

Reprint
as at 17 December 2016



**Biosecurity (Bovine Tuberculosis—Cattle and Deer Levy)
Order 2016**
(LI 2016/111)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 30th day of May 2016

Present:

His Excellency the Governor-General in Council

This order is made under section 100L 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 Primary Industries made after being satisfied of the matters in section 100L(5) 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 Biosecurity (Bovine Tuberculosis—Cattle and Deer Levy) Order 2016.

2 Commencement

This order comes into force on 1 August 2016.

Order: confirmed, on 17 December 2016, by section 8 of the Subordinate Legislation Confirmation Act 2016 (2016 No 103).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

adult cattle means cattle each of whose dressed weight is or exceeds 40 kg

beef cattle means cattle that are not dairy cattle

cattle means any animals of the Bovidae family

dairy cattle—

- (a) means cattle bred and, at any time in the period of 62 days ending immediately before the date of slaughter, used for the production of dairy material (within the meaning of that term in section 4(1) of the Animal Products Act 1999); and

- (b) includes bulls intended to be used for breeding dairy cattle

date of export means the date on which the cattle or deer are loaded on board a ship or an aircraft for export

deer means any animals of the Cervidae family

exporter—

- (a) means a person who exports cattle or deer from New Zealand; and
- (b) if a person described in paragraph (a) is based overseas, includes the person's New Zealand agent or representative

industry means the dairy industry, the beef industry, the cattle export industry, and the deer export industry

levy means the levy imposed by clause 4

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

levy year—

- (a) means a period of 12 months that begins on 1 October and ends on 30 September; and
- (b) includes the period starting on the commencement of this order and ending on 30 September 2016

NAIT information system has the meaning given in section 4 of the National Animal Identification and Tracing Act 2012

National Bovine Tuberculosis Management Plan means the plan made under clause 3 of the Biosecurity (National Bovine Tuberculosis Pest Management Plan) Order 1998

operator means, in relation to any regulated slaughter premises, the owner or other person in control of the animal product business concerned

regulated slaughter premises means the premises of an animal product business within the meaning of the Animal Products Act 1999 in which cattle are slaughtered under a risk management programme registered under Part 2 of that Act or a regulated control scheme made under Part 3 of that Act

TBfree New Zealand means TBfree New Zealand Limited

zoo means a place where animals are kept for public exhibition, education, or entertainment or for conservation or research.

Levy imposed

4 Levy imposed

A levy payable to TBfree New Zealand is imposed, for the purposes of partially funding the implementation of the National Bovine Tuberculosis Management Plan, on—

- (a) adult cattle that are slaughtered in regulated slaughter premises; and
- (b) cattle that are exported live for commercial purposes, other than to a zoo; and
- (c) deer that are exported live for commercial purposes, other than to a zoo.

Determination of levy

5 Basis for calculation of levy

The basis for the calculation of the levy is,—

- (a) for adult cattle slaughtered in regulated slaughter premises, the number of cattle slaughtered; and
- (b) for cattle and deer that are exported live, the number of cattle or deer exported.

6 Different rates of levy apply

Different rates of levy apply to—

- (a) adult cattle slaughtered that are dairy cattle; and
- (b) adult cattle slaughtered that are beef cattle; and
- (c) cattle and deer that are exported live.

7 Maximum rate of levy

(1) The maximum rate of levy is,—

- (a) for dairy cattle slaughtered, \$15 per head of adult dairy cattle; and
- (b) for beef cattle slaughtered, \$8.50 per head of adult beef cattle; and
- (c) for cattle and deer that are exported live, \$15 per head of cattle or deer.

- (2) Those maximum rates are exclusive of goods and services tax.

