



Biosecurity (Response—Arable Crops Levy) Order 2023

Rt Hon Dame Helen Winkelmann, Administrator of the Government

Order in Council

At Wellington this 15th day of May 2023

Present:

Her Excellency the Administrator of the Government 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—Arable Crops Levy) Order 2023.

2 Commencement

This order comes into force on 1 July 2023.

3 Interpretation

(1) 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) SGRR

arable crop means a crop of—

- (a) cereal:
- (b) forage or turf seed:
- (c) maize seed:
- (d) non-forage seed

cereal means—

- (a) barley, oats, rye, or wheat that is grown in New Zealand for use in feed grain or as milling grain; and
- (b) cereal silage (as defined in clause 3 of the Commodity Levies (Cereal Silage) Order 2018)

deed—

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by SGRR on 23 March 2020 (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)

distributor means a person whose business is, or includes, the distribution of an arable crop (such as a seed sales business, seed storage business, grain broker, grain or seed importer, or seed merchant)

first transaction has the meaning set out in clause 4

first transaction price means the following prices (excluding GST):

- (a) in relation to a first transaction in which an arable crop is bought and sold, the price at which the crop is bought and sold in the transaction:
- (b) in relation to a first transaction in which cereal, forage or turf seed, or non-forage seed is assigned by the grower for use within their farming operation, the price that the crop would have attracted in field-dressed form in the locality in which the crop is grown

forage or turf seed means seed that is grown in New Zealand as seed for any of the following forage or turf crops:

- (a) beets:
- (b) brassicas:
- (c) chicory:
- (d) grass (any type):
- (e) legumes:
- (f) lucerne:

(g) plantain

grower, in relation to an arable crop, means a person whose business is, or includes, growing the crop for sale or processing

grower's levy has the meaning set out in clause 13(2)

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 17

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

levy rate means a levy rate set under clause 9

levy year means,—

(a) for the first levy year, the period that starts on 1 August 2023 and ends on 31 December 2023; and

(b) for each subsequent year, the 12-month period that starts on 1 January and ends on 31 December

maize seed means maize seed that is grown in, or imported into, New Zealand

non-forage seed means seed that is grown in New Zealand as seed for a non-forage crop

processor means a person whose business is, or includes, the processing of an arable crop (such as a seed cleaner, seed dresser, or grain dryer)

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

SGRR means Seed and Grain Readiness and Response Incorporated.

- (2) Terms or expressions that are not defined in this order, but that are defined in the Act, have the meanings given to them by the Act.

Levy

4 Levy on arable crops at first transaction

- (1) A levy is imposed on each of the following transactions of an arable crop (the **first transaction**):
- (a) the sale of cereal, forage or turf seed, or non-forage seed by the grower to a processor or distributor:
 - (b) the sale of maize seed by a processor or distributor to a grower:
 - (c) the assignment of cereal, forage or turf seed, or non-forage seed by the grower for use within their farming operation.
- (2) The levy must be paid to SGRR.

5 How levy may be spent

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

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

- (1) SGRR is responsible for setting the levy rate.
- (2) The levy must be calculated on the basis of the first transaction price.

7 Different levy rates may apply

Different levy rates may apply in respect of each arable crop to—

- (a) growers; and
- (b) processors and distributors.

8 Maximum levy rates

The levy rates payable in respect of an arable crop must not, when added together, exceed 1% of the first transaction price.

9 Levy rates payable

- (1) The levy rates in respect of each arable crop are set at zero for the period that starts on 1 July 2023 and ends on 31 July 2023.
- (2) SGRR's board is responsible for setting the levy rates—
 - (a) for the first levy year; and
 - (b) for each subsequent levy year.
- (3) If the board does not set a levy rate before the start of a levy year, the levy for that year is the rate most recently set under this clause.

*Notification process***10 SGRR must notify levy rates**

- (1) SGRR must notify any rate set under clause 9.
- (2) The earliest date on which a rate may come into effect is the day after SGRR has given notice of the new rate.
- (3) SGRR has **given notice** when the notice—
 - (a) is published—
 - (i) in the *Gazette*; and
 - (ii) in SGRR's newsletter or other similar publication; and
 - (iii) on SGRR's Internet site; and

- (b) is communicated by post or email to all growers, processors, and distributors whose contact details are known to SGRR.
- (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 applicable.

