



Biosecurity (Response—Winegrapes and Grape Wine Levy) Order 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 10th day of August 2020

Present:

Her Excellency the Governor-General 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—Winegrapes and Grape Wine Levy) Order 2020.

2 Commencement

This order comes into force on 11 September 2020.

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) NZW

buyer means a person who—

- (a) buys winegrapes, or grape juice or grape juice concentrate made from winegrapes, in New Zealand from the grower of the winegrapes; and
- (b) may collect the levy from growers and wineries and pay it to NZW

deed—

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZW on 30 May 2017 (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)

farm-gate price means the price paid to buy winegrapes from their grower (excluding GST)

free on-board value means the value of winegrapes specified in the declaration attached to, or forming part of, the Customs entry for the grapes (excluding GST)

grape juice means the juice of winegrapes

grape juice concentrate means grape juice that has been concentrated by removing water from it

grape wine means grape wine (as defined by section 4(1) of the Wine Act 2003) that is made from winegrapes grown in New Zealand

grape wine component means the volume of grape wine contained in a grape wine product

grape wine product means a wine product (as defined by section 4(1) of the Wine Act 2003) in which the wine content includes grape wine

grower means a person whose business is or includes—

- (a) growing winegrapes for sale or export; or
- (b) growing winegrapes to make grape juice, or grape juice concentrate, for sale or export

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

levy—

- (a) means the levy imposed by clause 4; and
- (b) includes any additional levy imposed under clause 18

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

levy rate means the levy rate set under clause 9 or the levy rate varied under clause 10

levy year means,—

- (a) for the first levy year, the period starting on 11 September 2020 and ending on 30 June 2021; and
- (b) for each subsequent year, the 12-month period that starts on 1 July and ends on 30 June

New Zealand Winegrower or its replacement means—

- (a) the publication known on the commencement of this order as *New Zealand Winegrower*; or
- (b) any publication that replaces *New Zealand Winegrower*; or
- (c) if *New Zealand Winegrower* stops being published and is not replaced, a publication that the Minister specifies by notice in the *Gazette*

notional price means the price (excluding GST) set for winegrapes under clause 8 of the Commodity Levies (Winegrapes) Order 2016

NZW means the incorporated society known as New Zealand Winegrowers Incorporated

quarter means a 3-month period ending on 31 March, 30 June, 30 September, or 31 December

readiness activity has the meaning given in section 100Y(2) of the Act

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

winegrapes has the meaning given in clause 3 of the Commodity Levies (Winegrapes) Order 2016

winery has the meaning given in clause 3 of the Wine (Grape Wine Levy) Order 2016.

4 Levy on winegrapes and grape wine

- (1) A levy is imposed on—
 - (a) winegrapes that—
 - (i) are grown for sale or export; or
 - (ii) are grown to make grape juice, or grape juice concentrate, for sale or export; and
 - (b) grape wine that is sold by (or on behalf of) a winery; and
 - (c) the grape wine component of a grape wine product that is sold by (or on behalf of) a winery.
- (2) However, the levy is not imposed in relation to the sale of the grape wine or grape wine product to another winery in New Zealand.
- (3) The levy must be paid to NZW.

5 How levy may be spent

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

*Determining levy***6 Basis for calculating levy**

- (1) NZW is responsible for setting the levy rate.
- (2) The levy in a levy year must be calculated,—
 - (a) for winegrapes sold by or on behalf of a grower, on the basis of the farm-gate price of the grapes (unless paragraph (b) applies):
 - (b) for winegrapes exported by or on behalf of the grower, on the basis of the free on-board value of the grapes:
 - (c) for winegrapes made into grape juice or grape juice concentrate that is sold or exported by or on behalf of the grower, on the basis of the notional price of the grapes:
 - (d) for grape wine, on the basis of the volume (in litres) of grape wine (including the grape wine component of a grape wine product) that is sold by or on behalf of a winery.

7 Levy must be paid at single rate

The levy must be paid at a single rate for—

- (a) winegrapes; and
- (b) grape wine.

8 Maximum levy rate

- (1) The maximum levy rate payable for winegrapes is 1.5% of the farm-gate price, free on-board value, or notional price of the winegrapes.
- (2) The maximum levy rate payable for grape wine is 3.5 cents per litre of grape wine (including the grape wine component of a grape wine product) that is sold.
- (3) The maximum levy rate is exclusive of GST.

