

Reprint
as at 14 May 2018



Commodity Levies (Nashi Pears) Order 2012 (SR 2012/89)

Commodity Levies (Nashi Pears) Order 2012: revoked, on 14 May 2018, pursuant to section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 14th day of May 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, 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 Primary Industries given in accordance with sections 5 and 6 of that Act, makes the following order.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Nashi Pears) Order 2012.

2 Commencement

This order comes into force on 14 June 2012.

Order: confirmed, on 12 December 2012, by section 8(c) of the Subordinate Legislation (Confirmation and Validation) Act 2012 (2012 No 97).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

grower means a person whose business is or includes growing nashi pears

leviable nashi pears means nashi pears grown in New Zealand and—

- (a) exported; or
- (b) sold fresh in New Zealand (otherwise than for processing) for human consumption

levy means the levy imposed by clause 4

levy money—

- (a) means money payable under this order as levy; and
- (b) includes any increased levy payable under clause 14

levy year—

- (a) means a period of 12 months beginning on 1 November and ending on 31 October; and
- (b) includes both of the following periods:
 - (i) the period beginning on the date of commencement of this order and ending on 31 October 2012; and
 - (ii) the period beginning on 1 November 2017 and ending on the expiry of this order

mediator means a person appointed under clause 23

Nashi New Zealand means the industry organisation known at the commencement of this order as Nashi New Zealand Incorporated

nashi pears means fruit of the plant species *Pyrus pyrifolia* or of any plant that is a hybrid of that species and the species *Pyrus ussuriensis*

party means a party to a dispute

The Orchardist means the publication of that name published, from time to time, before the commencement of this order (under whatever name it may later be published).

Levy imposed

4 Levy imposed

- (1) A levy is imposed on leviable nashi pears.

- (2) The levy is payable to Nashi New Zealand.

5 Growers responsible for payment of levy

A grower of leviable nashi pears is primarily responsible for paying, and must pay, the levy on them.

Determination of levy

6 Basis of calculation of levy

- (1) The levy is to be calculated on the kilogram weight of leviable nashi pears.
- (2) The levy for a levy year is to be calculated by reference to the kilogram weight of the grower's leviable nashi pears for that levy year.
- (3) In a levy year that commences on 1 November and ends on 31 October, Nashi New Zealand must send to growers 2 returns on which growers must declare—
- (a) the kilogram weight of leviable nashi pears for the 8 months ending on 30 June and for the 4 months ending on 31 October; and
 - (b) the levy payable for each of those periods.
- (4) In any other levy year, Nashi New Zealand must send to growers a return on which growers must declare—
- (a) the kilogram weight of leviable nashi pears produced in that levy year; and
 - (b) the levy payable for that levy year.

7 Levy to be paid at single rate

The levy is to be paid at a single rate.

8 Maximum rate of levy

The maximum rate of levy is 5 cents per kilogram of leviable nashi pears, exclusive of any goods and services tax.

9 Minimum amount of levy payable

The minimum amount of levy money payable for a levy year is \$50 per grower, exclusive of any goods and services tax.

10 Fixing actual rate of levy

The actual rate of levy,—

- (a) in the case of the levy year ending on 31 October 2012, is 1.5 cents per kilogram; and
- (b) in the case of each of the other levy years, is to be fixed by Nashi New Zealand at its annual general meeting in the previous levy year.

11 Previous rate to apply

If the actual rate of levy is not fixed by Nashi New Zealand for a levy year under clause 10(b), the levy for that levy year is payable at the levy rate set by clause 10(a) or last fixed under clause 10(b), as the case may require.

