

Reprint
as at 1 August 2016



Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998

(SR 1998/457)

Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998: revoked, on 1 August 2016, by clause 27 of the Biosecurity (Bovine Tuberculosis—Cattle and Deer Levy) Order 2016 (LI 2016/111).

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 18th day of December 1998

Present:

The Right Hon Jenny Shipley presiding in Council

Pursuant to section 90 of the Biosecurity Act 1993, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and on the recommendation of the Minister for Food, Fibre, Biosecurity and Border Control, makes the following order.

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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 and commencement

- (1) This order may be cited as the Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998.
- (2) This order comes into force on 14 January 1999.

Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998: confirmed, on 9 September 1999, by section 2(b) of the Subordinate Legislation (Confirmation and Validation) Act 1999 (1999 No 112).

2 Interpretation

- (1) In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

adult cattle means a cattle beast that is or exceeds 40 kg dressed weight

cattle means any animal of the Bovidae family

licensed premises means—

- (a) a licensed abattoir or licensed export slaughterhouse (within the meaning of the Meat Act 1981):
- (b) 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

licensee, in relation to premises of a kind referred to in paragraph (b) of the definition of licensed premises, means the operator of the animal product business concerned

TBfree New Zealand means TBfree New Zealand Limited.

- (2) Any term or expression that is not defined in this order, but that is defined in the Act, has the meaning given to it by the Act.

Clause 2(1) **adult cattle**: substituted, on 2 September 2004, by clause 3 of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2004 (SR 2004/266).

Clause 2(1) **Board**: revoked, on 1 July 2013, by clause 4(1) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 2(1) **licensed premises**: substituted, on 1 November 1999, by section 8(2) of the Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

Clause 2(1) **licensee**: inserted, on 1 November 1999, by section 8(2) of the Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

Clause 2(1) **President of the relevant District Law Society**: revoked, on 1 July 2013, by clause 4(1) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 2(1) **TBfree New Zealand**: inserted, on 1 July 2013, by clause 4(2) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

3 Levy imposed

There is imposed on all adult cattle slaughtered in licensed premises a levy payable to TBfree New Zealand for the purposes of partially funding the implementation of the National Bovine Tuberculosis Pest Management Plan.

Clause 3: amended, on 1 July 2013, by clause 5 of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 3: amended, on 18 September 2012, by section 93 of the Biosecurity Law Reform Act 2012 (2012 No 73).

4 Owner responsible for paying levy

The owner of any adult cattle at the time of slaughter is responsible for paying the levy.

5 Licensee of licensed premises to collect levy and pay it to Director-General

A licensee of licensed premises where adult cattle are slaughtered must collect the levy from the owner of the adult cattle slaughtered and pay the levy to the Director-General in accordance with this order.

6 Licensee of licensed premises may recover levy from owner

- (1) A licensee of licensed premises who has paid levy money in respect of any adult cattle, and who was not the owner of the adult cattle when slaughtered, may recover from the owner of the adult cattle when slaughtered all or part of any levy money paid, either as a debt or by deducting it from any money in the licensee's hands belonging or payable to the owner.
- (2) A licensee of licensed premises is not entitled to recover the cost of levy collection and estimated amounts.

7 Director-General to account to TBfree New Zealand for all levy money

Except as provided in section 17 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997, all levy money received by the Director-General must be accounted for in full to TBfree New Zealand.

Clause 7 heading: amended, on 1 July 2013, by clause 6(1) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 7: amended, on 1 July 2013, by clause 6(2) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

8 Basis for calculation of levy

The basis for the calculation of the levy is the number of adult cattle slaughtered in a licensed premises.

9 Levy to be paid at single rate

The levy is to be paid at a single rate.

10 Maximum rate of levy

The maximum rate of the levy is \$15 per head of adult cattle (exclusive of GST).

Clause 10: amended, on 30 August 2001, by clause 3 of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2001 (SR 2001/199).

