



Proposals for notices under the Food Act 2014

MPI Discussion Paper No: 2015/36

ISBN No: 978-1-77665-053-8 (online)
ISSN No: 2253-3907 (online)

September 2015

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1 Submissions

The Ministry for Primary Industries (MPI) is seeking submissions from interested parties, both individuals and organisations, on proposals for notices under the Food Act 2014.

This document sets out proposals for notices in a number of areas. The draft notices have been provided to assist you in understanding the proposals. The drafting is indicative only and may change.

Your submissions will help us assess whether we need to amend these proposals in any way to better meet your needs, while still meeting the purpose of the Food Act 2014.

1.1 HOW TO HAVE YOUR SAY

The deadline for all submissions is:

- **5pm on Friday 6 November 2015;**

Please make sure you include the following information in your submission:

- the title of this discussion document;
- your name and title;
- your organisation's name (if you are submitting on behalf of an organisation); and
- your contact details (e.g. phone number, address and email).

Also:

- make sure that your comments can be clearly read; and
- state the page your comments are referring to; or
- state the notice or section of the notice (including the page number) your comments are referring to.

You can return your submission in any of these ways:

Email: foodact2014@mpi.govt.nz

Mail: Consultation: Proposals for notices under the Food Act 2014
Ministry for Primary Industries
PO Box 2526
Wellington 6104

Or hand delivery: Consultation: Proposals for notices under the Food Act 2014
Ministry for Primary Industries
Pastoral House
25 The Terrace
Wellington

Please make sure your submission gets to us no later than 5pm on the closing date above.

1.2 OFFICIAL INFORMATION ACT REQUIREMENTS

Under the Official Information Act 1982 (OIA) information held by MPI is to be made available to requestors unless there are grounds for withholding it. The grounds for withholding information are outlined in the OIA.

If you are making a submission, you may wish to indicate any grounds for withholding information contained in your submission. Reasons for withholding information could include that information is commercially sensitive or that you wish personal information, such as names or contact details, to be withheld. An automatic confidentiality disclaimer from your IT system will not be considered as grounds for withholding information.

We will take your indications into account when determining whether or not to release information. Any decision to withhold information requested under the OIA may be reviewed by the Ombudsman.

1.3 WHAT HAPPENS NEXT

After the consultation period has closed, we will take into account all submissions and as necessary amend the proposed notices. The notices will then be issued by the MPI chief executive (or under delegated authority).

A summary of submissions will be sent to all submitters and posted on the MPI website.

The notices must be in place by 1 March 2016.

2 Summary

The Food Act 2014 (the Food Act) was passed into law in June 2014 and will replace the Food Act 1981 over time. Most of the Food Act, including regulations to be made under that Act, and the notices proposed in this document, will come into force on 1 March 2016.

The Food Act provides for further requirements to be specified in regulations and notices to set out how “things will work” on a more practical level. The development of regulations and notices allows public input into the proposals before they become law.

Proposals for regulations were consulted on earlier this year and following analysis of the submissions received are now being drafted.

The proposals in this document are for notices and will apply to the food businesses covered by the food sectors identified in Schedule 1 and Schedule 2 of the Food Act. They cover a range of areas to bring this Act into operation, including the components of the MPI template food control plan, requirements to ensure food is safe and suitable, requirements for the registration process for importers and the clearance of certain imported foods, and matters relating to recognised agencies and persons.

2.1 WHAT WE PROPOSE

It is proposed that four notices be issued under the Food Act 2014.

2.1.1 Components for the template food control plan

All food businesses that are described in Schedule 1 Part 1 paragraphs (a) – food retail sector and (b) – food service sector of the Food Act 2014 are required to operate under a food control plan (FCP). The proposed notice will enable the described food retail and food service businesses to meet this requirement by using a template issued by MPI. The template FCP

consists of three main parts: Management and Basics (People, Places, Food); Specialist sections (each in its own sub-section); Records and Diary.

