



Commodity Levies (Paeonies) Order 2018

Patsy Reddy, Governor-General

Order in Council

At Wellington this 6th day of August 2018

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.

Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 GST	3
<i>Levy imposed</i>	
5 Levy on paeonies	3
<i>Paying levy</i>	
6 Payers	4
7 When levy payable	4
8 Conscientious objectors	4
<i>Rate of levy</i>	
9 Basis of calculation of levy	5
10 Setting levy rates	5

11	Notifying levy rates	5
	<i>Spending levy money</i>	
12	NZPSI must spend levy money	5
13	Purposes for which levy money may be spent	5
14	Consultation on spending levy money	6
	<i>Information and record-keeping requirements</i>	
15	Information to determine payment	6
16	Commercial growers must keep records	6
17	Collection agents must keep records	7
18	NZPSI must keep records	7
19	Confidentiality	8
	<i>Dispute resolution</i>	
20	Appointment of mediators	8
21	Remuneration of mediators	8
22	Conferences under control of mediators	9
23	Conferences must be held in private	9
24	Representatives	9
25	Right to be heard	9
26	Evidence	9
27	Mediators may resolve disputes in certain cases	9
28	Cost of mediation	10
29	Appeal to District Court	10
	<i>Compliance audits</i>	
30	Remuneration of auditors	10
	<i>Revocation</i>	
31	Revocation of Commodity Levies (Paeonies) Order 2012	10

Order

1 Title

This order is the Commodity Levies (Paeonies) Order 2018.

2 Commencement

This order comes into force on 7 September 2018.

3 Interpretation

In this order, unless the context otherwise requires,—

collection agent means a person whose business is or includes—

- (a) buying paeonies from commercial growers for sale in New Zealand or overseas; or

- (b) selling paeonies in New Zealand or overseas on behalf of commercial growers

commercial grower means a person who—

- (a) grows paeonies in New Zealand; and
- (b) derives more than \$2,500 from the sale of the person's paeonies in a levy year

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 5

levy money means the money paid or payable under this order as a levy

levy year means—

- (a) a period of 12 months starting on 1 September and ending on 31 August; but
- (b) for the first levy year, the period starting on 7 September 2018 and ending on 31 August 2019

NZPSI means the New Zealand Paeony Society Incorporated

paeony means cut flowers, buds, leaves, stems, and roots of the genus *Paeonia*

sell includes export for sale

selling price means,—

- (a) for paeonies sold in New Zealand, the commercial grower's farm-gate selling price, exclusive of GST and before deduction of any costs or charges:
- (b) for paeonies sold overseas before export, the actual selling price:
- (c) for paeonies exported to be sold overseas, the free on-board value (FOB value) as specified in the declaration attached to or forming part of the customs entry made for the paeonies.

4 **GST**

A reference in this order to the payment or recovery of a levy must be read as including the payment or recovery of any GST payable on the levy.

Levy imposed

5 **Levy on paeonies**

- (1) A levy is imposed on paeonies grown by commercial growers.
- (2) The levy is payable to NZPSI.

*Paying levy***6 Payers**

- (1) Commercial growers are primarily responsible for paying the levy.
- (2) If a commercial grower uses a collection agent, the agent must pay the levy.
- (3) A collection agent may recover the levy from a commercial grower by—
 - (a) deducting the amount of the levy from the payment made to the grower for the paeonies; or
 - (b) recovering the amount of the levy as a debt due from the grower.
- (4) A collection agent may charge NZPSI a collection fee of not more than 4% of the levy payable (exclusive of GST) plus the GST payable on the fee by deducting the fee plus GST before paying the levy to NZPSI.

7 When levy payable*Due dates for payment*

- (1) If a commercial grower sells the grower's paeonies in New Zealand to anyone other than a collection agent, the due date is the date on which the grower is paid for the paeonies.
- (2) If a collection agent sells a commercial grower's paeonies in New Zealand, the due date is the date on which the agent sells the paeonies.
- (3) If a commercial grower or a collection agent exports the grower's paeonies, the due date is the earlier of—
 - (a) the date on which the paeonies are loaded on an international carrier for export; and
 - (b) the date on which the paeonies are sold overseas.

