

**Reprint  
as at 19 June 2012**



**Commodity Levies (Asparagus)  
Order 2006**

(SR 2006/156)

Commodity Levies (Asparagus) Order 2006: revoked, on 19 June 2012, by section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Dame Sian Elias, Administrator of the Government

**Order in Council**

At Wellington this 19th day of June 2006

Present:

The Hon Dr Michael Cullen presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Administrator of the Government, acting on the recommendation of the Minister of Agriculture and on the advice and with the consent of the Executive Council, makes the following order.

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This order is administered by the Ministry of Agriculture and Forestry.**

**Commodity Levies (Asparagus) Order 2006**Reprinted as at  
19 June 2012

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## Order

### 1 Title

This order is the Commodity Levies (Asparagus) Order 2006.

### 2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

Commodity Levies (Asparagus) Order 2006: confirmed, on 13 December 2006, by section 8(c) of the Subordinate Legislation (Confirmation and Validation) Act 2006 (2006 No 80).

### 3 Interpretation

In this order, unless the context otherwise requires,—

**asparagus** means spears of the species *Asparagus officinalis* or of any plant that is a hybrid of that species

**commercial asparagus grower**, in relation to a levy year, means the occupier of land totalling 500 m<sup>2</sup> or more that, as at 30 June of the levy year, is planted with asparagus for commercial purposes

**council** means the industry organisation that, on the commencement of this order, was known as the New Zealand Asparagus Council Incorporated

**levy** means the levy imposed by clause 4

**levy year**—

- (a) means a period of 12 months beginning on 1 April and ending on 31 March; and
- (b) includes—
  - (i) the period beginning on the commencement of this order and ending on 31 March 2007; and
  - (ii) the period beginning on 1 April 2011 and ending on the expiry of this order.

**4 Levy imposed**

A levy is imposed on all asparagus planted in New Zealand by commercial asparagus growers.

*Responsibility for payment of levy***5 Growers responsible for paying levy**

Commercial asparagus growers are primarily responsible for paying the levy.

*Determination of levy by council***6 Calculation of levy**

- (1) The amount of levy payable by a commercial asparagus grower in a levy year is the amount calculated in accordance with the following formula:

$$a \times r$$

where—

a is the area of land in hectares (expressed to 2 decimal places in the case of any part hectare) occupied by the commercial asparagus grower and planted with asparagus as at 30 June of the levy year

r is the rate of levy for the levy year fixed in accordance with clauses 10 and 11.

- (2) However, subclause (1) applies subject to clauses 10 and 11.

**7 Levy to be paid at single rate**

The levy is to be paid at a single rate.

**8 Maximum rate of levy**

The maximum rate of the levy is \$100 for every hectare of asparagus, exclusive of any goods and services tax.

**9 Minimum levy payment**

The minimum levy payment is the amount that would be calculated under clause 6 on 1 hectare, exclusive of goods and services tax.

**10 Council must fix actual rate of levy**

- (1) The council is to fix the actual rate of levy for the first levy year in accordance with its rules.
- (2) The council is to set the actual rate of levy for a subsequent levy year at its annual general meeting in the levy year or at any special general meeting called for the purpose and held at the beginning of the levy year.

**11 Previous rate to apply**

If the council does not fix the actual rate of levy for a subsequent levy year, the rate last fixed under clause 10 applies to the new levy year.

**12 Notification of rate of levy**

As soon as practicable after the rate of levy has been fixed for a levy year, the council must notify the rate and the year to which it relates by notice—

- (a) in the *Grower*; or
- (b) if the *Grower* ceases to be published, in any publication that replaces it; or
- (c) if the *Grower* ceases to be published and no publication replaces it, in a publication specified for the purposes of this order by the Minister by notice in the *Gazette*.

*Payment of levy*

**13 Levy to be paid to council**

The industry organisation to which the levy is to be paid is the council.

**14 Periods in respect of which levy is to be paid**

The levy is an annual levy and is payable in respect of each levy year.

**15 When levy payable**

- (1) The due date for payment of the levy by a commercial asparagus grower in a levy year is 31 October of the levy year.
- (2) The latest date for payment of the levy by a commercial asparagus grower in a levy year is 28 February of the levy year.

**16 Penalty for late payment**

If a levy has not been paid on or before the latest date for payment under clause 15(2), the commercial asparagus grower must pay to the council—

- (a) the amount of the levy outstanding as at the latest date for payment; plus
- (b) 10% of that amount.

*Expenditure of levy money***17 Council must spend levy money**

The council must spend or, pending expenditure, invest all levy money paid to it.

**18 General purposes for which levy money to be spent**

The general purposes for which the council may spend the levy money must relate to asparagus or matters in connection with it and include (but are not limited to) the following purposes:

- (a) product research and development:
- (b) market research and development:
- (c) promotion of asparagus:
- (d) quality assurance:
- (e) education:
- (f) day-to-day administration of the council.

**19 Consultation on how levy money to be spent**

(1) The council must consult commercial asparagus growers on how it proposes to spend levy money and provide details of the previous 12 months' expenditure—

- (a) at every annual general meeting of the council; and
- (b) at any special meeting of the council called according to the rules of the council for this purpose.

(2) For the purposes of subclause (1), the council must, at the meeting,—

- (a) present a budget for the proposed expenditure of levy money to be collected in that levy year; and
- (b) present accounts as to the expenditure of levy money collected in the previous levy year; and

- (c) allow reasonable time in the agenda of the meeting for commercial asparagus growers to discuss expenditure of levy money.

