

Reprint
as at 5 December 2017



Commodity Levies (Eggs) Order 2016 (LI 2016/210)

Hon Sir William Young, Administrator of the Government

Order in Council

At Wellington this 19th day of September 2016

Present:

The Hon Bill English presiding 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 for Primary Industries made after meeting the requirements of sections 5 and 6 of that Act.

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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 (Eggs) Order 2016.

2 Commencement

This order comes into force on 1 November 2016.

Order: confirmed, on 5 December 2017, by section 7 of the Subordinate Legislation Confirmation Act 2017 (2017 No 47).

3 Interpretation

In this order, unless the context otherwise requires,—

chick means a chicken, of a kind usually kept primarily for the production of eggs (rather than the production of poultry meat), that is less than 5 days old when sold for the first time

chicken means a member of the species *Gallus domesticus*

eggs means the commodity specified in clause 4(1)

Federation means the body known on the commencement of this order as the Egg Producers Federation of New Zealand Incorporated

hatchery means a person that produces chicks for sale

industry means the business of producing eggs in New Zealand for sale

levy means the levy imposed by clause 4

levy money means money paid under this order as levy

levy year—

- (a) means a period of 12 months that begins on 1 January and ends on 31 December; and
- (b) includes the period that begins on the commencement of this order and ends on 31 December 2017

mediator—

- (a) means a person appointed under clause 24(2); and
- (b) in relation to a dispute, means a mediator appointed to resolve the dispute

producer means a person that, in a levy year,—

- (a) buys more than 100 chicks; and
- (b) does 1 or both of the following:
 - (i) produces eggs for sale;
 - (ii) rears chicks for the purpose of supplying them to persons that produce eggs for sale.

*Imposition and payment of levy***4 Levy imposed**

- (1) A levy is imposed on chicken eggs produced in New Zealand for sale.
- (2) The levy is payable to the Federation.

*Responsibility for payment of levy***5 Producers to pay levy**

A producer who buys chicks is primarily responsible for paying the levy.

6 Hatcheries to pay levy and recover it from producers

- (1) A hatchery that sells chicks to a producer—
 - (a) must pay the levy payable on their sale; and
 - (b) may recover the levy (and any goods and services tax paid in respect of it) from the producer by including it in the price payable for the chicks.
- (2) However, a hatchery is not required to pay the levy (or part of the levy) if—
 - (a) the hatchery has taken all reasonable measures to recover the levy (or part of the levy) from a producer; and
 - (b) the hatchery has been unsuccessful in recovering the levy (or part of the levy) from the producer because the producer is bankrupt or otherwise incapable of paying.
- (3) A hatchery must not charge a collection fee for paying and recovering the levy.

*Determination of levy by Federation***7 Basis of calculation of levy**

The levy is to be calculated on the basis of the number of chicks sold to producers by hatcheries.

8 Hatcheries to provide chick sales figures

- (1) A hatchery must provide monthly chick sales figures to the Federation.
- (2) The sales figures must accompany the levy payments.

9 Levy to be paid at single rate

The levy is to be paid at a single rate.

10 Maximum rate of levy

The maximum rate of the levy is 50 cents per chick, exclusive of goods and services tax.

11 Federation to fix actual rate of levy

- (1) For the levy year that begins on 1 November 2016, the actual rate of levy is 36 cents per chick, exclusive of Goods and Services Tax.
- (2) For subsequent levy years, the Federation must fix the actual rate of the levy at the annual general meeting of the Federation.

12 Rate if no rate fixed before beginning of levy year

If the Federation does not fix the actual rate of levy before 1 December in the year before a levy year, the levy for that year is payable at the rate last fixed under clause 11.

13 Notification of levy rate

As soon as practicable after the rate of levy for a levy year has been fixed under clause 11(2), the Federation must notify it—

- (a) in the *Gazette*; and
- (b) in a Federation newsletter or in any other publication or document that is sent to all levy payers known to the Federation.

Payment levy

14 Levy payable monthly

The levy is to be paid monthly, in respect of each calendar month.

15 When levy payable

- (1) The due date for payment of the levy is the date on which the hatchery that produced the chicks sells them to a producer.
- (2) The latest day for payment of the levy is the 20th day of the month after the month in which the levy payment is due.