2.1.2 Food control plans and National programmes

The proposed notice will set requirements for the following matters:

- all National Programme operators receiving, storing, handling, and transporting readily perishable food, including vending machines containing these foods;
- temperature limits and record keeping for food service to pre-school children in a centre-based service setting preparing readily perishable food (particularly chicken and ground or minced meat);
- self-supplied water used in places at which food is manufactured or processed and handled to ensure it is suitable for the purpose for which it is used and does not adversely affect the safety and suitability of food;
- the types of amendments to a Food Control Plan which must be treated as significant amendments and therefore must be notified to the appropriate registration authority; and

2.1.3 Recognised agencies & persons

Part one of the proposed notice will set out the technical competencies for persons who are recognised or wish to be recognised under the Food Act 2014 to perform evaluation and/or verification for certain classes of food operation.

Part two of the proposed notice will set out the following matters relating to the deeming of recognised agencies and persons:

- the period of deemed recognition;
- the requirements that apply during the period of deemed recognition;
- the functions that the deemed recognised person or agency must or must not carry out;
- the training the deemed recognised person must complete;
- the competency standards that the deemed recognised person must meet; and
- the management standards the deemed recognised agency must meet.

2.1.4 Imported food & importers

The proposed notice will set out the following:

- the manner in which an importer must register
- which foods are considered “High Regulatory Interest” and “Increased Regulatory Interest”;
- the requirements and mechanisms for clearance for each food classified as “High Regulatory Interest” and “Increased Regulatory Interest”; and
- approved laboratories for testing of imported food.

3 Context

The Food Act will apply to around 85,000 food premises. It covers all businesses, activities, or undertakings involving trade in food, including food that is imported. It does not distinguish between food intended for domestic consumption or for export.

Food that is not sold or traded commercially is not covered by the Food Act. Examples of food activities that are excluded are seasonal workers that are provided with food and accommodation in return for their labour or food shared between families, friends, and neighbours. However, the Food Act does apply to food that is exchanged or bartered in commercial quantities, or via businesses specifically set up to facilitate this practice.

The policy objective of the Food Act and its regulations and notices is to provide an efficient, effective and risk-based regulatory regime that manages domestic food safety and suitability issues, while meeting the Government's objective of having increased certainty for food businesses.

The Food Act meets this policy objective by establishing a risk management framework that is underpinned by the following principles:

- the need to achieve the safety and suitability of food;
- the need to require persons who operate food businesses or otherwise trade in food to take responsibility for the safety and suitability of food;
- the need to promote standards and control mechanisms that are, as far as possible, risk-based and science-based;
- the need for efficiency and to minimise compliance costs;
- the importance of ensuring that regulatory requirements are applied consistently and fairly across sectors and groups depending on factors such as risk; and
- the importance of providing services in a co-ordinated and coherent manner as far as practicable.

The risk-based food safety system has been designed to be responsive to the diversity of businesses operating in the food industry. The Food Act regulates types of food businesses at different levels depending on the food safety risk that such businesses present to the public. The different levels correspond to different risk-based measures, including food control plans and national programmes. Accordingly, high risk businesses will be required to have a food control plan, and medium to low risk businesses will operate by using a national programme.

Businesses will be verified periodically against the requirements of the appropriate risk-based measure to ensure they are managing food safety risks. The frequency and type of verification is determined by the type of food business and its associated risks.

All food businesses should fit within one or more of the food sectors that are listed and described in Schedules 1 to 3 of the Food Act. Schedules 1 and 2 assign one of two risk-based measures (food control plan and national programme) to these food sectors as follows:

- Schedule 1 food businesses are in a sector that must operate under a food control plan;
- Schedule 2 food businesses are in one of three sectors that must operate under one of three levels of national programme: level 3; level 2; level 1.

Schedule 3 food businesses are not required to operate under a food control plan or national programme, but are still required to meet the requirement of selling food that is safe and suitable.

Traditional fundraising and benevolent "Kiwiana" activities such as sausage sizzles and cake stalls are not regulated other than the requirement to ensure food is safe and suitable, providing they occur no more than 20 times in a calendar year. This is in contrast to the Food Act 1981, which has a one-size-fits-all approach to food safety so that, with limited exceptions, all food for sale must be prepared in a commercial kitchen.

3.1 THE DEVELOPMENT OF REGULATIONS

Regulations are also referred to as secondary legislation and, like primary legislation such as the Food Act, impose legally binding obligations. In many instances regulations are required to amplify the provisions already in the Food Act. While the Food Act provides the legal

framework, regulations allow for more detailed requirements to help set out how “things will work” on a more practical level.