11 TBfree New Zealand to fix actual rate of levy

- (1) The actual rate of the levy is to be fixed by TBfree New Zealand at any meeting of the directors of TBfree New Zealand.
- (2) In fixing the rate of levy, TBfree New Zealand must have regard to—
 - (a) the expected total costs of implementing the strategy for the current financial year; and
 - (b) the share of costs to be funded from the levy as established by the funding formula set out in Chapter 12.5 of the Animal Health Board (Incorporated)'s proposal for a national pest management strategy for bovine tuberculosis notified in the *Gazette* on 16 November 1995; and
 - (c) the expected number of adult cattle that will be slaughtered in licenced premises in that year.

Clause 11 heading: amended, on 1 July 2013, by clause 7(1) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 11(1): replaced, on 1 July 2013, by clause 7(2) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 11(2): amended, on 1 July 2013, by clause 7(3) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 11(2)(b): amended, on 1 July 2013, by clause 7(4) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

12 Notification of rate of levy

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

- (a) by notice in the *Gazette*; and
- (b) by notice in the publication *Straight Furrow* or, where that publication has ceased to be published, a publication for the time being specified for the purposes of this order by the Director-General by notice in the *Gazette*.

Clause 12: amended, on 1 July 2013, by clause 8 of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

13 Levy returns

- (1) The licensee of licensed premises where adult cattle are slaughtered must make a return to the Director-General of the adult cattle slaughtered there.
- (2) The levy return—
 - (a) must be in the form determined by the Director-General after consulting TBfree New Zealand (or, if the consultation occurred before 1 July 2013, the Animal Health Board (Incorporated)); 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) in the case of a rural slaughterhouse, must be made in respect of quarterly periods ending with the last day of March, June, September, and December; and
 - (d) in all other cases, must be made in respect of weekly periods.

Clause 13(2)(a): amended, on 1 July 2013, by clause 9 of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

14 Payment of levy

- (1) The Director-General must make to licensees of licensed premises a written demand of any levy money payable.
- (2) TBfree New Zealand may, if a levy return is not made to the Director-General within the time specified in clause 13(2)(b), or if TBfree New Zealand is not satisfied that the information contained in a levy return is complete and correct,—

- (a) estimate the levy money payable; and
 - (b) make a written demand or authorise the Director-General to make a written demand for the levy money estimated under paragraph (a).
- (3) Every licensee to whom a demand is made under subclause (1) must, within 18 days after the making of the demand, pay the amount demanded—
- (a) into a bank account of the Ministry specified by the Director-General, for the benefit of the Director-General; or
 - (b) with the approval of the Director-General, into an office of the Ministry specified by the Director-General.
- (4) Every licensee to whom a demand is made under subclause (2) must pay the amount demanded—
- (a) into a bank account of the Ministry specified by the Director-General, for the benefit of the Director-General; or
 - (b) with the approval of the Director-General, into an office of the Ministry specified by the Director-General.
- (5) An amount required by subclause (4) to be paid must be paid,—
- (a) if the licensee has not earlier under clause 15 disputed the validity of the estimate concerned, within 18 days after the making of the demand; or
 - (b) if the estimate concerned has been confirmed or substituted under clause 15(3)(c), within 18 days after the giving of the notice confirming it or substituting it for another.

Clause 14(2): amended, on 1 July 2013, by clause 10(1) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 14(2): amended, on 1 July 2013, by clause 10(2) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

15 Licensee may dispute estimate

- (1) Within 10 days after the making of a demand under clause 14(2) to the licensee of any licensed premises (other than a demand substituted for another under subclause (3)(c)(i) of this clause), the licensee may dispute the estimated amount demanded by written notice to TBfree New Zealand—
- (a) containing or accompanied by any written evidence or argument the licensee wishes to bring to TBfree New Zealand's attention; and
 - (b) accompanied by a copy of the demand.
- (2) If the demand was made by the Director-General, the licensee must give the Director-General a copy of the notice and the material accompanying it.
- (3) 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 licensee's operations TBfree New Zealand thinks appropriate and the licensee allows; and

- (c) by written notice to the licensee,—
 - (i) withdraw the demand, and substitute another for it; or
 - (ii) withdraw the demand, and indicate that no other will be substituted for it; or
 - (iii) confirm the demand; and
- (d) give the Director-General a copy of the notice.

