

Chair
Cabinet Economic Growth and Infrastructure Committee

Proposals for changes to food safety regulations

Proposal

1. This paper seeks agreement for minor and technical changes to legislative instruments necessary to support implementation of the Food Act 2014 (Food Act).

Executive Summary

2. New Zealand is an export-based economy operating in an intensely competitive global food market. Food and beverage products contributed \$28.1 billion to our economy in the year to June 2016.
3. The Food Act and Food Regulations 2015 align New Zealand's domestic food system with the risk-based approach of our export-oriented food statutes, namely the Animal Products Act 1999 and the Wine Act 2003.
4. While new businesses were required to operate under the Food Act immediately, existing businesses will transition to the new law over a three year introductory period. The first group of existing businesses are transitioning to the new regime by 30 June 2017.
5. Implementation of the Food Act is going well. Over 5,000 businesses have registered under the new regime. As with any large regulatory reform, there are plenty of challenges. The Ministry for Primary Industries (MPI) is responding to these challenges as they arise, and is actively engaging with businesses and other stakeholders. For example, during the latter half of 2016 MPI worked with territorial authorities across New Zealand and held Food Act workshops for businesses. MPI continues to seek feedback and improve resources it offers business.
6. In late 2016 MPI conducted public consultation on proposals for changes to food safety regulations [EGI-16-MIN-0260]. MPI received 213 submissions. In general, there was support for the regulatory package.

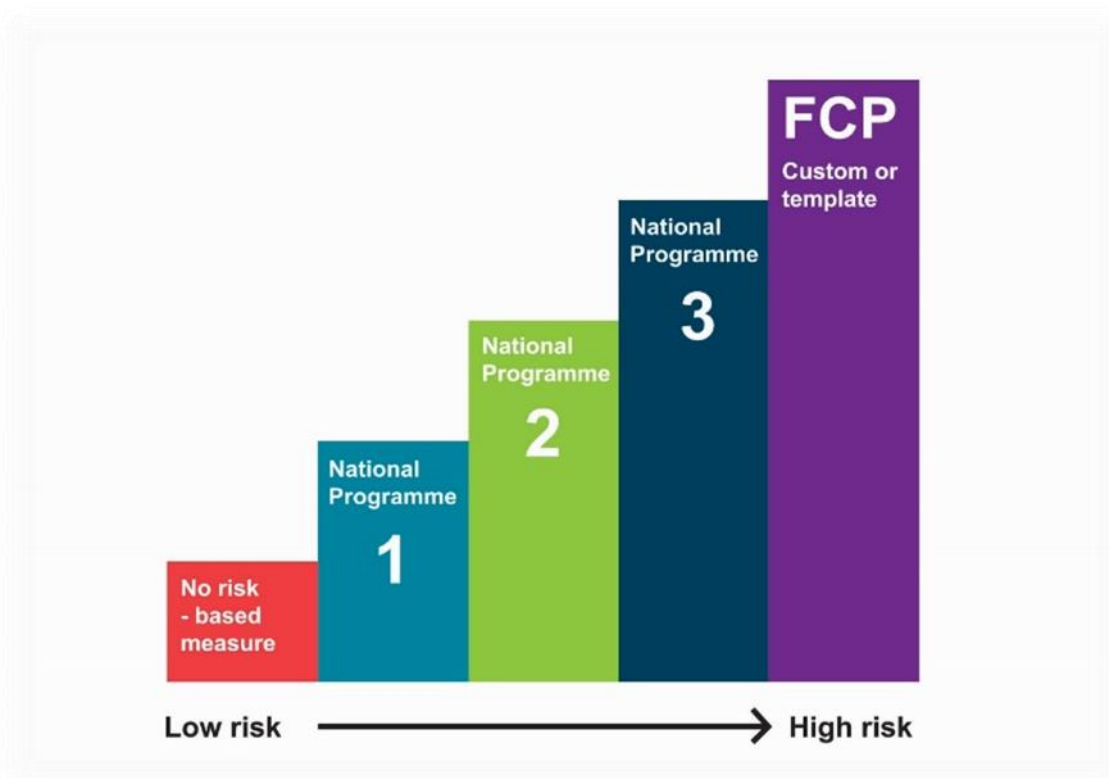
7. The proposals comprise:
 - minor changes to the Food Regulations 2015, which are made under the Food Act and establish the detailed rules necessary to support the operation of the Act;
 - a technical amendment to the Animal Products (Exemptions and Inclusions) Order 2000 to clarify that certain operators must operate under a risk-based measure under the Food Act 2014 rather than the Animal Products Act 1999; and
 - the revocation of the outdated Food (Safety) Regulations 2002, which were made under the old Food Act 1981.
8. I propose retaining three regulations from the Food (Safety) Regulations 2002, by rolling these forward into the Food Regulations 2015. These:
 - confirm that businesses who add water from reticulated supplies to food may do so if the water is fluoridated;
 - permit the sale of hemp seed oil; and
 - give effect to an international agreement relating to varietal composition rules for imported wine.
9. Following consideration of submissions received, I recommend some changes to the original proposals. In particular, I propose further increasing flexibility around the timing of initial verification visits to new food businesses, to make it easier for them to enter the Food Act regime.

