading activities.

**18 Consultation on spending levy money**

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

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

*Record-keeping requirements and confidentiality  
of information*

**19 Returns must be supplied to PNZ**

- (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 21 or 22, 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.

**20 Records to be kept by PNZ**

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.

**21 Records to be kept by growers**

- (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.

**22 Records to be kept by collection agents**

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.

**23 Records must be kept for 2 years**

The records kept in accordance with clauses 20 to 22 must be kept for at least 2 years from the date of payment of the levy to which they relate.

**24 Confidentiality of information**

- (1) No officer or employee of PNZ may disclose (except to an officer or employee of PNZ) any information obtained—
  - (a) under or because of this order; or
  - (b) under the Act in relation to this order.
- (2) Subclause (1) does not affect or prevent—
  - (a) the production of records or accounts under section 17(1) of the Act;
  - (b) the production of any statement under section 25 of the Act;
  - (c) the giving of evidence in any legal proceedings taken in relation to this order under, or in relation to, the Act.
- (3) Subclause (1) does not prevent PNZ from disclosing or using any information—
  - (a) for statistical or research purposes, if the information is in a form that does not identify any individual;
  - (b) for the purpose of collecting the levy;
  - (c) with the consent of every identifiable person to whom it relates;
  - (d) as required by law.

*Miscellaneous*

**25 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 chief executive of the Ministry for Primary Industries.
- (2) The chief executive must pay the amount to PNZ.

**26 Remuneration of persons conducting compliance audit**

A person appointed as an auditor under section 15 of the Act must be remunerated by PNZ at a rate determined by the Minister for Primary Industries after consultation with PNZ.

*Mediation of disputes***27 Appointment of mediators**

- (1) This clause applies to a dispute concerning—
  - (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 34.

**28 Remuneration of mediators**

- (1) A mediator is to 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).

**29 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 of the matters specified in paragraph (a) by post or email; and

- (c) preside at the conference.

**30 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.

**31 Conference to be held in private**

Only the parties to a dispute, the mediator, and representatives the mediator allows to attend may attend a conference organised by the mediator.

**32 Right to be heard**

The following persons may be heard at a conference with a mediator:

- (a) each party to the dispute; and
- (b) each representative of a party allowed by the mediator to attend the conference.

**33 Evidence**

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative,—
  - (a) seek and receive any evidence that the mediator thinks desirable to resolve the dispute; and
  - (b) make any investigations and inquiries that the mediator thinks desirable to resolve the dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

**34 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 of the parties written notice of the mediator's decision and the reasons for that decision.
- (3) The parties must comply with the mediator's decision.

**35 Cost of mediation**

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

**36 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the mediator's decision under clause 34 may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal—
  - (a) within 28 days of the making of the decision concerned; or
  - (b) within any longer time 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
  - (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) Every 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.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### 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 18 June 2013, imposes a levy on potatoes grown in New Zealand for the domestic fresh market, processing, export, or seed. Potato growers are primarily responsible for payment of the levy. However, in some circumstances, collection agents are responsible for the payment of the levy on behalf of growers. The levy is payable to Potatoes New Zealand Incorporated.

Prior to this order, a levy was imposed on potatoes by the Commodity Levies (Vegetables and Fruit) Order 2007. That order expires at the close of 17 June 2013 and, in respect of potatoes, is replaced by this order.

Under section 12 of the Commodity Levies Act 1990, this order will be deemed to be revoked at the close of 30 June 2014 unless it is confirmed by an Act of Parliament passed on or before that date. The order will then be deemed to be revoked 6 years after it is made, by virtue of section 13(1) of the Commodity Levies Act 1990, unless the order is earlier revoked or extended.

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

Date of notification in *Gazette*: 16 May 2013.

This order is administered by the Ministry for Primary Industries.

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