

Reprint
as at 19 December 2018



Commodity Levies (Maize) Order 2018 (LI 2018/82)

Patsy Reddy, Governor-General

Order in Council

At Wellington this 21st day of May 2018

Present:

Her Excellency the Governor-General in Council

This order is made under section 4 of the Commodity Levies Act 1990—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Agriculture given in accordance with sections 5 and 6 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 Commodity Levies (Maize) Order 2018.

2 Commencement

This order comes into force on 1 July 2018.

Order: confirmed, on 19 December 2018, by section 10(e) of the Subordinate Legislation Confirmation Act (No 2) 2018 (2018 No 56).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent means a person whose business is or includes selling maize seed to growers for sowing

Director-General means the chief executive of the Ministry for Primary Industries

FAR means the industry organisation that, on the commencement of this order, was known as the Foundation for Arable Research Incorporated

grower means a person whose business is or includes growing maize in New Zealand

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 the money paid or payable under this order as a levy

levy rate means the rate fixed under clause 14

levy year means,—

(a) for the first levy year, the period that begins on 1 July 2018 and ends on 30 June 2019; and

(b) for each subsequent year, the period of 12 months that begins on 1 July and ends on 30 June

maize means maize that is grown for grain, seed, silage, or grazing

mediator means—

(a) a person appointed under clause 25; and

(b) for a particular dispute, the mediator appointed to resolve the dispute.

Levy imposed

4 Levy on maize

(1) This order imposes a levy on maize seed sold for sowing.

- (2) The levy must be paid to FAR.

Paying levy

5 Growers primarily responsible for paying levy

Growers of maize are primarily responsible for paying the levy.

6 Exemption

- (1) A grower is exempt from paying the levy on maize seed that is used in the same levy year to sow a crop to replace a failed maize crop that a collection agent verifies as having failed to establish.
- (2) If the grower has already paid the levy in relation to a maize crop that cannot be harvested due to flooding or other climate-related disasters, FAR must refund the amount of the levy paid.
- (3) For the purposes of subclause (2), standing maize that is fed to stock is deemed to have been harvested.

7 Collection agent must pay levy and recover it from growers

- (1) A collection agent who sells maize seed to a grower for sowing must pay the levy (including any GST payable on it).
- (2) A collection agent may recover the levy (including any GST payable on it) from a grower by invoicing them for the levy at the same time as invoicing them for the maize seed.
- (3) A collection agent who pays the levy to FAR may deduct from the levy a collection fee of not more than 1% of the amount of levy collected (excluding GST) plus the GST payable on the fee.

8 Conscientious objectors

- (1) A grower 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 FAR.

9 When levy payable

- (1) The due date for payment of an amount of levy on any quantity of maize seed is the earlier of—
 - (a) the date on which the grower pays for the maize seed; and
 - (b) the date on which payment of the invoice for the maize seed is due.
- (2) If an amount of levy payable for a month is \$2,000 or greater (excluding GST), the latest date for payment is the last day of the month following the due date for payment.

- (3) If an amount of levy payable for a month is less than \$2,000 (excluding GST), the payer may choose to pay in accordance with subclause (2) or combine the levy payment for the month with levy payments for 1 or more subsequent months in the same quarter, in which case the latest date for payment is as follows:

Combined levy

Latest date for payment

Combined levy comprising payments for the first and second months of a relevant quarter and that is \$2,000 or more plus GST

Last day of the third month of the relevant quarter

Combined levy comprising payments for the first and second months of a relevant quarter and that is less than \$2,000 plus GST

Last day of the month following the close of the relevant quarter

Combined levy comprising payments for the second and third months of a relevant quarter

Last day of the month following the close of the relevant quarter

Combined levy comprising payments for the first, second, and third months of a relevant quarter (regardless of the amount)

Last day of the month following the close of the relevant quarter

- (4) To avoid doubt, the latest date for payment of a levy relating to the third month of a relevant quarter (regardless of the amount and whether it is part of a combined levy) is the last day of the month following the close of the relevant quarter.
- (5) In this clause, **relevant quarter** means (as applicable) the following periods:
- (a) 1 July to 30 September:
 - (b) 1 October to 31 December:
 - (c) 1 January to 31 March:
 - (d) 1 April to 30 June.

10 Additional levy for late payment

- (1) If a grower or collection agent does not pay an amount of levy money by the required date, the grower or collection agent must pay FAR,—
- (a) for the first month, an additional levy of 5% of the unpaid amount; and
 - (b) for each subsequent month that the amount (or part of the amount) remains unpaid after the required date, an additional levy of 1% of the amount of the unpaid levy.
- (2) Any additional levy imposed by subclause (1) that remains unpaid is not itself subject to subclause (1).

Setting levy rate

11 Basis for calculating levy

FAR must calculate the levy payable in a levy year on the basis of the number of maize seeds a grower buys from a collection agent in the levy year.

12 Levy must be paid at single rate

The levy must be paid at a single rate.

13 Maximum levy rate

The maximum rate of the levy is \$1.40 per 10 000 seeds (excluding GST) purchased by a grower.

