



Biosecurity (Response—Onions Levy) Order 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 30th day of September 2019

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 100ZB of the Biosecurity Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Biosecurity made after being satisfied of the matter described in section 100ZB(6) of that Act.

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Order

1 Title

This order is the Biosecurity (Response—Onions Levy) Order 2019.

2 Commencement

This order comes into force on 1 November 2019.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

agreement—

- (a) means the deed; and
- (b) includes any operational agreement of the kind referred to in section 100Z(3) of the Act that is made between—
 - (i) the Director-General; and
 - (ii) ONZ

deed—

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by ONZ on 9 October 2015 (as may be revised or amended from time to time); and
- (b) includes a deed of the kind described in section 100Z(2) of the Act that replaces the deed referred to in paragraph (a)

grower means a person whose business is or includes the commercial production of onions

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 1 November 2019 and ending on 30 November 2019; and
- (b) for all levy years other than the first levy year, a period of 12 months starting on 1 December and ending on 30 November

onions means the bulb of the onion plant *Allium cepa* (excluding the bulb of the shallot plant *Allium cepa* var *aggregatum*) grown in New Zealand for the domestic fresh market, processing, or export

ONZ means Onions New Zealand Incorporated

planted hectares has the meaning given in clause 6

process, in relation to onions, means to perform any chemical or mechanical process

response activity has the meaning given in section 100Y(3) of the Act.

4 Levy imposed

- (1) This order imposes a levy on onions grown by a grower.
- (2) The levy must be paid to ONZ.

5 How levy may be spent

- (1) ONZ must spend all levy money paid to it on meeting its commitments relating to response activities under the agreement.
- (2) ONZ may invest levy money until it is spent.

Determination of levy

6 Basis for calculating levy

- (1) The levy must be calculated on the basis of planted hectares.
- (2) In this order, **planted hectares** means the number of hectares of land a grower has planted in onions to the nearest hectare, determined as at 15 October of the preceding calendar year.
- (3) In subclause (2), **nearest hectare** is determined as follows:
 - (a) any total area that includes a fraction of 0.5 or more hectares must be rounded up to the nearest hectare; and

- (b) any total area that includes a fraction of 0.5 or less hectares must be rounded down to the nearest hectare.

7 Levy must be paid at single rate

The levy must be paid at a single rate.

8 Maximum levy rate

- (1) The maximum rate of levy payable for a levy year is \$600 per planted hectare.
- (2) The maximum rate of levy is exclusive of GST.

9 Rate of levy payable

- (1) The levy rate is 0.0 cents per planted hectare for the first levy year.
- (2) For a levy year after the first levy year, ONZ may set a levy rate if—
 - (a) ONZ is required to raise funds to meet its financial obligations for 1 or more response activities under the agreement; and
 - (b) ONZ has consulted its members on the levy rate proposed for the levy year; and
 - (c) the board of ONZ approves the setting of the levy rate.
- (3) ONZ must set—
 - (a) a levy rate in accordance with ONZ’s rules; and
 - (b) a starting date for the levy rate that is after the latest date on which ONZ gives notice under subclause (4).
- (4) ONZ must notify the levy rate and its starting date—
 - (a) in the *Gazette*; and
 - (b) in the ONZ newsletter or another ONZ publication; and
 - (c) by post or email to all growers known to ONZ.
- (5) Notification under subclause (4)(c) is treated as occurring,—
 - (a) by post, at the time the notice would have been delivered in the ordinary course of post; and
 - (b) by email, at the time of transmission of the email.
- (6) This clause is subject to clause 10.

10 Power to vary rate of levy

- (1) ONZ may vary the levy rate at any time with the approval of its board if, under the agreement, ONZ is required to contribute to the costs of a response activity.
- (2) When varying a levy rate under this clause, ONZ must set—
 - (a) the varied rate at a level that is sufficient, but does not exceed what is necessary, to enable ONZ to meet its response activity commitments under the agreement; and

- (b) a start date for the varied rate that is after the latest date on which ONZ gives notice under subclause (3).
- (3) ONZ must notify the varied rate and its starting date—
 - (a) in the *Gazette*; and
 - (b) in the ONZ newsletter or another ONZ publication; and
 - (c) by post or email to all growers known to ONZ.
- (4) Notification under subclause (3)(c) is treated as occurring,—
 - (a) by post, at the time the notice would have been delivered in the ordinary course of post; and
 - (b) by email, at the time of transmission of the email.
- (5) The levy rate varied in accordance with this clause may be set—
 - (a) at zero; and
 - (b) for a period not exceeding 3 years after the start date.

Paying levy

11 Grower primarily responsible for paying of levy

- (1) The grower is primarily responsible for paying the levy.
- (2) No grower is exempt from paying the levy.

12 ONZ responsible for collecting levy

ONZ is responsible for collecting the levy unless the grower pays the levy money to the Director-General.