9 Levy rate payable

- (1) The levy rate for winegrapes and grape wine is set at zero for the first levy year.
- (2) If NZW does not set the levy rate before the start of a levy year, the levy for that year is the rate most recently set under this clause.
- (3) This clause is subject to clause 10.

10 Power to vary levy rate for response activity

- (1) NZW may vary the levy rate for a response activity if the NZW board approves the variation.
- (2) The board may approve a variation of the levy rate—
 - (a) for an indefinite period of time; but
 - (b) only to a level that is sufficient for NZW to meet its response activity commitments under the agreement.

11 Maximum levy payable in levy year

- (1) The maximum amount of levy payable in a levy year,—
 - (a) by a grower for winegrapes, is \$150,000; and
 - (b) by a winery for grape wine, is the amount of the levy payable on 20 million litres of grape wine (including the grape wine component of a grape wine product).
- (2) The amounts specified in this clause do not include any additional levy payable under clause 18.

*Notification process***12 NZW must notify levy rate and varied levy rate**

- (1) NZW must notify a rate set under clause 9 or varied under clause 10.
- (2) The earliest date that the rate or varied rate may come into effect is on the day after NZW has given notice of the new rate.
- (3) NZW has given notice as required when the information—
 - (a) is published—
 - (i) in NZW’s newsletter; and
 - (ii) in *New Zealand Winegrower* or its replacement; and
 - (iii) on NZW’s website; and
 - (b) is directly communicated by post or email to all growers, buyers, and wineries whose contact details are known to NZW.
- (4) Notification under subclause (3)(b) is treated as occurring at the time the notice would have been delivered in the ordinary course of post or at the time of transmission of the email, whichever is earlier.

*Paying and collecting levy***13 Growers and wineries responsible for paying levy**

- (1) A grower is primarily responsible for paying the levy on—
 - (a) winegrapes grown by the grower; and

- (b) winegrapes, or grape juice or grape juice concentrate made from winegrapes, exported by or on behalf of the grower.
- (2) A winery that sells grape wine or a grape wine product (or on whose behalf the wine or product is sold) is primarily responsible for paying the levy on the grape wine (including the grape wine component of a grape wine product).

14 Buyers responsible for collecting levy

- (1) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are sold by or on behalf of the grower,—
 - (a) the buyer must pay the levy on the grapes; and
 - (b) the buyer may recover from the grower any amount the buyer pays as the levy (and any GST payable on the levy) by deducting it from any amount payable to the grower; but
 - (c) the buyer must not charge a fee for paying the levy or recovering the amount paid as the levy from the grower.
- (2) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are exported by or on behalf of the grower, the grower must pay the levy on the grapes.

15 When levy payable by growers or buyers

- (1) Unless subclause (2) applies, if winegrapes, or grape juice or grape juice concentrate made from winegrapes, are sold by or on behalf of the grower,—
 - (a) in the case of winegrapes, juice, or concentrate to be paid for by 2 or more instalments, the due date for paying the levy to which an instalment relates is the day on which the buyer is liable to pay the instalment for the winegrapes, juice, or concentrate; or
 - (b) in any other case, the due date for paying the levy is the day on which the buyer is liable to pay for the winegrapes, juice, or concentrate.
- (2) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are exported by or on behalf of the grower,—
 - (a) in the case of winegrapes, juice, or concentrate to be paid for by 2 or more instalments, the due date for paying the levy to which an instalment relates is the day on which the grower is entitled to be paid the instalment for the winegrapes, juice, or concentrate; or
 - (b) in any other case, the due date for paying the levy is the day on which the grower is entitled to be paid for the winegrapes, juice, or concentrate.
- (3) The latest date for paying any levy is the 20th day of the month after the month in which the levy is due to be paid.

16 When levy payable by wineries

- (1) The due date for wineries to pay the levy is the date the grape wine or grape wine product is sold.
- (2) However, the levy must be paid quarterly, and the latest date for paying the levy is—
 - (a) 31 October, for sales in the previous quarter ending on 30 September:
 - (b) 31 January, for sales in the previous quarter ending on 31 December:
 - (c) 30 April, for sales in the previous quarter ending on 31 March:
 - (d) 31 July, for sales in the previous quarter ending on 30 June.

17 Extension of payment date

NZW's board, at its discretion, may extend the time for a grower or a winery to pay an amount of levy money if the board determines that the grower or winery was or will be unable to pay the levy by the latest date for payment because of extraordinary circumstances beyond the grower's or winery's control.