Clause 15(1): amended, on 1 July 2013, by clause 11(1) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 15(1)(a): amended, on 1 July 2013, by clause 11(2) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 15(3): amended, on 1 July 2013, by clause 11(3) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 15(3)(b): amended, on 1 July 2013, by clause 11(3) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

16 Purpose for which levy money to be spent

The only purposes for which TBfree New Zealand may spend levy money are disease control relating to cattle, vector control, and the payment of common costs (as these terms are defined in the Biosecurity (National Bovine Tuberculosis Pest Management Plan) Order 1998 (SR 1998/179)).

Clause 16: amended, on 1 July 2013, by clause 12 of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 16: amended, on 18 September 2012, by section 93 of the Biosecurity Law Reform Act 2012 (2012 No 73).

17 Consultation on how levy money to be spent

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

- (a) such organisation as is recognised by the responsible Minister as an appropriate representative of the dairy industry;
- (b) such organisation as is recognised by the responsible Minister as an appropriate representative of the beef industry;
- (c) the Federated Farmers of New Zealand (Inc.).

Clause 17: amended, on 1 July 2013, by clause 13(1) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 17: amended, on 1 July 2013, by clause 13(2) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 17(a): substituted, on 16 October 2001, by section 165(5) of the Dairy Industry Restructuring Act 2001 (2001 No 51).

Clause 17(b): replaced, on 1 July 2013, by clause 13(3) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

*Miscellaneous matters***18 Levy money to be held in separate trust accounts**

- (1) Funds from which payments of levy are made are to be held on trust in separate accounts.
- (2) The licensee of licensed 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 day of slaughter.

19 Records relating to levy to be kept

- (1) A person who makes a levy return under clause 13 or pays levy money under clause 14 must keep accurate records of the payment and full particulars of the transaction to which the payment related.
- (2) All such records must be preserved for a period of not less than 2 years from the date they are made.

20 Remuneration of persons conducting compliance audit

A person appointed as an auditor under section 100P of the Act must be remunerated by TBfree New Zealand at a rate determined by the Minister after consultation with TBfree New Zealand (or, if the consultation occurred before 1 July 2013, the Animal Health Board (Incorporated)).

Clause 20: amended, on 1 July 2013, by clause 14(1) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 20: amended, on 1 July 2013, by clause 14(2) of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200).

Clause 20: amended, on 18 September 2012, by section 93 of the Biosecurity Law Reform Act 2012 (2012 No 73).

*Arbitration in case of dispute***21 Appointment of arbitrator in case of dispute**

- (1) If a dispute arises as to—
 - (a) whether or not any person is required to pay the levy; or
 - (b) the amount of the levy any person is required to pay,—the parties may agree to submit the dispute to arbitration and that agreement is an arbitration agreement for the purposes of the Arbitration Act 1996.
- (2) If the parties 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 and, whether by agreement or in accordance with the Arbitration Act 1996, the arbitrator is an arbitral tribunal for the purposes of the Arbitration Act 1996.

22 Procedures and other matters relating to resolution of disputes

Except as provided in 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 all disputes submitted to arbitration in accordance with this order.

23 Payment of arbitration costs

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

24 Appeal to District Court

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

Marie Shroff,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998 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*

Biosecurity (Bovine Tuberculosis—Cattle and Deer Levy) Order 2016 (LI 2016/111): clause 27

Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2013 (SR 2013/200)

Biosecurity Law Reform Act 2012 (2012 No 73): section 93

Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2004 (SR 2004/266)

Dairy Industry Restructuring Act 2001 (2001 No 51): section 165(5)

Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2001 (SR 2001/199)

Subordinate Legislation (Confirmation and Validation) Act 1999 (1999 No 112): section 2(b)

Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94): section 8(2)