Background

Modern legislation with a global outlook

10. Food products make a significant contribution to our economy. Food exports (including beverages) accounted for \$28.1 billion of export revenue for the year to June 2016, and 59.6% (and growing) of our merchandise exports. The food sector is central to supporting the Government's Business Growth Agenda and achieving MPI's goal of doubling the value of primary industry exports by 2025.
11. Overseas trade relies on New Zealand's strong reputation for safe food. Global markets are increasingly competitive.
12. New Zealand has shifted from prescriptive to outcomes-focused legislation. Food businesses are regulated according to the level of risk they present. The onus is on the business to ensure they provide safe and suitable food.
13. High-risk food businesses (such as those in the food service sector) operate under written food control plans (FCP). Low to medium-risk businesses operate under the rules of one of three levels of national programme, with national programme level 1 being the lowest risk category (figure 1). National programme businesses include a range of food manufacturers and retailers.

Figure 1: The Graduated, Risk-Based Regulatory Approach



FCP = Food Control Plan

14. The Food Act and Food Regulations 2015 came into force on 1 March 2016. The Act establishes a high-level framework for food safety, while the regulations set out the detailed rules necessary to support the Act's operation. New food businesses that started on or after 1 March 2016 are subject to the Food Act straight away. Businesses operating before this date transition to the new regime over a three-year introductory period. The first group of existing businesses to operate under the Food Act include some high-risk operations (such as manufacturers of food for vulnerable populations) as well as Early Childhood Education providers. This first group must transition by 30 June 2017.

An opportunity to strengthen the framework

15. To further strengthen the framework and enable the revocation of some outdated regulations, Cabinet authorised public consultation on proposals for changes to food safety regulations in October 2016 [EGI-16-MIN-0260]. Consultation concluded in December 2016, with most submitters supportive of the package.
16. I am now seeking Cabinet agreement to final policy proposals, and approval to issue drafting instructions to the Parliamentary Counsel Office. My proposals are summarised below.

Reviewing the Food (Safety) Regulations 2002

17. The Australia New Zealand Food Standards Code came into full effect in December 2002, superseding all prior New Zealand food standards. The Food (Safety) Regulations 2002 were introduced to deal with aspects of New Zealand's food standards regime that were not covered by the Food Standards Code.
18. Most of the Food (Safety) Regulations 2002 are now covered by the Food Act regime or other legislation. They can be revoked. Details of these proposed revocations are listed in appendix one. I propose that the following regulations be rolled forward into the new Food Act regime.
 - Regulation 20(1) implements an international agreement relating to varietal composition rules for wine. I propose clarifying that this clause relates only to imported wine. New Zealand wine will continue to be regulated under the Wine Act 2003.
 - Regulation 24 sets out that water added to food must be potable and may be fluoridated. I propose clarifying that this clause applies only to water from reticulated supplies. Self-supply water used by food businesses is already regulated via the Food Regulations 2015 and related notices.
 - Regulation 26 allows the sale of oil extracted from hemp seeds. Retaining this permission is vital for industry continuity. I propose no policy change, but note that the clause will need updating to reflect current terminology and legislation.
19. Some of these proposals are within scope of the *Agreement between the Government of Australia and Government of New Zealand Concerning a Joint Food Standards System*. Accordingly, in December 2016 my predecessor invited comment from the accountable Australian Minister (Hon Dr David Gillespie). Minister Gillespie advised me in January 2017 that Australia has no concerns with the proposals.

Reducing regulatory requirements for low to medium risk businesses.

20. The Food Act's intent is that there should be fewer regulatory requirements on lower risk businesses. To better reflect this intent, I propose removing from the Food Regulations 2015 some sanitising, record keeping and procedural requirements for specified national programme level 1 and 2 businesses. These proposals are summarised in the table below.