8 TBfree New Zealand to fix actual rate of levy

- (1) The actual rate of levy for a levy year is the rate fixed by TBfree New Zealand, before the commencement of that levy year, at any meeting of its directors.
- (2) In fixing the rate of levy for a levy year, TBfree New Zealand must—
- (a) have regard to the expected total costs of implementing the National Bovine Tuberculosis Pest Management Plan for that year and the expected total costs of collecting the levy money for that year; and
 - (b) determine the share of costs to be funded by each industry, having regard to,—
 - (i) for the levy rate for dairy cattle slaughtered, the expected value of funding under clause 19(1)(b) of the Biosecurity (National Bovine Tuberculosis Pest Management Plan) Order 1998; and
 - (ii) for the levy rates for dairy cattle slaughtered and beef cattle slaughtered, clause 19(2) of the Biosecurity (National Bovine Tuberculosis Pest Management Plan) Order 1998; and
 - (iii) for the levy rate for cattle and deer that are exported live, the benefits the live animal export industry will receive from the plan's operations; and
 - (c) have regard to,—
 - (i) for the levy rate for dairy cattle slaughtered, the expected number of adult dairy cattle that will be slaughtered in regulated slaughter premises in that year; and
 - (ii) for the levy rate for beef cattle slaughtered, the expected number of adult beef cattle that will be slaughtered in regulated slaughter premises in that year; and
 - (iii) for the levy rate for cattle and deer that are exported live, the expected number of cattle and deer that will be exported live in that year.

9 Rate if no rate fixed before beginning of levy year

If TBfree New Zealand does not fix an actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed.

10 Notification of rate of levy

As soon as practicable after fixing a rate of levy, TBfree New Zealand must notify the rate of levy—

- (a) in a major rural publication; and
- (b) on an Internet site maintained by or on behalf of TBfree New Zealand.

*Payment of levy***11 Person responsible for paying levy**

The following person is responsible for paying the levy:

- (a) if the levy is payable for adult cattle slaughtered, the owner of the cattle at the time of slaughter;
- (b) if the levy is payable for cattle or deer exported live, the exporter of the cattle or deer.

12 How levy must be paid

The levy must be paid to the Director-General.

13 Operator of regulated slaughter premises to pay levy on slaughtered cattle and pay to Director-General

- (1) The operator of regulated slaughter premises where adult cattle are slaughtered—
 - (a) must collect the levy for adult cattle slaughtered from the owner of the adult cattle and pay the levy to the Director-General in accordance with this order; and
 - (b) may recover the levy money from the owner of the adult cattle when slaughtered (if the operator was not the owner at that time)—
 - (i) by recovering the amount as a debt due from the owner; or
 - (ii) by deducting it from any amount payable to that owner by the operator; and
 - (c) is not entitled to charge a fee for collecting the levy or recovering the levy money.
- (2) In determining whether to collect the levy for adult cattle slaughtered at the rate set for dairy cattle or the rate set for beef cattle, the operator of regulated slaughter premises may rely on information in the NAIT information system relating to the cattle or the owner of the cattle.
- (3) If reliance by an operator of regulated slaughter premises on information in the NAIT information system results in an incorrect amount of levy money being paid for adult cattle slaughtered,—
 - (a) the owner of the cattle may seek a refund of overpaid levy money from TBfree New Zealand under clause 17; but
 - (b) neither TBfree New Zealand nor the Director-General may seek payment of underpaid levy money.

14 When levy must be paid

- (1) The due date for payment of the levy for adult cattle that are slaughtered is the date on which the adult cattle are slaughtered at the regulated slaughter premises.
- (2) The due date for payment of the levy payable on live cattle and deer that are exported is the date of export.
- (3) The latest date for payment of any levy is 10 days, or such longer period as the Director-General allows, after a demand is made by the Director-General.
- (4) Clause 16(6) overrides subclause (3) if a demand for an estimated amount of levy is made.

15 Levy returns for slaughtered cattle

- (1) The operator of regulated slaughter premises must make a levy return to the Director-General of the information that the Director-General reasonably requires in order to determine the amount of levy payable for adult cattle that are slaughtered, including the number and classes of cattle slaughtered at the regulated slaughter premises.
- (2) The levy return—
 - (a) must be in the form determined by the Director-General for the levy after consulting TBfree New Zealand; and
 - (b) must be made to the Director-General within 10 days after the end of the period to which the return relates; and
 - (c) must be made in respect of weekly periods; but
 - (d) if the Director-General considers that the number of adult cattle slaughtered at the regulated slaughter premises does not justify weekly returns, must be made in respect of quarterly periods ending with the last day of March, June, September, and December.

