



## Maritime Transport (Oil Pollution Levies) Order 2016

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 21st day of November 2016

Present:

Her Excellency the Governor-General in Council

This order is made under section 333(1) of the Maritime Transport Act 1994—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister made in accordance with section 333(4) of that Act.

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## Order

### 1 Title

This order is the Maritime Transport (Oil Pollution Levies) Order 2016.

### 2 Commencement

This order comes into force on 1 January 2017.

### 3 Revocation of clauses 23 to 30 and cross-heading

Clauses 23 to 30 and the cross-heading above clause 23 are revoked on the close of 30 June 2017.

### 4 Interpretation

In this order, unless the context otherwise requires,—

**Act** means the Maritime Transport Act 1994

**contributing ship** has the meaning given to it by section 329 of the Act, but does not include a ship that—

- (a) is 24 metres or less in length; or
- (b) operates exclusively in fresh water

**Director** means the Director of Maritime New Zealand

**domestic**, in relation to a ship, means a ship that is a New Zealand ship

**foreign**, in relation to a ship, means a ship that is not a New Zealand ship

**FPSO** means a floating vessel used in the production, storage, and offloading of oil

**gross tons** means, in relation to a ship, the gross tons of that ship determined or recognised in accordance with the provisions of the Act or any maritime rules but without any reduction on account of segregated ballast tanks

**in bulk** means, in relation to a ship's carriage of a cargo of oil, loaded onto or discharged from the ship by a pipeline system

**master** means a person (except a pilot) having command or charge of a ship

**New Zealand fishing vessel** has the meaning given to it by section 2(1) of the Fisheries Act 1996

**oil tanker** means a ship that carries oil in bulk as cargo

**out of commission** means, in relation to a ship,—

- (a) being incapable of operation as a result of being wrecked, stranded, or disabled while—
  - (i) in a New Zealand port; or
  - (ii) on the New Zealand coast; or
  - (iii) proceeding from one New Zealand port to another; or
- (b) being prohibited from operation by the Director exercising his or her powers under the Act; or
- (c) being prevented from operation by an employment relationship problem (for example, a strike or a lockout)

**persistent oil** includes crude oil, fuel oil, lubricating oil, and heavy diesel oil

**year** means the 12-month period beginning on 1 July in any calendar year.

### *Oil pollution and capability levies*

## **5 Purposes of levies**

- (1) The levies imposed by this order are oil pollution levies intended generally to provide money for the New Zealand Oil Pollution Fund to be applied by it for the purposes set out in section 331(1) of the Act.
- (2) The levies described as capability levies are imposed particularly to support expenditures for the purposes set out in section 331(1)(b) of the Act and, more

particularly, to support New Zealand's oil pollution response capability or oil pollution response systems including capital expenditures to purchase or upgrade oil pollution response equipment.

## **6 Oil pollution levies: contributing ships**

- (1) Oil pollution levies are imposed for each year that begins on or after 1 July 2017 with respect to every contributing ship within 1 or more classes specified in the first column of the Schedule.
- (2) Oil pollution levies for a year for a ship that belongs to a class or classes specified in the first column of the Schedule are calculated as set out in the second column of the Schedule in the corresponding row or rows.
- (3) For a domestic ship, an oil pollution levy is a single annual levy for the year.
- (4) For a domestic oil tanker, an oil pollution levy with respect to carrying oil as cargo is to be determined initially on the basis of an estimate of oil to be carried as cargo in the year and to be adjusted at the end of the year to reflect the actual amount carried.
- (5) For a foreign ship, an oil pollution levy is a per entry levy payable on each entry during the year of the ship into a New Zealand port from outside the harbour limits of that port.

## **7 Oil pollution levies: contributing oil sites**

An oil pollution levy is imposed for each year that begins on or after 1 July 2017 with respect to every contributing oil site within one of the following classes in the amount specified:

- (a) for a FPSO, \$85,186:
- (b) for an offshore installation that is not an FPSO, \$8,888.89:
- (c) for an oil pipeline, \$8,888.89:
- (d) for an exploration oil well, \$8,888.89.