In January this year MPI released the discussion document paper *Proposals for regulations under the Food Act 2014* that sought submissions on proposed regulations needed to implement the new Food Act 2014. Consultation closed on 31 March 2015.

Regulations were proposed in the following areas:

- food control plans and national programmes;
- recognised agencies and persons;
- approved documents, material, facilities, persons or classes of persons;
- food standards – ensuring food is safe and suitable;
- imported food;
- requirements for registration and verification (auditing) of businesses;
- cost recovery;
- infringement offences; and
- transitional matters – how existing businesses will move from the Food Act 1981 to the Food Act 2014.

Submissions broadly supported the policy proposals in the consultation document. However, a number of changes were made. Generally these relate to:

- how the verification process will operate;
- providing more clarity about how the evaluation process will work;
- providing greater clarity about some of the safety and suitability proposals and removing undue prescription;
- the registration period for businesses operating under national programmes; and
- transition timeframes and making specific provisions in the transition schedule for businesses already operating under a risk based measure

Cabinet has now approved the final policy for regulations that are to be made under the Food Act 2014. Further information relating to this consultation is available at.

<http://www.mpi.govt.nz/news-and-resources/consultations/proposals-for-regulations-under-the-food-act-2014/>.

The Food (Fees and Charges) Regulations 2015 were gazetted in May 2015. The fees published apply only to services provided by MPI, as territorial authorities will set their own fees.

The rest of these regulations are currently being drafted and should be finalised late this year (2015), before coming into effect on 1 March 2016. Final regulations will be published in the New Zealand Legislation website and MPI will advise when this happens on its website.

3.2 ISSUING NOTICES UNDER THE FOOD ACT

The Food Act provides the MPI chief executive with the power to specify certain matters by notice (this is also referred to as tertiary legislation). This includes an ability to set requirements that are contemplated by the Act or its regulations, or if they are necessary or desirable to give effect to the Food Act or its regulations, or necessary to amplify the manner in which the requirements of regulations under the Food Act may or must be met.

Any notices issued by the MPI chief executive must be consistent with the Food Act and with any regulations under the Food Act.

Notices are proposed to set requirements where specialist knowledge is considered essential, where there is a need for flexibility, or to respond to the needs of sectors that face frequent change. The Food Act also specifies particular requirements that can only be set out in a notice rather than in regulations.

The consultation document *Proposals for regulations under the Food Act 2014* MPI Public Discussion Paper No: 2015/01 did include some proposed requirements that were to be set out in a notice. They were included in that document because it was considered that this would help readers to better understand how these notices relate to some of the proposed regulations.

Specifically these proposals relate to a significant amendment of a food control plan (page 23) and deemed recognition of auditors of Food Safety Programmes (pages 118-120).

For completeness these proposals are also included in this document. Submitters views received during consultation on proposed regulations have been taken into account for these proposals. We are seeking any further views you may have on those proposals, and views on the other matters that are proposed for inclusion in the notices.

3.3 TIMELINE FOR REGULATIONS, NOTICES AND THE INTRODUCTORY PERIOD

While the Food Act was passed in June 2014, most of the Act, the regulations and notices will come into force on 1 March 2016.

Key dates for developing and enacting the regulations and notices are:

Key dates	Action
Second and third quarter 2015	Regulations drafted and consulted on with representatives of affected parties
Third and fourth quarter 2015	Notices drafted and consulted on with affected parties
1 March 2016	Regulations and notices come into force – immediate effect for food businesses starting on or after that date
March 2016 to June 2019	Proposed introductory period for food businesses that existed at 1 March 2016 – regulations will specify a start date within this period for each food sector

Regulations under the Food Act are currently being drafted based on final policy decisions made by Cabinet in July 2015. The regulations will not be finalised until the end of 2015. Consultation on proposals for notices is being undertaken prior to the regulations being gazetted. This is to ensure there is sufficient time for the development of and consultation on notices. The regulations will be finalised before notices are issued so that any minor and technical amendments that are necessary to reflect the final wording of regulations are taken into account.

While the Food Act will apply to new businesses commencing trading on or after 1 March 2016, a three-year introductory period commences for food businesses that already exist at that time.

