

Managing re-registration and transition of food businesses

Issue

A proportion of food businesses registered under the Food Act 2014 need to have their registrations renewed as their expiration date draws close in the coming months. In addition, other food businesses will be required to transition to the new regime in accordance with the Act's requirements. This document sets out national guidance on how to manage those businesses that fail to re-register or transition at the appropriate time and to facilitate national consistency.

Context

Renewal of registration

The Food Act states that food businesses can only renew their registration while it is current (Schedule 4 Part 2 (3)). Registration authorities may provide an extension to the expiry date where appropriate (ref section 61(1)(b) for example). If the registration is allowed to expire the food business must start the process of registration again from the beginning. They are treated as a new business which may affect which risk based measure they can use and has implications for their verification cycle.

Transition to the appropriate risk based measure

Some businesses operating deemed food control plans are able to operate these until early 2019. Other businesses, required to transition at earlier dates may, depending on how the business is structured, opt to be registered by a local territorial authority or MPI. Other business may be new entrants to the food regulatory regime.

MPI continues to communicate with industry about transition time frames for each sector through a variety of media. MPI is also broadly advertising / communicating with food businesses about the need for them re-register before their expiration date.

Developing an approach

Drawing on the approach currently taken in both Territorial Authorities (TAs) and MPI to manage re-registration and the new interventions available under the Food Act 2014, a process for managing registration follows. The following draft guidance is not intended as a 'one size fits all – must do' document and degrees of variation from guidance time frames and actions will be expected to address local business demands.

Communication

Initial communication – reminder notice 1

Six to eight weeks prior to the expiry date of a food business registration or the time it should transition food businesses receive written communication (email or letter) that they need to renew their registration or transition. The communication should include advice that failure to do so would result in the business operating in breach of Food Act requirements.

Rationale:

This should provide sufficient time for businesses to respond to the reminder, seek clarification of their status or contact their registration authority.

Implications:

There needs to be reliable knowledge of businesses that need to renew registration or transition. While registration authorities will generally hold dependable data about registered businesses they may not be aware of businesses that should be transitioning. Monitoring of businesses operating within the boundaries of the registration authority will be necessary to ensure business that should be covered by the regime are contacted. This is because some businesses may only require registration when their transition is due.

Second communication – reminder notice 2

For business that have not responded to the first communication a further written reminder is sent approximately two weeks prior to registration renewal or transition date. Communication should indicate that registration can only be renewed while it is still current. Registration authorities may wish to indicate that if ongoing compliance monitoring / follow up is required this may be cost recovered from the business. This requires an appropriate entry in the registration authority's fees and charges. A personal visit or phone call may also be considered as part of this step.

Rationale:

Similar to the communication above but serving as a final notice of impending expiration of registration.

Implications:

Similar to the initial communication section above

Third Communication – Post Expiry / date for transition – written warning

Three to five working days after the point at which the business should have renewed registration or transitioned, written communication is sent to the food business indicating that continued operation is in breach of the Food Act 2014. The warning should set out the need to apply for a new registration and that failure to do so could result in service of an infringement notice. For businesses that failed to renew on time the communication could also include mention of intention to cancel registration for the reasons set out in the section “Cancellation of registration and removal from the public register”

Rationale:

The three to five day ‘gap’ allows time for any applications that were received close to the cut-off point to be processed. Processing may take longer in some locations however it is important that processing occurs in a timely manner. This warning clearly communicates that further trading is in breach of the Act and the need to file a new registration application. Renewal is no longer an option. Mention of cancellation of registration facilitates removal of the business from the public register.

Implications:

Similar to the initial communication section above. However, to avoid unnecessary overlap it will be appropriate for a lead agency to be decided for dealing with food businesses that fail to transition.

Infringement Notice or other regulatory action

Four weeks after the point at which the business should have renewed registration or transitioned consideration can be given to serving an infringement notice subject to Schedule 2 Part 1 of the Food Regulations 2015 (fee \$450). The notice can be accompanied by a further letter explaining the business need to seek registration and that the infringement notice does not rule out further regulatory action. For some food businesses other interventions may be more appropriate, such as an improvement notice. Information about other options is set out in ‘Further steps’ below

Rationale:

The food business operator has been informed of the need to register and consequences of non-compliance. In most cases an infringement notice provides clear direction to the business that compliance is necessary.

Implications:

Service of an infringement notice requires gathering of evidence of the offence, service of the notice by a warranted Food Safety Officer, appropriate information technology systems, a procedure to handle appeals or explanations, a procedure for cancellation of notices, a procedure to issue reminder notices, an ability to defend notices if a hearing is requested and a funding source to draw on to refer infringement notices to court if they remain unpaid.

Further Steps

Nothing in the guideline process set out above constrains a Food Safety Officer taking alternative forms of action under the Act if it is appropriate to do so.

There are a range of tools available to address breaches of the Food Act or deficiencies in food businesses however some of these are related directly to safe-guarding the production of safe and suitable food. Some of the options available to a registration authority in a graduated response include:

- The registration authority could seek to recover costs for any monitoring associated with seeking compliance from the business. There would need to be clear accommodation for this form of charge in the registration authority's publicly consulted fees and charges. It would also be appropriate to advise the business operator of the likelihood that this might happen.
- Consideration can be given to serving a second infringement notice. This would need to cover a clearly separate event of non-compliance.
- Consideration can be given to the use of a Notice of Direction to stop operation of a business and require registration or an improvement notice to address failure to comply with a requirement of the Food Act 2014. While this step provides access to a broader range of penalties than the infringement notice, these penalties are only available as part of a prosecution through the courts.