## **8 Capability levies: contributing ships**

- (1) Capability levies are imposed for each of the years in the period beginning on 1 July 2017 and ending on 30 June 2022 with respect to every contributing ship within 1 or more classes specified in the first column of the Schedule.
- (2) Capability levies for a year for a ship that belongs to a class or classes specified in the first column of the Schedule are calculated as set out in the third column of the Schedule in the corresponding row or rows.
- (3) For a domestic ship, a capability levy is a single annual levy for the year.
- (4) For a domestic oil tanker, a capability levy with respect to carrying oil as cargo is to be determined initially on the basis of an estimate of oil to be carried as cargo in the year and to be adjusted at the end of the year to reflect the actual amount carried.

- (5) For a foreign ship, a capability levy is a per entry levy payable on each entry during the year of the ship into a New Zealand port from outside the harbour limits of that port.

#### **9 Capability levies: contributing oil sites**

A capability levy is imposed for each of the years in the period beginning on 1 July 2017 and ending on 30 June 2022 with respect to every contributing oil site within one of the following classes in the amount specified:

- (a) for an FPSO, \$19,814:
- (b) for an offshore installation that is not an FPSO, \$281:
- (c) for an oil pipeline, \$226:
- (d) for an oil exploration well, \$63.

#### **10 Reduced proportional levy if use arises after 1 July**

- (1) Despite clauses 6 to 9, a levy imposed under any of those clauses for a year in respect of a domestic ship or a contributing oil site is to be reduced to a proportional amount calculated in accordance with subclause (2) if,—
- (a) in the case of a domestic ship, its first ever entry into a New Zealand port occurred after 1 July in the year; and
  - (b) in the case of a contributing oil site, it first commenced operation after 1 July in the year.
- (2) The amount of the reduced proportional levy is to be calculated in accordance with the following formula:

$$\text{FullLevy} \times \text{DaysLeftinYear} \div 365$$

where—

FullLevy is the full annual levy otherwise determined under the applicable clause of clauses 6 to 9

DaysLeftinYear is the number of days remaining in the year from and including, in the case of a domestic ship, the date of the ship's first ever entry into a New Zealand port and, in the case of a contributing oil site, the date on which it first commenced operation.

#### **11 GST**

The amounts payable as levies under this order are exclusive of any goods and services tax.

#### **12 Liability for levies**

- (1) The owners and masters of a contributing ship during a period in respect of which a levy is imposed by this order with respect to the ship are jointly and severally liable for the levy.

- (2) The owners of a contributing oil site during the period in respect of which a levy is imposed by this order with respect to the site are jointly and severally liable for the levy.

### **13 When levies payable**

Except as expressly provided otherwise, the due date for payment of any levy imposed under this order is the 20th day of the month after the date on which an invoice for the levy is issued.

#### *Refunds and exceptions*

### **14 Refunds on change of use**

- (1) Despite clauses 6, 8, and 10, the Director may, on application, refund an amount calculated in accordance with subclause (2) if—
- (a) a levy imposed under any of those clauses has been paid in respect of a contributing ship for a year; and
  - (b) the Director is satisfied that, at the date of the application, the use of the ship has changed so that the ship no longer falls within the class of ship with respect to which the levy was determined.
- (2) The amount of the refund is to be calculated in accordance with the following formula:

$$\text{LevyPaid} \times \text{DaysLeft} \div \text{DaysLevied}$$

where—

LevyPaid is the amount of the levy paid

DaysLeft is the number of days remaining in the year from and including the date of the application

DaysLevied is 365 in the case of a levy determined under clause 6 or 8 and, in the case of a levy determined under clause 10, is the number of days used as the DaysLeftinYear in the calculation under that clause.

### **15 Refunds for ships laid up**

- (1) Despite clauses 6, 8, and 10, the Director may, on application, refund to the applicant an amount calculated in accordance with subclause (2) if a levy imposed for a year under any of those clauses in respect of a contributing ship has been paid and the Director is satisfied that the contributing ship has been out of commission—or laid up for survey or repairs—for a period of at least 30 consecutive days during the year.
- (2) The amount of the refund is to be calculated in accordance with the following formula:

$$\text{LevyPaid} \times \text{DaysOut} \div \text{DaysLevied}$$

where—

LevyPaid is the amount of the levy paid

DaysOut is the number of consecutive days during which the contributing ship has been out of commission or laid up

DaysLevied is 365 in the case of a levy determined under clause 6 or 8 and, in the case of a levy determined under clause 10, is the number of days used as the DaysLeftinYear in the calculation under that clause.