Each food sector will be set a date specified in regulations under the Food Act during the three-year introductory period. On the specified date all businesses in that food sector will need to have made the transition from the requirements of the Food Act 1981 to the requirements of the Food Act 2014.

The Food Act 1981 is repealed by the Food Act 2014. However, despite the repeal of the Food Act 1981, the Food Hygiene Regulations 1974, the Food (Safety) Regulations 2002 and the Dietary Supplements Regulations 1985 will continue to be in force until the end of the new Food Act's introductory period¹ to help food businesses make a smooth transition.

There are other areas where the Food Act allows for further requirements to be set. Further proposals may be developed later as the “new” food safety system develops and matures, and it becomes clear that they are required to meet the purpose of the Food Act 2014.

3.4 FURTHER GUIDANCE AND SUPPORT

To implement the Food Act and to support the regulatory framework as we move through the transition, MPI will develop a package of materials, including:

- a food control plan development manual to assist food businesses to develop a custom food control plan;
- guidance for food businesses operating under national programmes;
- guidance for food sectors that are exempt from having to operate under a national programme or food control plan; and
- guidance for verifiers and evaluators of food businesses operating under the new food safety regime.

¹ Unless these regulations are revoked sooner by regulations made under the Food Act

4 Proposed notices

The four proposed notices are described in this section. A draft of each of the notices is available from the MPI website.

4.1 COMPONENTS FOR THE TEMPLATE FOOD CONTROL PLAN

All food businesses that are described in Schedule 1 Part 1 paragraphs (a) and (b) of the Food Act 2014 are required to operate under a food control plan (FCP). The food businesses in these sectors include: food retailers and specialist food retailers such as butchers, fishmongers, delicatessens and bakeries; and food service businesses such as bars, cafes and restaurants, caterers and operators of residential care facilities and other food service businesses. The proposed notice will enable these businesses to meet the requirement to operate under an FCP through the use of the MPI approved template.

The template FCP is a plan for a food business to identify, control, manage and eliminate or minimise hazards or other relevant factors to achieve safe and suitable food. It provides a set of procedures that a food business must tailor to recognise how it deals with matters affecting food safety. The requirements in the template FCP take into account the type of food the business trades in, the type of process or operation that is applied to the food and each place that the food business trades in.

Since 2008 a version of a template plan and a range of additional 'clip-on' procedures for specific processes (e.g. sushi, doner kebabs, and Chinese style roast duck) has been available for adoption as a food safety programme on a voluntary basis for businesses in food service and catering. By implementing and operating under this template these businesses have been able to register an exemption from the Food Hygiene Regulations. The components of this early template have been revised and updated as feedback has been received over the years.

The template FCP that is to be issued under the proposed notice incorporates the components that have been used by food service and catering businesses. In addition several new components relating to a range of specialist food retailers (e.g. butchers, fishmongers, delicatessens and bakeries); residential care facilities; and the sous vide method of cooking have been developed. MPI welcomes comments on all components of the template FCP but is particularly interested in receiving comments on the new components.

The template FCP consists of three main parts:

- (1) Management and Basics:
 - People
 - Places
 - Food
- (2) Specialist sections:
 - Serve Safe
 - Care Safe
 - Baking Safe
 - Meat Safe
 - Seafood Safe
 - Deli Safe
 - Produce and general food Safe
- (3) Diary.

The template FCP does not cover businesses in the other food sectors described in Schedule 1 Part 1 (these businesses are required to develop and register and operate under a custom FCP²).

4.2 FOOD CONTROL PLANS AND NATIONAL PROGRAMMES

The following matters are proposed to be included in a notice:

4.2.1 Readily perishable food

The proposed notice will set requirements for temperature limits, to ensure food is safe and suitable, and record keeping and will apply to all national programme operators receiving, storing, handling, and transporting readily perishable food. It will also apply to operators of vending machines containing readily perishable food.

The proposed notice will also set temperature limits and record keeping for food service to pre-school children in a centre-based service setting preparing readily perishable food (particularly chicken, chicken products, liver and ground or minced meat). This requirements is not applicable to other national programme businesses because they are not undertaking the preparation (i.e. cooking) of these foods.

