



## PRACTICE NOTE 9

October 2018

# FOOD ACT 2014

## Condition setting for Registration Authorities based in Territorial Authorities

### Purpose

This document sets out guidance for Registration Authorities outside of MPI on setting conditions of registration for food businesses under the Food Act 2014.

### Approach

This document draws on the content of the Food Act 2014 (the Act). It has been developed in collaboration with multiple Territorial Authorities (TAs) and stakeholders within the Ministry for Primary Industries (MPI).

### Intended Audience

Registration Authority staff

## Context

The Act makes provision for a registration authority to set reasonable conditions of registration for Food Control Plans (FCPs) and National Programmes (NPs). This is specifically empowered by section 60 in relation to FCPs and section 89 relation to NPs.

This guidance describes some of the situations where use of a condition of registration might be appropriate, requirements and constraints related to setting conditions of registration, and what is involved when there is a request for review of a condition.

## Setting conditions

The Act sets out criteria for putting in place conditions of registration. It allows for any condition to be applied so long as it is reasonable. If a condition is created in line with the provisions of the Act and it has a clear reason for its application, it is likely to be regarded as reasonable.

For example, a food business operating a FCP or NP is required to be verified (see sections 50 and 80 of the Act) and each TA has as a function under the Act to undertake information-gathering activities for the purpose of ascertaining compliance (see section 173(1) (j) of the Act). A condition of registration requiring a food business to provide evidence they have been verified within a specified time frame would appear to be reasonable. Such a condition informs the TA that the business is compliant without requiring more expensive forms of monitoring which would be cost recoverable from the business.

An example of a condition that may be regarded as unreasonable could be in setting a requirement that all staff at a food business are trained in a specific New Zealand Qualifications Authority (NZQA) unit standard covering food safety. This condition may, in many cases: exceed the requirements for staff training set out under the Act; be more economical for the business to provide its own targeted training; and not provide any food safety benefit to the business. So it would be difficult for this example to be considered a reasonable condition.

Situations where it may be appropriate to create a condition of registration may include:

- Where an early verification of a business is desirable, a condition of registration may specify a shorter timeframe to achieve verification (e.g. concerns about a business operator).
- Where an action needs to occur within a specified timeframe to make the registration unconditional.
- Where the nature of a food business is likely to evolve rapidly, it may be desirable to have an explicit restriction on the scope of activities unless they contact the registration authority.
- Where off-site effects may impinge on the production of safe and suitable food.

The above is not intended to be an exhaustive list of possibilities and registration authorities may choose to create conditions referencing other sections of the Act. The need for a condition of registration may be based on advice from Food Safety Officers, verification personnel or administration staff who work for the registration authority. It could also occur as a matter of policy pre-determined by the registration authority. It is recommended that the wording of any condition be reviewed by legal advisors to ensure it will achieve the desired outcome and that outcome is in line with the provisions of the Act.

It is important to note that the Act makes provision for the Governor General to create of prescribed

conditions at some future date. It also makes provision for the creation of restrictions on condition making, if that is deemed necessary (section 43(1) (e)).

The Act allows for conditions to be set or varied at any time. During the introductory phase of the Act, many registration authorities have appropriately maintained a focus on assisting businesses to transition to the new regime and may not have fully considered the possibilities associated with condition setting. The ability to vary conditions may be a useful tool for registration authorities as the transitional phase of the Act draws to a close and there is a shift to focus on business as usual.

## **Actions required when conditions are set or varied**

When a registration authority creates conditions on a registration or the registration conditions for a food business are varied, the registration authority is required to:

- Notify the business in writing setting out the condition(s).
- Notify the business of the reason for the condition(s).
- Notify the business of their right to seek a review of the condition(s).

## **When a business operator seeks a review of conditions**

It is important to note that when a person receives notification of conditions to the registration of their food business or a variation in the conditions of registration, they have the ability to request a review of the condition from their TA. This is an important distinction for TA staff, as the request for review is to the TA, not to the registration authority.

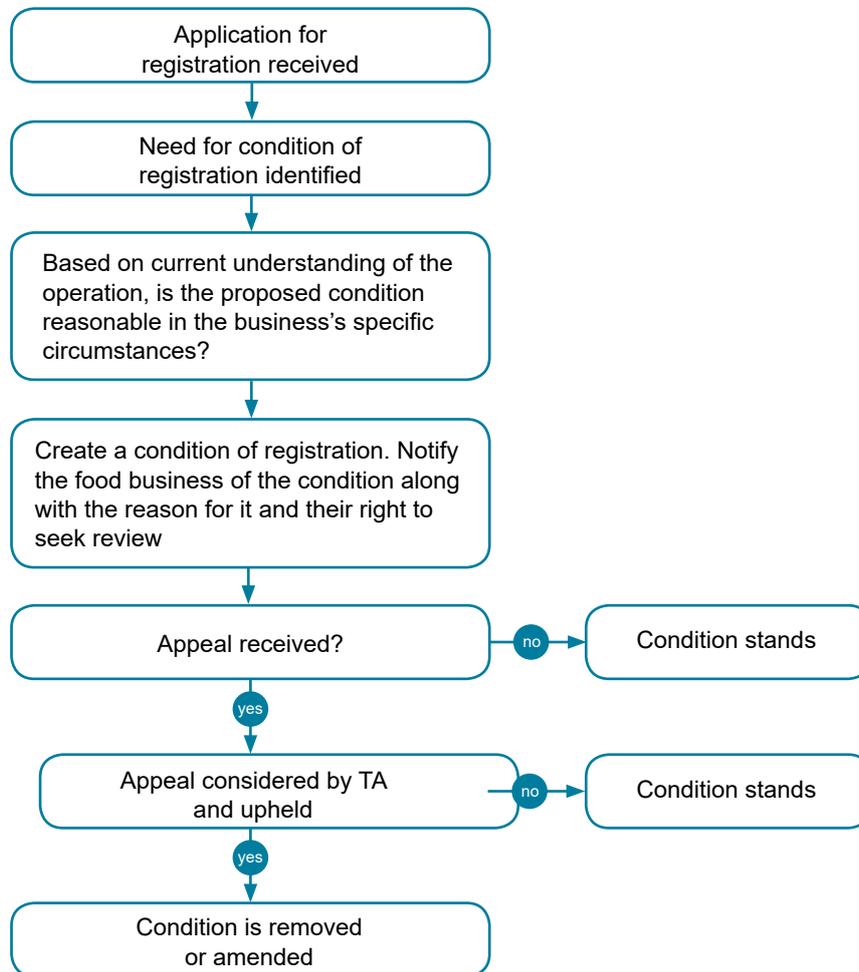
In summary, section 355 of the Act allows food business operators 20 working days to request a review of any decision with regard to conditions. Once a request has been received, the TA has 20

working days to reconsider their decision.

Individual TAs may choose to take different approaches to the delegation of authority around Food Act functions. TAs should consider how appeals will be managed, if they occur. Options include delegation of decision-making powers to one or more

staff members within the TA or with consideration of the review by Council or a committee of Council.

## Condition setting



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