Paying and collecting levy

11 Growers, processors, and distributors responsible for paying levy

- (1) The grower is responsible for paying—
 - (a) the levy on first transactions in which an arable crop is bought or sold:
 - (b) the levy on first transactions in which cereal, forage or turf seed, or non-forage seed is assigned for use within their farming operation.
- (2) The processor or distributor is responsible for paying the levy on first transactions in which an arable crop is bought or sold.

12 Exemption from levy

- (1) This clause applies if—
 - (a) a grower, processor, or distributor enters into a first transaction in which an arable crop is bought and sold and the crop cannot be supplied, and the transaction cannot be completed, because of a natural disaster:
 - (b) a grower enters into a first transaction in which cereal, forage or turf seed, or non-forage seed is assigned for use within their farming operation and, because of a natural disaster, the crop is destroyed before it can be used for the purpose for which it was assigned.
- (2) The grower, processor, or distributor is exempt from paying the levy on that transaction.
- (3) If the grower, processor, or distributor has already paid the levy, SGRR must refund the amount of the levy paid.

13 Processor or distributor responsible for collecting grower's levy on certain transactions

- (1) This clause applies in respect of the following transactions:
 - (a) the sale of cereal, forage or turf seed, or non-forage seed by the grower to a processor or distributor:
 - (b) the sale of maize seed by a processor or distributor to a grower.
- (2) The processor or distributor is responsible for collecting the levy that the grower is responsible for paying on the transaction (the **grower's levy**).
- (3) The processor or distributor must pay the grower's levy to SGRR.
- (4) A processor or distributor may recover the grower's levy (including any GST payable) from the grower,—

- (a) if the processor or distributor is the seller, by invoicing the grower for the levy at the same time as invoicing them for the maize seed; or
- (b) if the processor or distributor is the purchaser, by deducting the amount of the grower's levy from the payment made to the grower for the cereal, forage or turf seed, or non-forage seed.

14 Collection fees

A processor or distributor who collects a grower's levy under clause 13 may deduct from the grower's levy a collection fee of not more than 1% of the amount of levy collected (excluding GST).

15 When levy payable by growers, processors, and distributors

- (1) The due date for payment of the levy is as follows:
 - (a) for a grower,—
 - (i) in relation to cereal, forage or turf seed, or non-forage seed,—
 - (A) if the crop is sold, when they receive payment for the crop:
 - (B) if the crop is assigned, when the crop is assigned for use within their farming operation:
 - (ii) in relation to maize seed, when they enter into the transaction:
 - (b) for a processor or distributor, when they enter into the first transaction of any arable crop.
- (2) The latest date for payment of a levy is the 20th day of the month after the month in which the levy is due to be paid.

16 Extension of payment date

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

17 Additional levy for late payment

- (1) This clause applies if a grower, processor, or distributor does not pay an amount of levy money (including GST, if applicable) by the latest date for payment.
- (2) SGRR may, at its discretion, after the latest date for payment,—
 - (a) impose an additional levy of 10% of the unpaid amount of levy money; and
 - (b) charge a further 2% of the unpaid amount of levy money for each whole month that the amount remains unpaid.

18 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 SGRR.

*Returns***19 Growers, processors, and distributors must make returns to SGRR**

A grower, processor, or distributor must accompany each of their levy payments with a return in a form approved by SGRR that specifies—

- (a) the date of the first transaction; and
- (b) the name of the person that the arable crop was sold to or purchased from in the transaction (if applicable); and
- (c) the quantity of the arable crop—
 - (i) sold or purchased in the transaction; or
 - (ii) assigned for use within the grower's farming operation; and
- (d) the first transaction price.