MPI is particularly interest to receive comments as to whether or not how these requirements have been applied to national programme business is appropriate. Also is the manner in which the requirements are set out in the proposed notice clear and understandable.

4.2.2 Water

The proposed notice sets out requirements that must be met for self-supplied water (e.g. bore, rain or river water) for used at places that produce, process or handle food. This notice does not apply to public water (e.g. town supply) which must meet the New Zealand Drinking Water Standards.

The requirements include:

- that only clean water is used for the purpose of food production, processing and handling;
- design and installation requirements for water systems;
- what to do if water is non-complying; and
- what records must be kept.

MPI is particularly interest to receive comments as to whether or not these requirements should apply to all food business operators. Also is the manner in which the requirements are set out in the proposed notice clear and understandable.

4.2.3 Significant amendment of an FCP

The Food Act 2014 allows the operator of a registered Food Control Plan to amend the Plan. The Plan could either be based on a template or model issued or approved under the Act, or it could be a Plan that is not based on such a template or model.

If a significant amendment is made to the Plan, the food business operator must apply to the appropriate registration authority to register the amended Food Control Plan.

The proposed notice sets the following matters as significant amendments:

² A custom FCP is a food control plan that has been developed by an individual business and is not based on a template or model issued or approved by the chief executive under section 39 or 40 of the Act

- a change in scope of the FCP, including to the trading operations, due to major alternations to the premises or processing equipment;
- a change of address or physical location;
- introduction of a new type of food or process, that is not similar to what is already covered by the FCP or where the risk factors associated with the new food are not already adequately managed under the FCP;
- a change in the nature of the business;
- the merging of two or more businesses or plans, or the splitting of the FCP into two or more businesses or plans;
- adding a new business to a multi-business plan;
- adding a new site to a multi-site business.

4.3 RECOGNISED AGENCIES AND PERSONS

The proposed notice is in two parts.

4.3.1 Technical competencies for recognised persons

Part one of the proposed notice will set requirements for technical competencies for persons who are recognised or wish to be recognised under the Food Act 2014 to perform evaluation and/or verification for the following classes of food operation:

- ultra-high temperature (UHT)/aseptic/pasteurisation/hot fill heat treatment processing; and
- low acid canned food processing.

The proposed notice will also set requirements for reporting.

4.3.2 Deemed recognised persons and agencies

Part two of the proposed notice will set out matters relating to deemed recognised persons and agencies. Under the Food Act 2014 s435, auditors who are approved under section 8ZV of the Food Act 1981 to audit food safety programmes immediately before 1 March 2016 are deemed to be recognised persons until the earlier of the expiry of their current appointment under section 8ZV of the Food Act 1981 or a date nominated by the chief executive in a notice. Agencies managing these auditors are deemed to be recognised until the date nominated by the chief executive in a notice.

The proposed notice will set out the following:

- the period of deemed recognition;
- the requirements that apply during the period of deemed recognition;
- the functions that the deemed recognised person or agency must or must not carry out;
- the training the deemed recognised person must complete;
- the competency standards that the deemed recognised person must meet;
- the management standards the deemed recognised agency must meet.

Deemed recognition means that agencies and auditors are able to continue to audit their client food businesses until these businesses transition to meeting the requirements of the Food Act 2014.

4.4 IMPORTING FOOD

The Food Act provides that importers of food must be registered and requires that the manner of registration be specified by notice, the proposed notice will do this.

Regulations to be made under the Food Act will set out two categories of imported food that may require written clearance for entry into New Zealand. These being:

- a) High Regulatory Interest Food – imported food that presents an increased risk to human health based on the food’s inherent nature and hazards associated with it, the nature of its processing or handling, or the nature of the food safety controls in the country of origin
- b) Increased Regulatory Interest Food – imported food for which there is some uncertainty or concern about the risk to the safety and suitability of the food.

The proposed notice sets out which foods are considered High Regulatory Interest and Increased Regulatory Interest. For each food the requirements and mechanisms for clearance are also set out.

Regulations to be made under the Food Act will also set out a requirement that when imported food is required to be tested for clearance the testing must be completed by an approved laboratory. The Act requires laboratories to be approved by notice. The proposed notice therefore approves laboratories for testing of imported food.