



PRACTICE NOTE 2

July 2017

FOOD ACT 2014 Food safety officers powers - what has changed?

Purpose

This document sets out guidance on which powers may be exercised by Food Safety Officers (FSO) appointed under the Food Act 2014 and contrasts those with the powers available to pre-commencement Food Safety Officers also known as Food Act Officers (FAO) employed by Territorial Authorities and Local authority inspectors.

Approach

This document draws on the content of the Food Act 1981 and Food Act 2014 dealing with the powers of enforcement officers. It has been developed in collaboration with multiple territorial authorities and stakeholders within MPI.

Intended audience

Food Safety officers.

Context

Section 19 of the Food Act 2014 sets out the role of territorial authorities to carry out “enforcement and other regulatory responsibilities.” People who hold current warrants of appointment as Food Act Officers (FAO) issued under the Food Act 1981 are empowered by Section 424 of the Food Act 2014 to exercise powers that are substantially similar to those held by Officers under the 2014 Act. Although all FAO warrants will expire by March 2019 or before, they can still be exercised for some provisions under the new regime, until they expire.

Some of the powers set out for Food Safety Officers (FSO) under the 2014 Act have similarities to those of the 1981 Act and can be reasonably exercised by officers holding current FAO warrants. However some powers afforded to FSOs are new or different and can only be exercised by those holding appointments as FSOs under the new Act.

It is important to note that the powers available to Local Authority inspectors (also known as environmental health officers) under the 1981 Act were significantly constrained compared to the powers of officers employed by MPI (or District Health Board staff working under the 1981 Act). Powers under the 2014 Act are now consistent for all Food Safety Officers regardless of the organisation that employs them.

The list of powers covered by this guidance is not exhaustive but seeks to set out which powers can reasonably be exercised by FAO and additional powers available to FSO. It also briefly mentions some of the powers available to Registration Authorities.

Local Authority inspectors were granted a range of powers under the Section 13 of the Food Act 1981. These were somewhat constrained compared to FAO powers and are not set out in this guidance.

Food Safety Officers – Appointments issued under the Food Act 2014.	Food Act Officers – Appointments issued under the Food Act 1981 to deal with VIP businesses.	Are these powers sufficiently similar for a ‘pre-commencement Food Act Officer’ to use?
Powers of Officers – general description is set out in sections 296 through 321 and section 326.	Powers of officers – general description is set out in section 12.	Maybe. Some powers are similar but a clear understanding of the differences is important. This is set out in the following sections.
Powers to enter and inspect with / without a warrant are set out in Section 299 and Sections 310, 311, 322 to 327. Note: Section 110(e) of the Search and Surveillance Act 2012 applies.	Powers of entry – set out in section 12(2)(a) and (b).	Yes , in general. However, It is important to note the differences in approach set out in the different legislation e.g. the approach to dwellings. The Search and Surveillance Act 2012 also has important new implications for entry.
Power to ask for assistance – section 297.	Ask for assistance – section 12(2).	Yes. The Food Act 1981 contains a similar section for territorial authority FAO.
Information and evidence gathering powers – set out in Section 300.	Information gathering – section 12 (2) (g) related to VIP businesses.	Yes. However, territorial Authority FAO are not specifically empowered to examine books, documentation or records under the 1981 Act.
Powers of examination, identification and rectification, and associated detention powers – set out in section 301.	Examination of articles – sections 12 (2) (c) and (d).	Yes. However, the 2014 Act expands the definition covering these powers, broadening those things an FSO can look into.
Power to issue an improvement notice – set out in section 302.	Improvement notices – no analogous provision	No. There is no direct parallel to an improvement notice in the 1981 Act. An FAO cannot serve an improvement notice.
Powers to take, purchase, and sample – set out in Section 304.	Take Samples – section 12 (2) (e).	No. The new Act allows for TA FSO to take samples, a power previously unavailable to LAI, FAO were able to do so.
Power to interrupt operations and give certain directions – section 305.	Interrupt operations / Give directions – no analogous provision.	No. This provision is new.
Power to seize condemn and require disposal – is set out in Section 306.	Seizure of food – sections 13, 14 and 15 address the powers of TA FAO to seize or detain food.	Yes. While there are differences between the Sections setting out how to handle seizure of food, they have a similar approach.

Power to restrict use or close place – section 307. This power in a new provision for TA FSO.	Restrict or close a place – no analogous provision.	No. FAO employed by TAs were not authorised to close food businesses under the 1981 Act.
Other powers – section 308 – allows for the request of personal information, exclusion of persons from places and require answers to certain questions.	Information request of persons – section 18 allowed a FAO to request the name and address of the person in possession of food for sale and the person from whom the food was obtained only.	No. Section 308 cannot be regarded as substantially similar to section 18 as s308 enables the request of a broader range of personal info. Has new provisions such as ability to exclude persons from places.
Power to test samples of food or examples of food related accessories – section 312.	Testing Samples – no analogous provision.	No. This is a new provision.
Infringement notices – sections 218-221. specific offences and documentation are set out in Schedules 2 and 3 or the Food Regulations 2015.	Infringement notices – no analogous provisions	No. This is a new provision.

Use of powers

The Food Act 2014 provides a wide range of tools for Food Safety Officers. The information set out in the table only provides a thumbnail sketch of those powers. FSOs should become familiar with provisions of the Act to understand the details of the powers they wish to use.

Training

Training and guidance is available for Territorial Authority Food Safety personnel from MPI through the Tiritiri on line training platform. Appropriately qualified individuals may apply to MPI for an instrument of appointment as a Food Safety Officer.

For more information on how to be appointed as a Food Safety Officer consult:

<https://www.mpi.govt.nz/food-safety/food-act-2014/information-for-regulators-and-verifiers/food-safety-officers/>

Other powers that can be exercised by Registration Authorities

There are some powers that are available to registration authorities that do not need to be exercised by an FSO. It is likely an FSO or verifier will still be involved through provision of advice or information that would underpin use of these powers

Suspension of operations provisions for suspending FCP are set out in Section 62 and for National Programs Section 90.	Mandatory Suspension of Operations – No analogous provisions.	This is an action taken by a registration authority and is not required to involve an FSO but may require appropriate delegations within a Council.
Cancellation of registration – Section 67 deals with cancelling registered FCP, Section 95 deals with National Programs.	Cancellation of Registration – No analogous provisions in Act.	This is an action taken by a registration authority and is not necessarily undertaken by an FSO. Again this may require an appropriate delegation of powers within a Council.

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