



PRACTICE NOTE 3

September 2017

FOOD ACT 2014

Managing investigation of online food sales for Territorial Authority Food Safety Officers

Purpose

This document sets out guidance on how to manage potentially illicit online food sales. It provides some guidance on processes that Territorial Authority (TA) Food Safety Officers (FSO) can consider when investigating these issues.

Approach

This document draws on the content of the Food Act 2014 (the Act) powers available to FSOs. It has been developed in collaboration with multiple TAs and stakeholders within MPI. It contains references to content on several webpages that MPI does not control and may be subject to change without notification.

Intended audience

Food Safety officers.

Context

Operating food businesses online without registration

All food businesses, including online food businesses, unless specifically exempted by the Act, are required to register with an appropriate registration agency (either their local Council or MPI). The business needs to ensure that their food is safe and suitable for consumption, regardless of whether the food is being sold over the counter or over the internet.

Food operations without regulatory oversight undermine New Zealand's reputation for safe and suitable food. Operation of unregistered online food businesses is unfair on legitimate operators.

The applicable requirements of the Food Act 2014 for online/internet food traders will depend on the type of food they are selling and the nature of their operation.

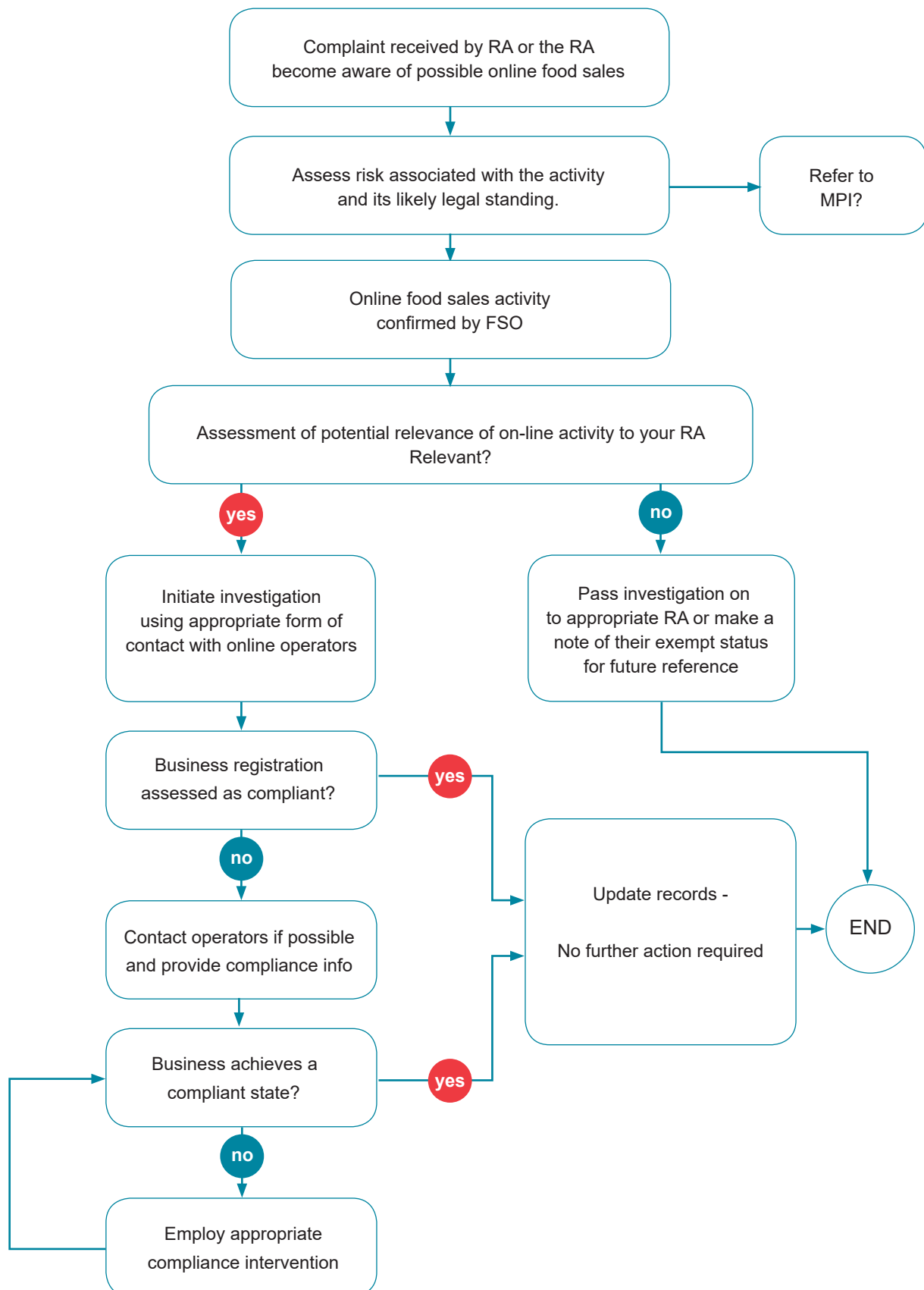
TA roles

As Registration Authorities (RA), TAs are responsible for registering food businesses that are based solely within their territorial boundaries. Online operations can therefore present some unique challenges. The base of operations of an on-line food business may not be immediately evident and some business may seek to operate covertly. This guidance outlines a basic approach to investigation of online food business activity, managing businesses to a point of compliance and if necessary, passing the matter on to the appropriate RA.