Latest dates for payment

- (4) The latest date for payment of the levy is,—
 - (a) if the levy is payable by a commercial grower, 90 days after the due date;
 - (b) if the levy is payable by a collection agent, the 20th day of the month after the month in which the due date occurs.

8 Conscientious objectors

If a commercial grower or collection agent objects on conscientious or religious grounds to paying the levy to NZPSI,—

- (a) the grower or agent must pay the equivalent amount to the Director-General of the Ministry for Primary Industries; and
- (b) the Director-General must pay the amount to NZPSI.

*Rate of levy***9 Basis of calculation of levy**

NZPSI must calculate the levy on the basis of the selling price of paeonies grown by commercial growers sold in a levy year.

10 Setting levy rates

- (1) NZPSI may set—
 - (a) a levy rate for paeony flowers, buds, leaves, and stems; and
 - (b) a levy rate for paeony roots.
- (2) Neither rate may exceed 2.5% of the selling price.
- (3) NZPSI must set the levy rates for a levy year before the start of the levy year at—
 - (a) the annual general meeting; or
 - (b) a special general meeting called for that purpose.
- (4) If NZPSI does not set the levy rates for a levy year before the beginning of the levy year, the rates that applied for the previous levy year continue to apply.

11 Notifying levy rates

- (1) NZPSI must notify the actual rates—
 - (a) by email to all commercial growers and collection agents known to NZPSI.
 - (b) in an industry publication produced by NZPSI; and
 - (c) on the NZPSI Internet site.
- (2) NZPSI must notify the actual rates as soon as practicable after setting them.

*Spending levy money***12 NZPSI must spend levy money**

NZPSI must—

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

13 Purposes for which levy money may be spent

- (1) NZPSI may spend levy money for all or any of the following purposes:
 - (a) product research and development, including the development of new varieties of paeonies;
 - (b) production research and development;
 - (c) market research and development, including the development of access to markets:

- (d) the provision of education, information, and training;
 - (e) the provision and application of technology;
 - (f) the protection or improvement of plant health;
 - (g) ensuring representation of the views of commercial growers to relevant government agencies or to other grower groups;
 - (h) the development of quality assurance programmes;
 - (i) the day-to-day administration of the NZPSI.
- (2) NZPSI must not spend levy money on commercial or trading activities.

14 Consultation on spending levy money

- (1) NZPSI must, at least once every 12 months,—
- (a) consult commercial growers on how it proposes to spend levy money in the next levy year; and
 - (b) provide growers with details of how it spent levy money in the previous 12 months.
- (2) For the purposes of subclause (1), NZPSI must—
- (a) hold local meetings at least 1 month before its annual general meeting; and
 - (b) present details of how it proposes to spend levy money in the next levy year for approval at its annual general meeting.
- (3) NZPSI must,—
- (a) before local meetings, circulate draft budgets and plans for spending the levy money by email, by post, or on the NZPSI Internet site; and
 - (b) advertise each local meeting on the NZPSI Internet site; and
 - (c) by email or post, invite all commercial growers and collection agents known to NZPSI to attend its annual general meeting.

Information and record-keeping requirements

15 Information to determine payment

- (1) NZPSI may, by email or post, request a commercial grower or a collection agent to provide any information that NZPSI reasonably requires in order to determine the amount of levy that the grower or agent must pay.
- (2) The grower or agent must provide the information to NZPSI as soon as practicable.

16 Commercial growers must keep records

- (1) A commercial grower must collect the following information for each levy year:
- (a) the selling price of paeonies sold by or on behalf of the grower:

- (b) the names and addresses of the collection agents who—
 - (i) bought paeonies from the grower; or
 - (ii) sold paeonies on behalf of the grower.
- (2) The grower must keep the information for at least 4 years after the date on which the levy money relating to the sale of the paeonies is paid to NZPSI.