Proposal	Who this will apply to
Reduce the need for sanitising where this is not necessary for achieving and maintaining the safety and suitability of food (while retaining general requirements for cleaning in regulation 47)	National programme businesses.
Reduce record keeping and procedural requirements relating to maintenance (regulation 48) and protection against contamination (regulation 74)	National programme level 1 businesses, national programme level 2 retailers, and Early Childhood Education providers operating at national programme level 2.
Reduce record keeping requirements relating to protection during transportation (regulation 75)	National programme level 1 businesses (except transporters or distributors of food products), national programme level 2 retailers, and Early Childhood Education providers operating at national programme level 2.

21. While minor in the overall context of the Food Act regime, these changes may be important for the businesses involved.
22. In general, submitters were in favour of reducing regulatory requirements for low to medium-risk businesses. It was suggested that some of the original proposals could be realised via non-regulatory methods. I agree, and have focused these final proposals on the clauses where the case for regulatory change is strongest.

Verification requirements and reports

23. The Food Act introduced a new verification regime. Verification ensures that a business is managing its food risks effectively and is complying with the law. Detailed rules for verification are set out in the Food Regulations 2015. Verification is usually carried out by territorial authorities or third parties recognised for this purpose by MPI.
24. A business's first verification is critical. The timeframes for when the initial verification must be completed are tied to when the business registers, and need to balance the period a business could be allowed to operate without a check that they are producing safe and suitable food with what is practical.
25. Some food businesses have experienced problems with the existing timeframes. An example is where a new business registers early, but only starts trading a short time before the maximum time limit within which the verifier must visit. If the business has not had time to bed their processes in and generate the evidence a verifier is seeking, the verifier may have to make another visit. This increases compliance costs.

26. Verification timeframes elicited a lot of comment from submitters. The majority were in favour of changing the status quo by increasing the timeframes. Many submitters thought that the original proposals did not adequately capture the range of situations and practicalities that affect how new food businesses prepare for verification.
27. I agree that the regulatory timeframes need adjusting to take into account the broad range of issues (from lease negotiations to staff training) that may impact on how quickly a business can generate evidence of safe food practice. I have amended the original proposals, as outlined in the table below, to create greater flexibility and make it easier for new businesses to join the Food Act regime.

Food sectors subject to:	Current timeframe for initial verification	Timeframe proposed in discussion document	Final proposal for initial verification of a new business	Registration authority
Non-template (custom) food control plan	Within 3 months of registration.	Within 3 months of registration plus up to 4 weeks in exceptional circumstances at the discretion of the registration authority.	Within 3 months of registration plus a potential time extension of up to a total of 6 additional weeks in special circumstances, and/or where a business has registered but has not yet started trading, at the discretion of the registration authority.	MPI
Template food control plan and national programme levels 1-3	Within 1 month of registration.	Within 1 month of registration plus up to 4 weeks in exceptional circumstances at the discretion of the registration authority.	Within 6 weeks of registration plus a potential time extension of up to a total of 6 additional weeks in special circumstances, and/or where a business has registered but has not yet started trading, at the discretion of the registration authority.	Territorial authority

28. I also propose changing what must be included in verification reports. Initially, MPI proposed requiring verification reports to include the names of any technical experts who provided information used by the verifier, copies of their reports and information about their competency. While this was broadly supported by submitters, not all thought that a copy of the full report would always be needed. Some believed this would create additional costs. I agree that including a copy of the expert's report is not necessary, and now propose requiring just the names of any technical experts used, and information about their competence.

Aligning the Animal Products (Exemptions and Inclusions) Order 2000

29. There is significant overlap of the food types regulated by the Food Act and the Animal Products Act 1999. The Food Act has a much wider scope, generally applying to all food for sale. The Animal Products Act provides the legal framework for processing, manufacturing and exporting animal material.
30. The Animal Products (Exemptions and Inclusions) Order 2000 (the Order) exempts people and businesses from some Animal Products Act requirements. A reason for such an exemption may be that it is more appropriate for a particular business or process to be regulated under the Food Act instead of the Animal Products Act.
31. As an unintended consequence of the commencement of the Food Act, three exemptions in the Order no longer achieve the objective of regulating certain persons or processes under the Food Act rather than the Animal Products Act. These relate to:
 - fishmongers selling fish for retail sale;
 - processing of certain dairy products consumed on premises; and
 - processing of certain multi-ingredient foods containing dairy products.
32. I propose making technical amendments to the Order to confirm the original policy intent that these people and processes must operate under a Food Act risk-based measure. There was broad support for this among submitters.