*Records***20 Growers must keep records**

- (1) A grower must keep records of the following for each levy year:
 - (a) the name and contact details, including address, of the processors or distributors they have sold an arable crop to or purchased an arable crop from:
 - (b) the quantity of the arable crop sold or purchased in each transaction:
 - (c) for each assignment of cereal, forage or turf seed, or non-forage seed for use within their farming operation, the quantity of the crop assigned and the purpose for which it was assigned:
 - (d) the first transaction price of each transaction:
 - (e) each amount of levy money, and the date on which the money was—
 - (i) paid to SGRR or to the Director-General:
 - (ii) collected by processors or distributors.
- (2) Growers must keep the records for 7 years after the levy year to which the records relate.
- (3) SGRR may, in writing, request from a grower any information set out in sub-clause (1) that SGRR reasonably requires to determine the amount of levy money payable by the grower.

- (4) A grower must, as soon as is reasonably practicable after receiving a request from SGRR, provide the information requested to SGRR in writing.

21 Processors and distributors must keep records

- (1) A processor or distributor must keep records of the following for each levy year:
- (a) the name and contact details, including address, of the growers they have sold an arable crop to or purchased an arable crop from:
 - (b) the quantity of the arable crop sold or purchased in each transaction:
 - (c) the first transaction price of each transaction:
 - (d) each amount of levy money paid to SGRR or the Director-General for levies that the processor or distributor is responsible for paying:
 - (e) each amount of grower's levy money—
 - (i) collected:
 - (ii) paid to SGRR:
 - (f) the date of each levy payment.
- (2) Processors and distributors must keep the records for 7 years after the levy year to which the records relate.
- (3) SGRR may, in writing, request from a processor or distributor any information set out in subclause (1) that SGRR reasonably requires to determine the amount of levy money payable by the processor or distributor.
- (4) A processor or distributor must, as soon as is reasonably practicable after receiving a request from SGRR, provide the information requested to SGRR in writing.

22 SGRR must keep records

- (1) SGRR must keep records of the following for each levy year:
- (a) each payment of levy money received by SGRR, including—
 - (i) the amount received; and
 - (ii) the date on which SGRR 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) SGRR must keep the records for 7 years after the levy year to which the records relate.

*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 SGRR at a rate determined by the Minister, after consultation with SGRR, 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 in accordance with 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 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 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.

Rachel Hayward,
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 1 July 2023. It imposes a levy on the following transactions:

- the sale of cereal, forage or turf seed, or non-forage seed by the grower to a processor or distributor:
- the sale of maize seed by a processor or distributor to a grower:
- the assignment of cereal, forage or turf seed, or non-forage seed by the grower for use within their farming operation.

Growers, processors, and distributors are responsible for paying the levy.

If the transaction to which the levy attaches involves the sale of an arable crop, the processor or distributor is responsible for collecting the grower's levy and paying both the grower's levy and their levy to Seed and Grain Readiness and Response Incorporated (**SGRR**) or the Director-General of the Ministry for Primary Industries (the **Director-General**) (*see clauses 13 and 18*).

If the transaction to which the levy attaches involves a grower assigning cereal, forage or turf seed, or non-forage seed for use within their farming operation, the grower is responsible for paying the levy directly to SGRR or the Director-General.

SGRR is the industry organisation representing the arable sector 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.

SGRR must spend the levy money paid to it to meet its commitments—

- to contribute to the costs of response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by SGRR on 23 March 2020; and
- to any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and SGRR.

Clause 9 sets the levy rate in respect of all arable crops at zero for the first month (1 July 2023 to 31 July 2023). After that time, the levy will be payable at the rates set by the board of SGRR.

The board may set different rates for each arable crop and for growers, and processors and distributors, in respect of each crop (*see clause 7*). For example, the levy rate for cereal may be 0.4% for growers and 0.3% for processors and distributors and the levy rate for maize seed may be 0.2% for growers and 0.6% for processors and distributors.

However, the levy rate for each arable crop must not exceed 1% of the first transaction price (*see clause 8*). For example, if the levy rate for cereal for growers is set at 0.4%, then the levy rate for the crop for processors and distributors cannot be set at a rate that is higher than 0.6%.

This order must be confirmed by an Act before the close of 30 June 2024. If it is not confirmed, it will be revoked on the close of that date. *See* subpart 3 of Part 5 of the Legislation Act 2019.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 18 May 2023.

This order is administered by the Ministry for Primary Industries.