Developing an approach

This guidance draws on the approaches currently taken by TAs and MPI to manage investigation of on-line food sales. The guidance provides some approaches that can be adopted in approaching non-compliant online food business. The guidance is not intended to constrain investigative methods but to provide some assistance with investigations and encourage consistency of approach to dealing with this area of activity.

Managing potentially unregistered on line food sales



Complaints received by RA

Information with regard to online food trading can be received from various sources. During this introductory phase of the Act it is not expected that TAs will undertake monitoring of online activities. Officers don't need to actively 'trawl for issues'. When a complaint is received indicating the likelihood of unregistered food trading online, it can be useful to seek a complainant's assistance. This may be particularly important when trading occurs in closed communities (such as closed Facebook groups, for example). Requesting copies of screenshots of implicated pages, URLs, copies of correspondence or receipts may all be useful.

Some council staff involved in the investigation of online food businesses have encountered unwillingness on the part of complainants to contribute to the investigation. This may hamper an effective investigation and this point can be made clear to reluctant complainant.

Assess risk

As with any investigation the degree of risk associated with the activity can influence the priority given the investigation. The priority given to investigation of an issue is a matter for the respective RA to decide. A business marketing food containing undeclared allergens is likely to be given higher priority than an unregistered cake decorating company that is otherwise operating satisfactorily.

If it becomes apparent that the activities of an on-line food business have national significance or the nature of the business is such that it should be registered with MPI it may be appropriate to refer the issue to MPI's Food Compliance Team.

Confirmation of on line food sales

Online activity can be confirmed by a variety of methods including engaging with the business through making a purchase or approaching them directly as an RA. If during the process of investigation it becomes evident that the business should be registered by another RA or MPI, the business details could be passed on to the appropriate authority.

In some instances, it may be useful to contact the organisation facilitating the web presence of the business, particularly if the business is difficult to contact or you cannot determine a base of operations. Some common referral points and ways of engaging with social media sites are included later in this guidance.

If the business should be registered by your authority, the operator can be encouraged towards voluntarily compliance. If the operator is not cooperative an FSO may need to consider use of more persuasive compliance interventions.

Compliance interventions

The choice of which intervention should be used is a decision of the FSO and RA involved. In general, a proportionate, graduated response to issues of non-compliance is recommended by MPI. Compliance interventions that could be employed include:

- Educational materials and advice promoting voluntary compliance.
- A warning letter.
- An improvement notice.
- An infringement notice (for failing to register).
- A notice of direction.
- Prosecution.

Social Media sites

Should it become necessary to contact a social media site the following information may be useful.

Trademe	Facebook	Neighbourly
<p>Trademe can be contacted to report potentially illegitimate activity:</p> <p>http://www.trademe.co.nz/Help/ContactUs.aspx</p> <p>AND</p> <p>http://www.trademe.co.nz/trust-safety/2012/7/29/how-to-use-the-community-watch-function-to-report-a-listing/</p>	<p>Notifying Facebook If You Don't Have an Account:</p> <ul style="list-style-type: none"> Go to Facebook's Report a Violation of the Facebook Terms page if you don't have a Facebook account or if you have been blocked from seeing the posts illustrating criminal activity. Follow the online prompts to report the illegal activity. If you are unable to see the content you are reporting, Facebook suggests asking a friend with an account to help you to find it. Provide Facebook with the requested information, including the page URL, as well as the date and time it was posted. You may also need to provide Facebook with your contact information to submit the report. 	<p>If you see a message on Neighbourly that you believe is inappropriate, please bring it to their attention by flagging it. The team at Neighbourly and Neighbourhood Leads will assess the post and decide whether to remove it.</p> <p>To flag a post using your computer</p> <ul style="list-style-type: none"> Locate the post that you would like to flag Click the "... " underneath the post Click REPORT THIS MESSAGE Select your reason for flagging the post Click REPORT <p>To flag a post using the mobile app</p> <ul style="list-style-type: none"> Locate the post that you would like to flag Click the DOWN ARROW underneath the post Select your reason for flagging the post

Please note, that these links and descriptions were current at the time this guidance was issued. Given the dynamic ever changing nature of the online environment it may be necessary to work through variations of the information presented below.

The information available in this document is intended to provide general information to territorial authorities and all reasonable measures have been taken to ensure the quality and accuracy of the information contained in it. However, the Ministry for Primary Industries disclaims any and all responsibility for any inaccuracy, error, or any other deficiency in the information, and also fully excludes any and all liability of any kind to any person or entity (whether a user of this guidance or not) that chooses to rely upon the information.

The contents of this website should not be construed as legal advice. It is not intended to take the place of, or to represent the written law of, New Zealand. Territorial authorities should seek independent legal advice where appropriate.