14 Fixing levy rate

- (1) For the first levy year, the levy on maize is \$1 per 10 000 seeds (excluding GST) bought by a grower.
- (2) For each subsequent levy year, FAR must fix the levy rate before the start of the levy year in accordance with its decision-making rules.
- (3) If FAR does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate most recently fixed under this clause.

15 Notifying levy rate

As soon as practicable after fixing a levy rate for a levy year, FAR must notify the rate—

- (a) in its newsletter to growers and collection agents; and
- (b) in the *Gazette*; and
- (c) on its Internet site.

Spending levy money

16 FAR must spend levy money

FAR must—

- (a) spend all the levy money paid to it; and
- (b) invest all levy money until it is spent.

17 Purposes for which levy money may be spent

- (1) FAR may spend levy money for all or any of the following purposes relating to maize or growers:
 - (a) research and development:
 - (b) education and training:
 - (c) collection, collation, and publication of information:
 - (d) day-to-day administration of FAR.
- (2) FAR must not spend levy money on commercial or trading activities.

18 Consulting on spending levy money

- (1) Each levy year, FAR must consult growers on how it proposes to spend levy money.

- (2) FAR may use the following methods to consult growers:
 - (a) discussions with local arable research groups and grower research committees:
 - (b) annual meetings, seminars, and field days.

Returns, records, and confidentiality

19 Returns

- (1) FAR may request, in writing, from each grower and collection agent any information that FAR reasonably requires to determine the amount of levy payable by the grower or collection agent.
- (2) Each grower and collection agent must, as soon as is reasonably practicable after receiving a request from FAR, supply FAR with a written return of the information requested.

20 Growers must keep records

A grower who buys maize seed must, in each levy year, keep records of—

- (a) each quantity of maize seed bought; and
- (b) the name and address of the seller of each quantity of maize seed.

21 Collections agents must keep records

A collection agent must, in each levy year, keep records of—

- (a) each quantity of maize seed bought by a grower from the collection agent; and
- (b) the name and address of the grower of each quantity of maize seed; and
- (c) each amount of levy money paid to FAR and the date of each payment.

22 FAR must keep records

FAR must, in each levy year, keep records of—

- (a) the amount of every levy paid to it; and
- (b) the date on which the levy was received; and
- (c) the person who paid the levy; and
- (d) how (if at all) amounts of levy were invested; and
- (e) how and when amounts of levy were spent.

23 Records must be kept for 2 years

The records required by clauses 20 to 22 must be kept for at least 2 years after the levy year to which the records relate.

24 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 FAR 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 17(1) of the Act; or
 - (d) the production of any statement under section 25 of the Act.
- (3) FAR may disclose information—
- (a) for the following purposes:
 - (i) statistical or research purposes that do not involve the disclosure of personal information;
 - (ii) invoicing or collecting the levy; and
 - (b) as required by law; and
 - (c) if every identifiable person to whom the information relates consents.

Dispute resolution

25 Appointing mediators

- (1) This clause applies to a dispute about—
- (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) A party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked, the President or a person authorised by the President may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends if—
- (a) the parties to the dispute resolve the dispute by agreement; or
 - (b) the mediator resolves the dispute under clause 32.

26 Remunerating mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated, or a person authorised by the President, must—

- (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount or amounts fixed and specified under subclause (2).

27 Conferences under control of mediator

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties by post or email; and
- (c) preside at the conference.

28 Conferences must be held in private

Unless clause 30 applies, only the parties to a dispute may attend a conference with the mediator.

29 Representatives

A mediator may allow a representative of a party to a dispute to attend a conference if the mediator is satisfied that it is appropriate to do so in all the circumstances.

30 Right to be heard

Each person who attends a conference may be heard at the conference.

31 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on their own initiative,—
 - (a) seek and receive any evidence that they think desirable to resolve the dispute; and
 - (b) make any investigations and inquiries that they think desirable to resolve the dispute.
- (3) A mediator may require a person giving evidence at a conference to verify the evidence by statutory declaration.

32 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or

- (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) A mediator who resolves a dispute under subclause (1) must give each party written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

33 Mediation costs

Each party must pay their own costs in relation to the mediation.

34 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal within 28 days after the decision is made or within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) fix the date, 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 every other party to the dispute.
- (4) Each 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 mediator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of process for the enforcement of the mediator's decision.

Compliance audits

35 Remunerating auditors

FAR must remunerate a person appointed as an auditor under section 15 of the Act at a rate determined by the Minister of Agriculture after consultation with FAR.

Revocation

36 Order revoked

The Commodity Levies (Maize) Order 2012 (SR 2012/163) 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 July 2018, imposes a levy on maize seed bought by growers from retailers (defined as collection agents in the order). Growers are primarily responsible for paying the levy, but retailers who sell maize seed to a grower for sowing must pay the levy. The levy is paid to the Foundation for Arable Research Incorporated.

Before this order, a levy was imposed on maize seed by the Commodity Levies (Maize) Order 2012. This order revokes and replaces that order. The revocation does not affect amounts of levy money that became payable under that order before the revocation.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2019, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act. If this order is confirmed, it will be revoked on 30 June 2024 (the day before the sixth anniversary of the date on which it came into force), unless it is extended under section 13(2) of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 24 May 2018.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Maize) Order 2018 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 (No 2) 2018 (2018 No 56): section 10(e)