#### **16 Refunds for ships not entering port during year**

Despite clauses 6 and 8, the Director may, on application, refund the entirety of a levy imposed for a year under either of those clauses in respect of a contributing ship if the levy has been paid and the Director is satisfied that the contributing ship has not entered a New Zealand port during the year.

#### **17 Refunds for certain oil sites**

- (1) Despite clauses 7, 9, and 10, the Director may, on application, refund to the owner of a contributing oil site an amount calculated in accordance with sub-clause (2) if—
  - (a) a levy imposed for a year under any of those clauses in respect of the contributing oil site has been paid; and
  - (b) the Director is satisfied that the contributing oil site has not been operating for a period of at least 30 consecutive days during the year.
- (2) The amount of the refund is to be calculated in accordance with the following formula:

$$\text{LevyPaid} \times \text{DaysNotOperating} \div \text{DaysUsedforLevy}$$

where—

LevyPaid is the amount of the levy paid

DaysNotOperating is the number of consecutive days during which the contributing oil site has not been operating

DaysUsedforLevy is 365 in the case of a levy determined under clause 7 or 9 and, in the case of a levy determined under clause 10, is the number of days used as the DaysLeftinYear in the calculation under that clause.

#### **18 Exception for exit and re-entry due to weather**

Despite any other provision in this order, if a contributing ship that has entered a New Zealand port is compelled by adverse weather conditions to put to sea, and later re-enters that port in order to complete any discharging or loading of passengers or cargo that was interrupted by its putting to sea, no levy is payable in respect of that re-entry.

**19 Right to deduct other levies from refunds**

Without affecting any other method of recovery, the Director may deduct from any refund calculated in accordance with this order the amount of any other oil pollution levy or capability levy that is owing and unpaid.

*Varying levies or payments***20 Election to pay annual levies**

- (1) The owner or master of a foreign ship that does not carry a cargo of more than 2 000 tonnes of oil in bulk may, by written notice to the Director, elect to pay the annual levy that would apply to it if it were a domestic ship instead of the per entry levy that otherwise applies to it as a foreign ship.
- (2) When an election has been made and the annual levy for the year is paid, no levy is payable in respect of any entry by the foreign ship into a New Zealand port during the year.

**21 Levies may be paid by instalment**

- (1) A person who is liable for 1 or more annual levies under this order may apply to the Director for authority to pay the levy or levies in monthly or quarterly instalments if the total amount of any annual levies payable by the person under this order and under the Maritime Levies Regulations 2016 for the applicable year is \$50,000 or more.
- (2) The Director must approve the application if—
  - (a) the Director is satisfied that the person will pay the account in monthly or quarterly instalments; and
  - (b) the application was made no more than 10 days after the date of issuance of the most recent invoice for a relevant levy under this order or under the Maritime Levies Regulations 2016; and
  - (c) an application fee of \$112.50 (inclusive of goods and services tax) has been paid.
- (3) For the purposes of subclause (2)(a), the Director may consider the payment history of the person in relation to any levies, fees, or charges previously incurred by the person under the Act or regulations made under the Act.
- (4) Despite subclause (2)(c), only the application fee required under regulation 15(1)(c) of the Maritime Levies Regulations 2016 is payable if applications for authority to pay levies monthly or quarterly, as the case may be, are made concurrently under this clause and under regulation 14 of the Maritime Levies Regulations 2016.
- (5) A person whose application to pay by monthly instalments has been approved must—
  - (a) pay the levy or levies for the year in 12 equal amounts; and

- (b) make the first and second payments on or before 20 August of the year; and
  - (c) make the remaining 10 payments on the first day of each succeeding month of the year.
- (6) A person whose application to pay by quarterly instalments has been approved must pay the levy or levies for the year in 4 equal payments made on or before 30 September, 31 December, 31 March, and 30 June, respectively, in the year.

### *Revocation*

## **22 Revocation**

The Maritime Transport (Oil Pollution Levies) Order 2013 (SR 2013/154) is revoked.