Technical change to the regulation of maximum residue levels in wine

33. The Food Regulations 2015 regulate maximum residue levels of agricultural compounds that may be present in processed foods. Following discussions between MPI and the wine industry, I propose a minor technical change to remove ambiguity in the regulation covering residue levels in wine. This will clarify that residues in wine need to be compliant with the maximum residue limit for the raw food commodity (grapes). There was broad support for this among submitters.

Public consultation

34. The Food and Animal Products Acts require that, before recommending that regulations be made, the Minister for Food Safety must be satisfied that appropriate consultation with affected stakeholders has taken place and the results of consultation have been taken into account.
35. Public consultation on the proposals started with the release of the discussion paper in October 2016 and closed in December 2016. The public were invited to make submissions in any format, and/or to complete an on-line survey. The consultation was publicised through a media release, MPI's website, and emails to industry associations, food businesses and territorial authorities. MPI received 213 submissions (161 online, and 52 via email or post).

36. New Zealand also notified the World Trade Organization of its intention to consult on the proposals. This consultation was carried out to meet New Zealand's obligations under the agreement on the Application of Sanitary and Phytosanitary Measures. The United States sought and was provided confirmation that the proposals did not impact on trade covered by the Animal Products Act. The California (USA) Wine Institute wrote in support of the proposed amendments relating to maximum residue limits in wine.
37. Overall, there was support from submitters for the proposals. The key change made as a result of feedback is the greater flexibility proposed for verification times.
38. Many submitters took the opportunity to raise a number of out-of-scope issues. MPI will address these matters as part of its wider Food Act Implementation Programme.
39. Two of the Food (Safety) Regulations 2002 that I propose revoking regulate muttonbird harvests. Muttonbirds (tītī) are a traditional product and a taonga species. MPI made direct contact with iwi believed to have interests in muttonbird (assisted by the Ministry of Justice and Te Puni Kōkiri) during the consultation period. One formal submission was received from Te Rūnanga o Ngāi Tahu supporting the revocations.

Departmental consultation

40. The following government agencies have been consulted on this paper: the Ministry for Business, Innovation and Employment, Ministry for the Environment, Department of Corrections, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Department of Internal Affairs, Ministry of Justice, Environmental Protection Authority, Commerce Commission, Te Puni Kōkiri, Department of Conservation, the New Zealand Police, New Zealand Customs Service and the Treasury. The Department of the Prime Minister and Cabinet and the Ministry of Transport were informed.

Financial implications

41. There are no financial implications arising from these proposals.

Human rights

42. There are no implications under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative implications

43. The proposals will result in amendments to regulations under the Food Act, and an Order in Council under the Animal Products Act 1999.

Additional statutory prerequisites

44. For the three policies proposed to be rolled over from the Food (Safety) Regulations 2002, there are a number of matters I must take into account before I recommend that new regulations be made. This is in addition to consultation requirements. These include the need to protect public health, giving effect to international obligations, and the most effective way of achieving safe and suitable food.
45. I am satisfied that all statutory prerequisites have been met.

Regulatory impact analysis

46. Regulatory impact analysis requirements do not apply because the proposals:
 - are minor; and/or
 - seek to maintain the policy status quo; and/or
 - are deregulatory in nature; and/or
 - are revocations of outdated legislation.

Publicity

47. A summary of submissions has been prepared and will be published on MPI's website. In addition, I seek Cabinet's approval to publish a copy of this paper on MPI's website (having regard to the objectives of the Official Information Act 1982). MPI will publicise the regulatory changes to affected stakeholders.

Recommendations

48. I recommend that the Cabinet Economic Growth and Infrastructure Committee:

1. **Note** that consultation was undertaken between October and December 2016 on proposed changes to food safety regulations;
2. **Agree** that the outdated Food (Safety) Regulations 2002 be revoked;
3. **Agree** that the following policy matters from the Food (Safety) Regulations 2002 be retained and incorporated into the Food Regulations 2015:
 - i. retention of the wine varietal composition rules (currently in regulation 20(1)) for imported wines only;
 - ii. retention of the policy that if water from reticulated supplies is added to food, then it must be of potable quality and may be fluoridated (currently in regulation 24);
 - iii. retention of the permission-to-operate for New Zealand's hemp seed oil industry (currently in regulation 26).
4. **Agree** that the Food Regulations 2015 should be amended to reduce the need for sanitising where this is not necessary for achieving and maintaining the safety and suitability of food for national programme operators;
5. **Agree** that record keeping and procedural requirements in the Food Regulations 2015 relating to maintenance (regulation 48) and protection against contamination (regulation 74) should be reduced for national programme level 1 businesses, national programme level 2 Early Childhood Education providers and retailers; and similar requirements relating to protection during transportation (regulation 75) should be reduced for the same businesses (except transporters or distributors of food products).
6. **Agree** that businesses subject to food control plans and national programmes should be verified according to the frequencies and conditions set out in the table below:

Food sectors subject to:	Initial verification of a new business
Non-template food control plan	Within 3 months of registration plus up to a total of 6 additional weeks in special circumstances, and/or where a business has registered but has not yet started trading, at the discretion of the registration authority.
Template food control plan and national programmes	Within 6 weeks of registration plus up to a total of 6 additional weeks in special circumstances, and/or where a business has registered but has not yet started trading, at the discretion of the registration authority.

7. **Agree** that regulations will require verification reports to include the names of any technical experts who provided information used by the verifier in the verification process, and information about their competency;
8. **Agree** that the Animal Products (Exemptions and Inclusions) Order 2000 is amended to clarify that fishmongers selling fish for retail sale, the processing of certain dairy products consumed on premises, and the processing of certain multi-ingredient foods containing dairy products must be regulated under a Food Act risk-based measure;
9. **Agree** that the Food Regulations 2015 are amended to remove ambiguity relating to maximum residue limits in wine;
10. **Note** that the Minister for Food Safety is satisfied that statutory prerequisites for the making of regulations under the Food Act 2014 have been complied with;
11. **Agree** to authorise the Minister for Food Safety to issue drafting instructions to the Parliamentary Counsel Office to implement these policy decisions;
12. **Agree** to authorise the Minister for Food Safety to make final decisions on detail and make changes consistent with the policy intent described in this paper on any issues that arise during the drafting process;
13. **Agree** that the Ministry for Primary Industries may publish a copy of this Cabinet paper on its website having regard to the objectives of the Official Information Act 1982.

Authorised for lodgement

Hon David Bennett
Minister for Food Safety

Appendix one: schedule of proposed revocations (Food (Safety) Regulations 2002)

Food (Safety) Regulation	Proposal	Rationale for the proposal
Misusing food containers in a way that misleads or causes poisoning.	Revoke.	Regulation no longer necessary as these risks are managed under the new Food Act regime.
Ensuring that items in contact with food (such as storage jars) will not leach toxic substances.	Revoke.	Regulation no longer necessary as these risks are managed under the new Food Act regime.
Regulating what must be included on labels on items in contact with food.	Revoke.	Regulation no longer necessary as these risks are managed under the new Food Act regime.
Providing that labels on reusable bottles must not hinder cleaning and inspection.	Revoke.	Regulation no longer necessary as these risks are managed under the new Food Act regime.
Protecting food from contamination by infected persons, and powers relating to infected food.	Revoke.	Regulations no longer necessary as these risks are managed under the new Food Act regime, and the Health (Protection) Amendment Act 2016.
Providing a regulatory regime for low-acid canning.	Revoke and replace with a notice under the Food Act 2014.	The risks posed by low-acid canning are significant, but are technical and best managed through a tertiary instrument.
Regulating muttonbird labelling and weight.	Revoke.	Regulations no longer necessary as the risks are managed through consumer protection laws, the Food Act regime, or are best dealt with by kaitiaki of muttonbird and/or the Conservation and Wildlife Acts.
Setting rules relating to varietal composition of wine and wine sales.	Roll forward requirements for imported wine into the Food Regulations 2015.	The varietal composition rule for imported wine is required to implement an international agreement. The rule relating to wine sales is not a food safety issue and is best regulated via the Sale and Supply of Alcohol Act 2012.
Providing that if water is added to food, it must be potable and may be fluoridated.	Roll forward into the Food Regulations 2015, clarifying that the rule applies to reticulated water only.	Retention of this rule enables food businesses to use tap water that happens to be fluoridated. Rules for self-supply water are regulated separately under the Food Act.
Allowing the sale of hemp seed oil.	Roll forward into the Food Regulations 2015.	This regulation is necessary for the existing hemp seed oil industry to continue operating.
Regulating for analyst's fees and certificates under the old Food Act 1981.	Revoke.	Matters covered by this regulation have been superseded by the new Food Act.