*Recordkeeping requirements and confidentiality  
of information*

**20 Returns**

- (1) Every commercial asparagus grower must, as soon as is reasonably practicable after receiving the council's written request to do so, provide the council written notice (in the form provided by the council, if provided) of the area of land in hectares (expressed to 2 decimal places in the case of any part hectare) occupied by the grower and planted with asparagus as at 30 June of the levy year to enable the council to calculate the levy payable by the commercial asparagus grower under clause 6.
- (2) The notice must be given to the council on or before the latest date for payment of the levy specified in clause 15(2).

**21 Records to be kept by commercial asparagus growers**

- (1) Every commercial asparagus grower must keep records, for each levy year, of the following matters and retain those records for at least 2 years after the end of the levy year to which they relate:
  - (a) the area of land occupied by that grower and planted in asparagus grown for commercial purposes:
  - (b) the amount of levy paid:
  - (c) the name of the entity that paid the levy.
- (2) This clause does not require a commercial asparagus grower to keep a nil record.

**22 Records to be kept by council**

- (1) The council must keep records, for each levy year, of the following matters and retain those records for at least 2 years after the end of the levy year to which they relate:
  - (a) the amount of each levy paid to it in that year and, in relation to each amount,—
    - (i) the day on which it was received; and

- (ii) the name of the entity that paid it; and
    - (iii) the area of land to which the levy relates:
  - (b) how (if at all) levy money paid to it in that year was invested:
  - (c) how and when all levy money spent by it in that year was spent.
- (2) This clause does not require the council to keep a nil record.

### **23 Confidentiality of information**

- (1) No officer or employee of the council may disclose (other than to some other person who is an officer or employee of the council) any information obtained—
- (a) under or because of this order; or
  - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not affect or prevent—
- (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
  - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or
  - (c) the giving of evidence in any legal proceedings taken—
    - (i) under or in relation to this order; or
    - (ii) under the Commodity Levies Act 1990 in relation to this order.
- (3) Subclause (1) does not prevent the council from disclosing or using any information—
- (a) (not being information relating to an identifiable person) obtained from a ballot held before the commencement of this order; or
  - (b) (not being information relating to an identifiable person) for statistical and research purposes; or
  - (c) for the purpose of collecting levies; or
  - (d) with the consent of every identifiable person to whom it relates.



*Miscellaneous*

**24 Conscientious objectors**

- (1) Any commercial asparagus grower who objects on conscientious or religious grounds to the payment to the council of an amount of levy money may pay the amount concerned to the Director-General of the Ministry of Agriculture and Forestry (or the chief executive of any other department of State that is for the time being responsible for the administration of this order).
- (2) The Director-General (or the chief executive) must pay any levy money received under subclause (1) to the council.

**25 Remuneration of persons conducting compliance audits**

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the council at a rate determined by the Minister after consultation with the council.

*Mediation in case of dispute*

**26 Appointment of mediators**

- (1) This clause applies to any dispute concerning—
  - (a) whether a person is required to pay a levy; or
  - (b) the amount of levy payable.
- (2) Any 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 and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) The mediator's appointment ends when—
  - (a) the parties resolve the dispute by agreement; or
  - (b) the mediator resolves the dispute under clause 33.

**27 Remuneration of mediators**

- (1) A mediator must be paid the remuneration (by way of fees and allowances) agreed to by the parties to the dispute.

- (2) If the parties 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 to do so) must—
  - (a) fix an amount or several amounts to be paid to the mediator as remuneration; or
  - (b) specify the amount (if any) that each party is to pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

## **28 Conference**

A mediator may organise a conference to facilitate the resolution of the dispute between the parties.

## **29 Time and place of conference**

Every conference organised by a mediator of the parties to a dispute is to be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

## **30 Conference to be held in private**

- (1) Only the parties to a dispute and the mediator may attend a conference organised by the mediator.
- (2) However, a mediator may, if satisfied that in all the circumstances it is appropriate to do so, allow a representative of any party to a dispute to attend a conference.

## **31 Right to be heard**

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, may be heard at the conference.

## **32 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 the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify his or her evidence by statutory declaration.

### **33 Mediator may resolve dispute in certain cases**

- (1) A mediator may resolve a dispute for the parties if the mediator—
  - (a) has organised and presided at a conference of the parties, but the dispute has not been resolved; or
  - (b) believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, the mediator must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the decision of the mediator.

### **34 Costs of mediation**

Each party to a dispute must pay its own costs in relation to the mediation.

### **35 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 33 may appeal to a District Court against the decision.
- (2) An appeal under this clause must be brought by the filing of a notice of appeal within 28 days after the making of the decision to which the appeal relates, or within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
  - (a) serve a copy of the notice of appeal on every other party to the dispute; and
  - (b) fix the time and place for the hearing of the appeal; and
  - (c) notify the appellant and all other parties to the dispute of the time and place for the hearing of the appeal.

- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the 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.

### **36 Revocation**

The Commodity Levies (Asparagus) Order 2000 (SR 2000/68) is revoked.

Diane Morcom,  
Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force 28 days after the date of its notification in the *Gazette*, imposes a levy on asparagus planted in New Zealand for commercial purposes. (This order replaces the Commodity Levies (Asparagus) Order 2000 which expired on 8 May 2006.)

The levy is payable to the New Zealand Asparagus Council Incorporated and is calculated on the basis of the area of land occupied by a commercial asparagus grower and planted in asparagus. It is intended to fund activities specifically related to asparagus, including research, promotion, and industry development.

Unless earlier revoked, the order expires 6 years after it is made by virtue of section 13 of the Commodity Levies Act 1990.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 22 June 2006.

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## **Notes**

### **1 *General***

This is a reprint of the Commodity Levies (Asparagus) Order 2006. The reprint incorporates all the amendments to the order as at 19 June 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

Commodity Levies Act 1990 (1990 No 127): section 13

Subordinate Legislation (Confirmation and Validation) Act 2006 (2006 No 80):  
section 8(c)

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