



PRACTICE NOTE 1

Revised
March 2020

Managing re-registration of food businesses

Purpose

This document sets out guidance on how to manage those businesses that fail to re-register at the appropriate time. It is intended to facilitate national consistency.

Approach

This guidance has been developed in collaboration with multiple Territorial Authorities (TAs) and stakeholders within MPI. It is intended as a living document that will be updated on an as needed basis.

Intended audience

Registration Authorities, Food Safety Officers.

Context

Renewal of registration

The Food Act 2014 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 (refer 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.

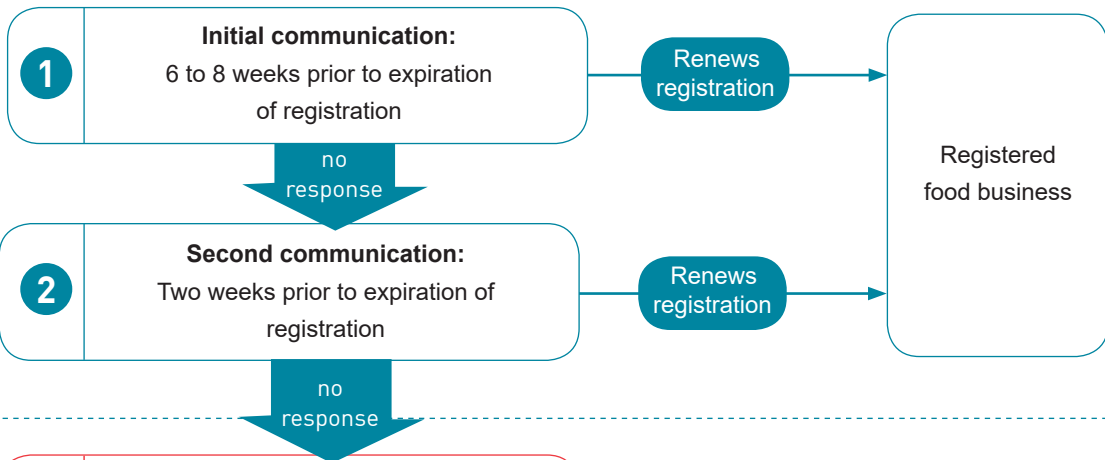
Developing an approach

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

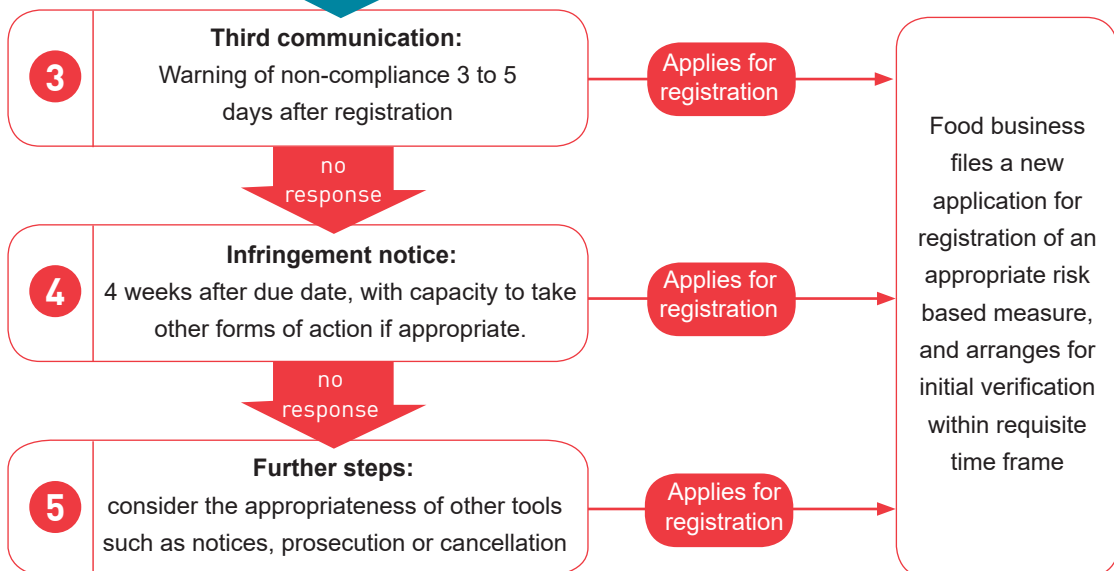
Communication

Re-registration Flow Chart — interactions with food businesses

Can renew registration



Must apply for new registration



1 Initial communication — reminder notice 1

Six to eight weeks prior to the expiry date of a food business registration food businesses receive written communication (email or letter from their Registration Authority) that they need to renew their registration. 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:

MPI and TAs need reliable knowledge of businesses that need to renew registration. Registration Authority will generally hold dependable data about registered businesses. 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.

2 Second communication — reminder notice 2

For businesses that have not responded to the first communication a further written reminder is sent approximately two weeks prior to registration renewal. Communication should indicate that registration can only be renewed while it is still current. Registration Authority 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 those set out in section 1.

3 Third Communication — Post Expiry — written warning

Three to five working days after the point at which the business should have renewed registration, 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 without registration is in breach of the Act and sets out the need to file a new registration application. Renewal is no longer an option. Mention of cancellation of registration will be required to enable facilitate removal of the business from the public register.

Implications:

Similar to those of the initial communication.

4 Infringement notice or other regulatory action

Four weeks after the point at which the business should have renewed registration 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 must seek a new 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 notice of direction. 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 of the 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 (FSO), 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.

5 Further Steps

Nothing in this guideline process constrains a food safety officer (FSO) from 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 as a part of 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 the time input from a warranted FSO. The use of a 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 justified for consistently non-compliant food business operators.

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) business's 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 Food Control Plan is no longer effective, when it is not renewed in time.