*Levies for part year: 1 January 2017 to 30 June 2017*

## **23 Definition**

In clauses 24 to 29, **Period** means the period beginning on 1 January 2017 and ending on 30 June 2017.

## **24 Oil pollution levies for Period: contributing ships**

- (1) Oil pollution levies are imposed for the Period with respect to every contributing ship within 1 or more classes specified in the first column of the Schedule.
- (2) Oil pollution levies for the Period for a ship that belongs to a class or classes specified in the first column of the Schedule are calculated as set out in the second column of the Schedule in the corresponding row or rows, but with the following modifications:
  - (a) in the case of a domestic oil tanker carrying non-persistent or persistent oil as cargo, substituting “in the Period” for “in the year” in each place;
  - (b) in the case of a ship in the class “Domestic ship using bunker fuel (other than a New Zealand fishing vessel)”, substituting “131.61” for “265.40”;
  - (c) in the case of a ship in the class “New Zealand fishing vessel”, substituting “31.13” for “62.78”.
- (3) For a domestic ship, an oil pollution levy is a single levy for the Period.
- (4) For a domestic oil tanker, an oil pollution levy with respect to carrying oil as cargo is to be determined initially on the basis of an estimate of oil to be carried as cargo in the Period and to be adjusted at the end of the Period to reflect the actual amount carried.
- (5) For a foreign ship, an oil pollution levy is a per entry levy payable on each entry during the Period of the ship into a New Zealand port from outside the harbour limits of that port.

**25 Oil pollution levies for Period: contributing oil sites**

An oil pollution levy is imposed for the Period with respect to every contributing oil site within one of the following classes in the amount specified:

- (a) for a FPSO, \$42,242.92:
- (b) for an offshore installation that is not an FPSO, \$4,407.92:
- (c) for an oil pipeline, \$4,407.92:
- (d) for an exploration oil well, \$4,407.92.

**26 Capability levies for Period: contributing ships**

- (1) Capability levies are imposed for the Period with respect to every contributing ship within 1 or more classes specified in the first column of the Schedule.
- (2) Capability levies for the Period for a ship that belongs to a class or classes specified in the first column of the Schedule are calculated as set out in the third column of the Schedule in the corresponding row or rows, but with the following modifications:
  - (a) in the case of a domestic oil tanker carrying non-persistent or persistent oil as cargo, substituting “in the Period” for “in the year” in each place:
  - (b) in the case of a ship in the class “Domestic ship using bunker fuel (other than a New Zealand fishing vessel)”, substituting “73.29” for “147.79”:
  - (c) in the case of a ship in the class “New Zealand fishing vessel”, substituting “17.34” for “34.96”.
- (3) For a domestic ship, a capability levy is a single levy for the Period.
- (4) For a domestic oil tanker, a capability levy with respect to carrying oil as cargo is to be determined initially on the basis of an estimate of oil to be carried as cargo in the Period and to be adjusted at the end of the Period to reflect the actual amount carried.
- (5) For a foreign ship, a capability levy is a per entry levy payable on each entry during the Period of the ship into a New Zealand port from outside the harbour limits of that port.

**27 Capability levies for Period: contributing oil sites**

A capability levy is imposed for the Period with respect to every contributing oil site within one of the following classes in the amount specified:

- (a) for an FPSO, \$9,825.57:
- (b) for an offshore installation that is not an FPSO, \$139.35:
- (c) for an oil pipeline, \$112.07:
- (d) for an oil exploration well, \$31.24.

## 28 Reduced proportional levy where use arises after 1 January 2017

- (1) Despite clauses 24 to 27, a levy imposed under one of those clauses for the Period in respect of a domestic ship or a contributing oil site is to be reduced to a proportional amount calculated in accordance with subclause (2) if,—
- (a) in the case of a domestic ship, its first ever entry into a New Zealand port occurred after 1 January in the Period; and
  - (b) in the case of a contributing oil site, it first commenced operation after 1 January in the Period.
- (2) The amount of the reduced proportional levy is to be calculated in accordance with the following formula:

$$\text{FullLevy} \times \text{DaysLeftinPeriod} \div 181$$

where—

FullLevy is the levy otherwise determined under the applicable clause of clauses 24 to 27

DaysLeftinPeriod is the number of days remaining in the Period from and including, in the case of a domestic ship, the date of the ship's first ever entry into a New Zealand port and, in the case of a contributing oil site, the date on which it first commenced operation.