16 TBfree may estimate levy money payable for slaughtered cattle

- (1) TBfree New Zealand may estimate the levy money payable for adult cattle that are slaughtered and may provide a levy demand (or authorise the Director-General to provide a levy demand) for that estimated amount if—
 - (a) a levy return has not been provided within the time required by clause 15; or
 - (b) TBfree New Zealand is not satisfied that the information contained in the levy return is complete and correct.
- (2) The operator of regulated slaughter premises who receives a demand for an estimated amount under subclause (1) may dispute the estimated amount by written notice to TBfree New Zealand within 10 days after the demand is made.
- (3) The notice disputing the estimated amount must—

- (a) contain or be accompanied by any written evidence or argument that the operator wishes to bring to TBfree New Zealand's attention; and
 - (b) be accompanied by a copy of the demand.
- (4) If the demand was made by the Director-General, the operator of the regulated slaughter premises must give the Director-General a copy of the notice and accompanying materials.
- (5) Within 15 days of receiving a notice of dispute, TBfree New Zealand must—
- (a) consider the matters raised in it; and
 - (b) undertake any audit of the operator's operations that TBfree New Zealand thinks appropriate and the operator allows; and
 - (c) by written notice to the operator,—
 - (i) withdraw the demand, and substitute another for it; or
 - (ii) withdraw the demand, and indicate that no other demand will be substituted for it; or
 - (iii) confirm the demand; and
 - (d) give the Director-General a copy of the notice.
- (6) The latest date for payment of the levy if the estimate is disputed under subclause (2) or clause 23 is—
- (a) 18 days after the demand is confirmed or substituted under subclause (5); or
 - (b) 18 days after the dispute is resolved under clause 23.

17 Refunds

- (1) TBfree New Zealand must refund levy money found to have been overpaid to the person responsible for paying the levy.
- (2) However, before paying a refund, TBfree New Zealand may require the person responsible for paying the levy to provide information justifying the refund.

Spending of levy money

18 How levy may be spent

The only purposes for which TBfree New Zealand may spend levy money are—

- (a) to fund the implementation of the National Bovine Tuberculosis Pest Management Plan; and
- (b) to fund the collection of the levy money.

19 Consultation on how levy money will be spent

Before the commencement of a levy year, TBfree New Zealand must consult the following organisations about how levy money is to be spent in that levy year:

- (a) an organisation recognised by the responsible Minister as an appropriate representative of the dairy industry:
- (b) an organisation recognised by the responsible Minister as an appropriate representative of the beef industry:
- (c) an organisation recognised by the responsible Minister as an appropriate representative of the cattle export industry:
- (d) an organisation recognised by the responsible Minister as an appropriate representative of the deer export industry:
- (e) Federated Farmers of New Zealand (Inc.).

Miscellaneous matters

20 Levy money from levy for slaughtered cattle to be held in separate trust accounts

- (1) Funds from which payments of levy for adult cattle slaughtered are made must be held on trust in separate accounts.
- (2) The operator of regulated slaughter premises must deposit in the trust account an amount equal to the levy on any adult cattle slaughtered at the premises within 15 days after the date of slaughter.

21 Records relating to levy for slaughtered cattle to be kept

- (1) An operator of regulated slaughter premises must keep accurate records of the payment of the levy for adult cattle slaughtered and full particulars of the transaction to which the payment relates.
- (2) The operator must keep all such records for a period of not less than 2 years from the date they are made.

22 Remuneration of persons conducting compliance audit

TBfree New Zealand must remunerate a person appointed as an auditor under section 100P of the Act at a rate determined by the Minister after consultation with TBfree New Zealand.

Arbitration in case of dispute

23 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.

24 Application of Arbitration Act 1996 to dispute

Except as provided in clause 26, 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.

25 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.

26 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with a decision made by an arbitrator may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the date of the decision; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) set the time and place for the hearing of the appeal; and
 - (b) notify the time and place to 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) Every 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 arbitrator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the arbitrator's decision.

Revocations

27 Revocation of Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998

The Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998 (SR 1998/457) is revoked.

28 Revocation of Biosecurity (Bovine Tuberculosis—Otago Land Levy) Order 1998

The Biosecurity (Bovine Tuberculosis—Otago Land Levy) Order 1998 (SR 1998/442) 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 August 2016, imposes a levy on cattle slaughtered in regulated slaughter premises and cattle and deer that are exported live for commercial purposes, other than to a zoo. The levy is payable to TBfree New Zealand Limited. The owner of cattle slaughtered and the exporter of cattle or deer are responsible for paying the levy but operators of regulated slaughter premises will collect the levy from owners of adult cattle slaughtered.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2017, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act.

Regulatory impact statement

The Ministry for Primary Industries produced a regulatory impact statement on 4 November 2015 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.mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 2 June 2016.

Reprints notes

1 *General*

This is a reprint of the Biosecurity (Bovine Tuberculosis—Cattle and Deer Levy) 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 2016 (2016 No 103): section 8