17 Collection agents must keep records

- (1) A collection agent must collect the following information for each levy year:
 - (a) the names and addresses of commercial growers from whom the agent bought paeonies:
 - (b) the selling price of the paeonies bought from each commercial grower:
 - (c) the names and addresses of commercial growers on whose behalf the agent sold paeonies:
 - (d) the selling price of the paeonies sold on behalf of each commercial grower:
 - (e) the amount of levy money collected and paid to NZPSI:
 - (f) the amount of collection fees deducted by the agent.
- (2) The collection agent must—
 - (a) keep the information required by subclauses (1)(a) to (d) for at least 4 years after the date on which the levy money relating to the sale of the paeonies is paid to NZPSI; and
 - (b) keep the information required by subclause (1)(e) for at least 4 years after the date on which the levy money is paid to NZPSI; and
 - (c) keep the information required by subclause (1)(f) for at least 4 years after the date on which the levy money from which the collection fee is deducted is paid to NZPSI

18 NZPSI must keep records

- (1) NZPSI must collect the following information for each levy year:
 - (a) each amount of levy money paid to it:
 - (b) the date on which it received each amount of levy money:
 - (c) who paid each amount of levy money:
 - (d) how it spent or invested the levy money.
- (2) NZPSI must—
 - (a) keep the information required by subclauses (1)(a) to (c) for at least 4 years after the date on which the levy money is paid to NZPSI; and
 - (b) keep the information required by subclause (1)(d) for at least 4 years after the levy money is spent or invested.

19 Confidentiality

- (1) This clause applies to information obtained—
 - (a) under the Commodity Levies Act 1990 in relation to this order; or
 - (b) under or because of this order.
- (2) NZPSI may disclose the information only for the following purposes:
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990:
 - (b) the production of a statement under section 25 of the Commodity Levies Act 1990:
 - (c) ensuring that commercial growers are complying with this order:
 - (d) the giving of evidence in legal proceedings taken under or in relation to this order:
 - (e) determining the voting entitlements of members of NZPSI:
 - (f) counting the votes of members of NZPSI:
 - (g) statistical and research purposes that do not involve the disclosure of personal information.

*Dispute resolution***20 Appointment of mediators**

- (1) This clause applies to a dispute concerning—
 - (a) whether or not 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 27.

21 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).

22 Conferences under control of mediators

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 email or post; and
- (c) preside at the conference.

23 Conferences must be held in private

Unless clause 24 applies, only the parties to a dispute may attend a conference with the mediator.

24 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.

25 Right to be heard

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

26 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.

27 Mediators may resolve disputes 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 the decision.
- (3) The parties must comply with the mediator's decision.

28 Cost of mediation

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

29 Appeal to District Court

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

Compliance audits

30 Remuneration of auditors

NZPSI must remunerate a person appointed as an auditor under section 15 of the Commodity Levies Act 1990 at a rate determined by the Minister of Agriculture after consultation with NZPSI.

Revocation

31 Revocation of Commodity Levies (Paeonies) Order 2012

The Commodity Levies (Paeonies) Order 2012 (SR 2012/273) 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 7 September 2018, imposes a levy on paeonies grown by commercial growers. The levy must be paid to the New Zealand Paeony Society Incorporated by commercial growers, or by collection agents who sell or export paeonies from commercial growers. This order revokes and replaces the Commodity Levies (Paeonies) Order 2012. The revocation does not affect amounts of levy money that became 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 31 December 2019, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act. If this order is confirmed, it will be revoked at the close of 6 September 2024 under section 13(1) of the Commodity Levies Act 1990 (the day before the sixth anniversary of the date on which it came into force), unless it is revoked earlier or extended under section 13(2) of that Act.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 9 August 2018.

This order is administered by the Ministry for Primary Industries.