18 Additional levy for late payment

- (1) This clause applies if a grower, a buyer, or a winery does not pay an amount of levy money (including GST, if applicable) by the latest date for payment.
- (2) NZW may, at its discretion, at the end of each month during which the amount remains unpaid, impose an additional levy of 10% of the unpaid amount (including any unpaid additional levy already imposed under this clause).

19 Conscientious objectors

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

*Returns***20 Growers, buyers, and wineries must make returns to NZW**

- (1) A grower or a buyer must accompany each of their levy payments with a return that specifies,—
 - (a) for winegrapes that are sold (but not exported), the amount, the variety, and the farm-gate price:
 - (b) for winegrapes that are exported, the amount, the variety, and the free on-board value:
 - (c) for grape juice or grape juice concentrate that is sold or exported, the amount, the notional price, and the variety of the winegrapes from which the grape juice or grape juice concentrate is made.

- (2) A winery must accompany each of its levy payments with a return that specifies the volume (in litres) of grape wine (including the grape wine component of a grape wine product) sold in the period to which the payment relates.

Records

21 Growers and wineries must keep records

- (1) A grower must keep records of the following matters for each individual sale or export of winegrapes, or of grape juice or grape juice concentrate made from the winegrapes, for each levy year:
- (a) the quantity of winegrapes, juice, or concentrate sold or exported:
 - (b) the variety or varieties of winegrape:
 - (c) the full name of the buyer or importer of the winegrapes, juice, or concentrate:
 - (d) the price received:
 - (e) the quantity of winegrapes made into juice or concentrate (if any):
 - (f) if the grower paid a levy to NZW,—
 - (i) the amount or amounts of the levy paid; and
 - (ii) when the amount or amounts of the levy were paid:
 - (g) if the winegrapes, juice, or concentrate were exported, a copy of any declaration attached to, or forming part of, the Customs entry for their export.
- (2) A winery must keep records of the following matters for each levy year:
- (a) each individual sale of grape wine (including the grape wine component of a grape wine product) sold in the levy year:
 - (b) each sale described in paragraph (a) that was a sale to another winery in New Zealand:
 - (c) the total volume of grape wine (including the grape wine component of grape wine products) sold in each quarter of the levy year:
 - (d) the portion of the total volume described in paragraph (c) that was sold to other wineries in New Zealand:
 - (e) each amount of levy money paid to NZW and the date of payment.
- (3) Growers and wineries must retain records for 2 years after the end of the levy year to which they relate.
- (4) Growers and wineries must supply to NZW, as soon as is reasonably practicable, any information that NZW requests in writing for the purposes of calculating the levy.

22 NZW must keep records

- (1) NZW must keep records of the following for each levy year:

- (a) each payment of levy money received by NZW, including—
 - (i) the amount received; and
 - (ii) the date on which NZW received it; and
 - (iii) the name and contact details of the person who paid it;
 - (b) how and when the levy money was invested (if at all);
 - (c) how and when the levy money was spent.
- (2) NZW must retain the records for 2 years after the date on which the levy money was received.

Compliance audit

23 Remunerating auditors

- (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 are payable by NZW at a rate determined by the Minister, after consultation with NZW, that the Minister is satisfied is reasonable.

Arbitration process

24 Appointing arbitrators

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

25 Application of Arbitration Act 1996 to dispute

- (1) Subject to clause 27, 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.

26 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.

27 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the arbitrator's decision may appeal to the District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal within 28 days after the making of the decision concerned, or within any longer time that the 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 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 comes into force on 11 September 2020. It imposes a levy on—

- winegrapes grown in New Zealand by growers, including for processing and export; and
- grape wine (including the grape wine component of a grape wine product) that is sold by (or on behalf of) a winery in New Zealand.

Growers and wineries are responsible for paying the levy to New Zealand Winegrowers Incorporated (NZW) or the Director-General.

NZW is the grape wine 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 readiness and response activities.

NZW must spend the levy money to meet its commitments in contributing to the costs of response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZW on 30 May 2017 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and NZW.

Clause 9 sets the levy rate for winegrapes and grape wine at zero. This rate may be varied under *clause 10* if NZW is required to contribute to a 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 2021, 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*: 13 August 2020.

This order is administered by the Ministry for Primary Industries.