Rationale:

Despite a process of communication and additional regulatory action, a food business operator may still not register their business. Further enforcement options may need to be considered in a graduated response to the offence.

Implications:

All of the above options require further time input from a warranted FSO. The use of an Notice of Direction or improvement notice, if either is not complied with, may lead to having to prosecute through the courts which can be expensive and time consuming for those involved. This may be warranted for consistently non-compliant food business operators.

Failure to transition

There is likely to be a significant number of businesses that fail to transition within statutory timeframes, for a variety of reasons. At this stage it appears territorial authority staff are well placed to identify businesses that should transition in their jurisdiction. Businesses that should register with MPI can be referred to approvals@mpi.govt.nz at the earliest opportunity.

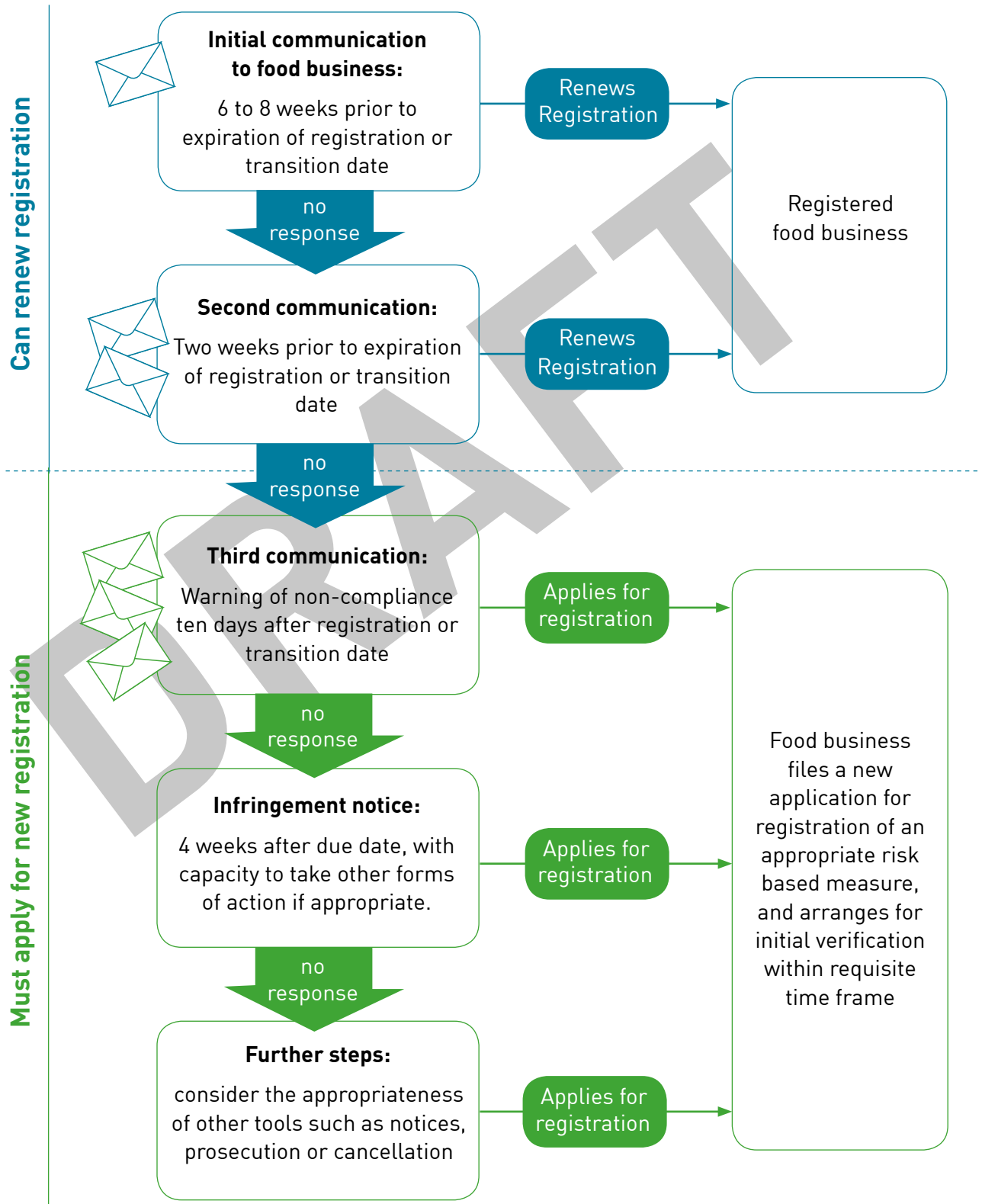
There are cost recovery implications with this approach, particularly where a business is being 'worked on' by a TA but found to be registerable by MPI. In this case it may be preferable for the TA to send a cost recovery bill to the business concerned but this may need to be signalled ahead of time.

Cancellation of registration and removal from the public register

Communications and warnings sent to food businesses should at some point include mention of the potential for cancellation of registration. This is because cancellation or surrender of registration is required to remove even an expired (and thus in-effective) risk based measures from the public register.

Cancellation is authorised under s67(1)(a)(i) or s95(1)(a)(i), that is, a failure to attend to a matter that would lead to suspension. Related to this is one of the mandatory suspension situations under s62(1)(a) or s90(1)(a) in that the FCP is no longer effective, when it is not renewed in time.

Re-registration / Transition Flow Chart – interactions with food businesses



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