16 Returns

- (1) A hatchery must, as soon as is reasonably practicable after the end of each quarterly period, inform the Federation in writing of the names of the producers who have paid the levy.
- (2) In this clause, a **quarterly period** is the 2-month period ending with the close of December 2016 and, from then onwards, the 3-month periods ending with the close of March, June, September, and December in any levy year.

Expenditure of levy money

17 Federation must spend levy money

The Federation must spend or (pending expenditure) invest all levy money paid to it.

18 Purposes for which levy money may be spent

The Federation may spend levy money for any or all of the following purposes:

- (a) generic promotion and advertising in relation to eggs, including marketing and public relations;
- (b) research and development relating to egg production;
- (c) protection and improvement of the health of chickens;
- (d) provision of education and information about eggs to producers and consumers;
- (e) collation of industry statistics;
- (f) development of codes of practice and industry standards;
- (g) the day-to-day administration of the Federation;
- (h) biosecurity.

19 Consultation on how levy money proposed to be spent

The Federation must consult producers on how it proposes to spend its levy money, by—

- (a) notifying producers, by Federation newsletter or any other means, of its general meetings; and
- (b) circulating, before its annual general meeting or any other special meeting called to discuss the matter, a draft budget and plan that shows how the money is to be spent; and
- (c) discussing the draft budget and plan with members of the Federation at its annual general meeting or any other special meeting called to discuss the draft budget and plan and approving them at the meeting.

*Record-keeping requirements and confidentiality of information***20 Records**

- (1) The Federation must, for each levy year, keep records of—
 - (a) each amount of levy money paid to it and, in relation to each amount,—
 - (i) the hatcheries who collected the levy; and
 - (ii) the producers who were liable to pay the levy; and
 - (b) how levy money paid to it has been invested or spent.
- (2) The Federation must retain the records for 2 years after the levy year to which the records relate.

21 Confidentiality of information

- (1) No officer or employee of the Federation or any other person who gathers information may disclose (otherwise than to some other officer or employee of the Federation) any information obtained—

- (a) under this order; or
- (b) under the Commodity Levies Act 1990 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 Commodity Levies Act 1990; or
 - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or
 - (c) the giving of evidence in any legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) in relation to this order, under or in relation to the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent the Federation or a hatchery from disclosing or using information—
 - (a) for statistical or research purposes, if the information is in a form that does not identify any individual; or
 - (b) for the purposes of invoicing and collecting the levy; or
 - (c) with the consent of every identifiable person to whom it relates; or
 - (d) as required by law.

Miscellaneous

22 Conscientious objectors

- (1) Any producer or hatchery who objects on conscientious or religious grounds to the manner of recovery by the Federation of an amount of levy money may pay the amount concerned to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to the Federation.

23 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the Federation at a rate determined by the Minister for Primary Industries after consultation with the Federation.

Mediation in case of dispute

24 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether any person is required to pay the levy; or
 - (b) the amount of levy payable.

- (2) Any 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 and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) 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 31.

25 Remuneration of mediators

- (1) A mediator must be paid the remuneration (by way of fees and allowances) agreed to 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 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 is to 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.

26 Time and place of conference

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

27 Conference to be held in private

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

28 Representatives

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

29 Right to be heard

Every party to a dispute, and every representative of such a party allowed by the mediator to attend a conference of the parties to the dispute, 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 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 a dispute 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) If subclause (1) applies, 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 the decision of the mediator.

32 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with a decision made by a mediator under clause 31 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 of the making of the decision concerned or 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 notify the appellant and the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on every other party to the dispute.
- (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.

Revocation

33 Revocation

The Commodity Levies (Eggs) Order 2010 (SR 2010/391) 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 November 2016, imposes a levy on chicken eggs produced in New Zealand for sale. The levy is payable to the Egg Producers Federation of New Zealand Incorporated (the **Federation**). A person that buys more than 100 chicks and either produces eggs for sale or rears chicks for the purpose of supplying them to persons that produce eggs for sale (a **producer**) is primarily responsible for paying the levy.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the end of 31 December 2017, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act. Even if confirmed in that way, under section 13 of the Commodity Levies Act 1990 this order will be revoked with the close of the sixth anniversary of the day before the day on which it was made, unless revoked earlier or extended under section 13(2) of that Act.

This order replaces the Commodity Levies (Eggs) Order 2010, which expires on 31 October 2016.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 22 September 2016.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Eggs) Order 2016 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 Act 2017 (2017 No 47): section 7