13 When levy payable

- (1) The due date for payment of the levy is the date on which ONZ invoices the grower for the levy money due.
- (2) The last date for payment of the levy is the 20th day of the month after the month in which the due date for payment occurs.
- (3) ONZ may, in its absolute discretion, extend the time for a grower to pay an amount of levy money if ONZ considers that the grower was or will be unable to pay the levy by the latest date for payment because of extraordinary circumstances beyond the grower's control.

14 Additional levy for late payment

- (1) If any amount of the levy (or GST payable on that amount) has not been paid by the close of the last day for payment, 5% of the amount of the levy not paid at the end of the first month must be paid to ONZ, 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.

15 Growers must make returns to ONZ

- (1) A grower must provide a completed return to ONZ when paying the levy.
- (2) The return must be in the form approved by ONZ.
- (3) The return must include, in relation to the levy being paid,—
 - (a) the planted hectares; and
 - (b) the name and contact details of the grower.

16 No collection fee

ONZ must not charge a fee for collecting the levy.

*Miscellaneous***17 Records**

- (1) A grower must, in each levy year, keep records of—
 - (a) the grower's planted hectares; and
 - (b) the amount of levy money paid to ONZ or the Director-General.
- (2) ONZ must, in each levy year, keep records of—
 - (a) how the levy money was spent or invested; and
 - (b) each amount of levy money it receives; and
 - (c) the date on which each amount of levy money is received; and
 - (d) the name of the grower who paid the levy money; and
 - (e) the planted hectares for each grower who has paid a levy.
- (3) The records referred to—
 - (a) in subclause (1) must be kept for at least 10 years after the date of payment of the levy to which the records relate;
 - (b) in subclause (2) must be kept for at least 10 years after the end of the levy year to which the records relate.
- (4) A grower who is required to keep records must provide ONZ with information from the records as soon as is reasonably practicable after receiving a written request from ONZ for the information.

18 Confidentiality of information

- (1) This clause applies to information obtained—
 - (a) under or because of this order; or
 - (b) under the Act in relation to this order.
- (2) A person must not disclose information to anyone other than an officer or employee of ONZ unless the disclosure is—
 - (a) the giving of evidence in any legal proceedings taken in relation to this order; or

- (b) required by law; or
 - (c) the production of records or accounts under section 100ZG of the Act.
- (3) ONZ may disclose information—
- (a) for statistical or research purposes that do not require the disclosure of personal information; or
 - (b) for the purpose of invoicing or collecting the levy; or
 - (c) if every identifiable person to whom the information relates consents; or
 - (d) as required by law.

19 Conscientious objectors

- (1) A grower who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the Director-General.
- (2) The Director-General must pay the amount to ONZ.

20 Remuneration payable to auditor

- (1) An auditor appointed under section 100ZF of the Act is entitled to receive remuneration (as provided for under section 100ZF(8) of the Act) for the auditor's fees and allowances.
- (2) The fees and allowances referred to in subclause (1) are payable by ONZ at a rate agreed to by the Minister and ONZ.

Arbitration in case of dispute

21 Appointment of arbitrator

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) The parties to a dispute may agree to submit the dispute to arbitration.
- (3) If the parties to a dispute are unable to agree on the appointment of an arbitrator, the arbitrator must be appointed in accordance with Schedule 1 of the Arbitration Act 1996.
- (4) For the purposes of the Arbitration Act 1996,—
 - (a) an agreement under subclause (2) is an arbitration agreement; and
 - (b) the arbitrator (whether appointed by agreement or under subclause (3)) is an arbitral tribunal.

22 Application of Arbitration Act 1996 to dispute

- (1) Subject to clause 24, the provisions of the Arbitration Act 1996 (including the provisions for procedures to be followed by an arbitral tribunal) apply to the resolution of a dispute submitted to arbitration under this order.
- (2) However, the provisions of this order prevail if there is any inconsistency between those provisions and the provisions of the Arbitration Act 1996.

23 Payment of arbitration costs

The costs of the arbitration (including the arbitrator's remuneration) must, unless the parties agree otherwise, be determined under Schedule 2 of the Arbitration Act 1996.

24 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by an arbitrator may appeal to the District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days after the making of the decision concerned, or 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 notify the appellant and the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on all parties to the dispute.
- (4) Any party to the dispute 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.

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 2019, imposes a levy on onions grown in New Zealand for the domestic fresh market, processing, or export. The grower is primarily responsible for the levy payment. The levy must be collected by Onions New Zealand Incorporated (**ONZ**) unless the grower pays the levy to the Director-General.

ONZ is the onion industry sector organisation under Part 5A of the Biosecurity Act 1993 (the **Act**). Part 5A of the Act concerns agreements between government and industry organisations to deal with unwanted organisms, including agreements for jointly funding the costs of response activities.

ONZ must spend the levy money paid to it on meeting its commitments for contributing to the costs of response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by ONZ on 9 October 2015 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and ONZ.

Clause 9 sets the levy rate for onions at 0.0 cents per planted hectare, but this rate may be varied under *clause 10* if, for example, a response activity is needed for an unwanted organism and ONZ is required to contribute to the costs of the response activity.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2020, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 3 October 2019.

This order is administered by the Ministry for Primary Industries.