## 29 Application of clauses 14 to 17, 20, and 21 in relation to levies under clauses 24 to 28

Clauses 14 to 17, 20, and 21 apply with respect to levies payable under clauses 24 to 28 with any modifications that the circumstances require, including the following:

- (a) a reference to a year is to be read as a reference to the Period;
- (b) a reference to an annual levy is to be read as a reference to a single levy for the Period;
- (c) references to clauses 6 to 10 are to be read as references to clauses 24 to 28, respectively;
- (d) “365” is to be read as “181”;
- (e) “DaysLeftinYear” is to be read as “DaysLeftinPeriod”.

## 30 Refund of part of former annual levy

- (1) The Director must refund out of an annual levy paid under the Maritime Transport (Oil Pollution Levies) Order 2013 (the **former order**) for the year beginning on 1 July 2016 the amount that is in excess of the portion of the levy that is attributable to the period beginning on 1 July 2016 and ending on 31 December 2016 (the **part-year**).

- (2) The following examples are only illustrative. Subclause (1) prevails over the examples and is not limited by them.

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### Examples

In the case of a levy under the former order that is calculated in relation to the number of tonnes of cargo carried by a ship, the portion of it attributable to the part-year would ordinarily be the product of the per tonne rate and the cargo carried during the part-year.

In the case of a levy under the former order that is calculated in relation to the gross tons of a ship, the portion of it attributable to the part-year would ordinarily be proportionate to the relationship between the number of days in the part-year (184 days) and the number of days in the entire year (365 days), that is, 184/365 of the levy paid.

For contributing oil sites, the levy rate under clause 25 of this order is equivalent to that under clause 5 of the former order. Therefore, the refund with regard to a levy paid under clause 5 of the former order will ordinarily be equal to (and be applied in accordance with clause 19 to fully pay) the levy owing under clause 25.

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## Schedule Rates of levy

cls 6, 8, 24, 26

Class of ship	Oil pollution levy	Capability levy
Domestic oil tanker, non-persistent oil carried as cargo	37.92 cents × number of tonnes of non-persistent oil carried as cargo in the year	21.11 cents × number of tonnes of non-persistent oil carried as cargo in the year
Domestic oil tanker, persistent oil carried as cargo	36.89 cents × number of tonnes of persistent oil carried as cargo in the year	20.54 cents × number of tonnes of persistent oil carried as cargo in the year
Domestic ship using bunker fuel (other than a New Zealand fishing vessel)	265.40 cents × number of gross tons of the ship	147.79 cents × number of gross tons of the ship
Foreign oil tanker, non-persistent oil carried as cargo	13.31 cents × number of tonnes of non-persistent oil carried as cargo (per entry)	7.41 cents × number of tonnes of non-persistent oil carried as cargo (per entry)
Foreign oil tanker, persistent oil carried as cargo	31.53 cents × number of tonnes of persistent oil carried as cargo (per entry)	17.56 cents × number of tonnes of persistent oil carried as cargo (per entry)
Foreign ship using bunker fuel	0.26 cents × number of gross tons of the ship (per entry)	0.14 cents × number of gross tons of the ship (per entry)
New Zealand fishing vessel	62.78 cents × number of gross tons of the vessel	34.96 cents × number of gross tons of the vessel

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 comes into force on 1 January 2017. It revokes and replaces the Maritime Transport (Oil Pollution Levies) Order 2013 (the **former order**). It imposes capability levies for the period from 1 January 2017 to 30 June 2022. The rates of these levies for contributing oil sites are the same as for comparable levies under the former order. For ships, the new rates of these levies range from 74% to 898% of the rates for comparable levies under the former order. The order also continues oil pollution levies (with the same rates as in the former order for contributing oil sites and new rates for ships) applicable from 1 January 2017. For ships, the new rates range from 32% to 365% of the ones under the former order.

## Regulatory impact statement

The Ministry of Transport produced a regulatory impact statement in June 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.transport.govt.nz/assets/Uploads/About/Documents/RIS-Revision-of-New-Zealands-Oil-Pollution-Levy.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 24 November 2016.

This order is administered by the Ministry of Transport.