12 Notification of rate of levy

- (1) As soon as practicable after fixing a rate of levy for a levy year, Nashi New Zealand must notify that rate and the levy year to which it relates by notice—
 - (a) in a publication of Nashi New Zealand (if any); and
 - (b) in *The Orchardist*.
- (2) If *The Orchardist* ceases to be published, Nashi New Zealand must notify the rate of levy and the levy year to which it relates by notice in a publication of Nashi New Zealand (if any) and—
 - (a) in a publication that replaces *The Orchardist*; or
 - (b) if no publication replaces *The Orchardist*, in a publication specified by notice in the *Gazette* by the Minister responsible for the time being for the administration of the Act.

Payment of levy

13 When levy payable

- (1) Levies must be paid as follows:
 - (a) in the case of a levy year that commences on 1 November and ends on 31 October, levies must be paid in 2 instalments:
 - (b) in the case of any other levy year, levies must be paid in a single instalment.
- (2) The due dates for the payment of levy money are as follows:
 - (a) in the case of a levy year that commences on 1 November and ends on 31 October, 30 June and 31 October:
 - (b) in the case of any other levy year, the last day of the levy year.
- (3) The latest day for payment of levy money is the 20th day of the month following the due date.
- (4) A return becomes an invoice for levy money the moment a grower pays the levy money declared to be payable on the return.

14 Increased levy payable if levy not paid in time

- (1) A grower must pay Nashi New Zealand an increased levy if the grower fails to pay levy money by the latest date for its payment under clause 13.
- (2) The amount of the increased levy is—
 - (a) the amount of levy money not paid by the latest date for payment; and

- (b) an additional 10% of that amount.

Expenditure of levy money

15 Levy money to be spent by Nashi New Zealand

Nashi New Zealand must spend or (pending expenditure) invest all levy money paid to it.

16 Consultation on how levy money to be spent

- (1) Nashi New Zealand must consult growers on how it proposes to spend levy money and provide the details of the previous 12 months' expenditure at its annual general meeting or a special meeting called for that purpose.
- (2) For the purposes of subclause (1), Nashi New Zealand must, at the meeting,—
 - (a) present a budget for the proposed expenditure of levy money to be collected in the next levy year; and
 - (b) present accounts on the expenditure of levy money collected in the previous levy year; and
 - (c) allow reasonable time in the agenda of the meeting for growers to discuss expenditure of levy money.

17 General purposes for which levy money may be spent

- (1) Nashi New Zealand may spend levy money for the following purposes relating to nashi pears:
 - (a) product research and development:
 - (b) market research and development:
 - (c) product promotion:
 - (d) quality assurance:
 - (e) education:
 - (f) day-to-day administration of Nashi New Zealand.
- (2) Nashi New Zealand must not spend levy money on commercial or trading activities.

Record-keeping requirements and confidentiality of information

18 Returns by growers

A grower must complete returns received from Nashi New Zealand under clause 6 and forward them to Nashi New Zealand with the levy money payable by the latest day for the payment of levy money under clause 13.

19 Records

- (1) Every grower must—

- (a) record the following matters for each levy year:
 - (i) the quantities of leviable nashi pears;
 - (ii) the amount of levy money paid to Nashi New Zealand; and
 - (b) ensure that the records are retained for at least 2 years after the payment of the levy money to which the records relate.
- (2) Nashi New Zealand must—
- (a) record the following matters for each levy year:
 - (i) each amount of levy money paid to it and, for each amount, the day of its receipt and the name and details of the person who paid it;
 - (ii) how (if at all) levy money received was invested;
 - (iii) how and when levy money spent by it was spent; and
 - (b) ensure that the records are retained for at least 2 years after the date of payment of the levy money to which the records relate.
- (3) This clause does not require any person to keep a nil record.

20 Confidentiality of information

- (1) No officer or employee of Nashi New Zealand may disclose (otherwise than to some other officer or employee of Nashi New Zealand) any commercially sensitive information obtained—
- (a) under or because of this order; or
 - (b) in relation to this order, under the Act.
- (2) Subclause (1) does not affect or prevent—
- (a) the production of records or accounts under section 17(1) of the Act; or
 - (b) the production of statements under section 25 of the Act; or
 - (c) the giving of evidence in legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) in relation to this order, under or in relation to the Act.
- (3) Subclause (1) does not prevent Nashi New Zealand from—
- (a) disclosing or using any information (not being information relating to an identifiable person) for statistical and research purposes; or
 - (b) disclosing or using any information for the purpose of determining the voting entitlements, and counting the votes, of members of Nashi New Zealand; or
 - (c) disclosing or using any information for the purpose of collecting levy money (including the preparation of returns and invoices under this order); or

- (d) disclosing or using any information with the consent of every identifiable person to whom it relates.

Miscellaneous

21 Conscientious objectors

- (1) A grower who objects on conscientious or religious grounds to the manner of recovery by Nashi New Zealand of levy money may pay the levy money concerned to the chief executive of the Ministry for Primary Industries or the chief executive of any department of State that is for the time being responsible for the administration of this order.
- (2) The chief executive must pay any levy money received under subclause (1) to Nashi New Zealand.

22 Remuneration of persons conducting compliance audits

A person appointed as auditor under section 15 of the Act is to be remunerated by Nashi New Zealand at a rate determined by the Minister for Primary Industries after consultation with Nashi New Zealand.

Mediation of disputes

23 Appointment of mediators

- (1) This clause applies if a dispute arises about—
- (a) whether a person is required to pay a levy; or
 - (b) the amount of levy money payable.
- (2) A party may ask the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated (the **President**) to appoint a person to—
- (a) organise and preside at a conference of the parties; and
 - (b) attempt to resolve the dispute by mediation.
- (3) On receiving a request under subclause (2), the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends when—
- (a) the parties resolve the dispute themselves; or
 - (b) the mediator resolves the dispute under clause 30.

24 Remuneration of mediators

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed to by the parties.
- (2) However, if the parties cannot agree on a mediator's remuneration, the President (or a person authorised by the President to do so) 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 fixed by the President (or authorised person) and specified as an amount to be paid by that party.

25 Time and place of conference

Every conference of the parties organised by a mediator is to be held on a day and at a time and place fixed, and notified in writing to the parties, by the mediator.

26 Conference to be held in private

Except as provided in clause 27, only the parties and the mediator may attend a conference organised by the mediator.

27 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of a party to attend a conference of the parties organised by the mediator.

28 Right to be heard

Every party, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, 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 the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties 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 the mediator—
 - (a) has organised and presided at a conference of the parties but the dispute has not been resolved; or
 - (b) believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If the mediator resolves a dispute, the mediator must give each of the parties written notice of the mediator's decision and the reasons for the decision.

- (3) The parties must comply with a decision of the mediator.

31 Costs of mediation

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

32 Appeal to District Court

- (1) A party who is dissatisfied with a decision made by a mediator under clause 30 may appeal against the decision to a District Court.
- (2) An appeal is to be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time a District Court Judge allows.
- (3) The Registrar of the District Court must—
- (a) serve a copy of the notice of appeal on every other party; and
 - (b) fix the time and place for the hearing of the appeal; and
 - (c) notify the appellant and the other parties of the time and place for the hearing of the appeal.
- (4) Every party 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.

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 14 June 2012, replaces the Commodity Levies (Nashi Asian Pears) Order 2006. That order expired on 27 February 2012.

This order imposes a levy on leviable nashi pears, being nashi pears grown in New Zealand and exported or sold fresh in New Zealand (otherwise than for processing) for human consumption. The levy is payable to Nashi New Zealand Incorporated by growers, being persons whose business is or includes growing nashi pears.

Unless earlier revoked, this order expires 6 years after it is made by virtue of section 13 of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 17 May 2012.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Nashi Pears) Order 2012 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Subordinate Legislation (Confirmation and Validation) Act 2012 (2012 No 97): section 8(c)

Commodity Levies Act 1990 (1990 No 127): section 13(1)