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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry for Primary Industries.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Food Act 2014.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions and different purposes (including the appointment of 1 or more dates for the purpose of commencing the repeals effected by section 420(2)).
- (2) Subsection (1) is subject to subsections (3) to (6).
- (3) The following provisions come into force on the day after the date on which this Act receives the Royal assent:
 - (a) sections 279 (but only as it relates to disposal upon recall under section 284), 282, 283 (except subsections (1)(a) and (8)), 284, 285(1)(o) and (p) and (2), 286, 287, 288, 289, and 292;
 - (b) sections 419 and 420(1).
- (4) Any other provision of this Act must be treated as if it were in force to the extent necessary for the operation of a provision to which subsection (3)(a) applies, including, without limitation,—
 - (a) section 241(1)(b) and (2) to (4); and
 - (b) section 244 (but only as it relates to a requirement under section 292); and
 - (c) any other provision that imposes an offence relating to a provision to which subsection (3)(a) applies; and
 - (d) sections 251, 351, and 353; and

- (e) any other provision relating to the enforcement of obligations imposed under a power in a provision to which subsection (3)(a) applies, such as provisions for the gathering of evidence and the taking of proceedings for an offence.
- (5) Section 133 comes into force on 1 July 2016 or an earlier date appointed by the Governor-General by Order in Council.
- (6) Any provision of this Act (other than section 133) that is not already in force on 1 March 2016 comes into force on that date.
- (7) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1 Preliminary provisions

Subpart 1—Introduction

3 Overview

- (1) This Act replaces the Food Act 1981.
- (2) This Part contains preliminary provisions that—
 - (a) state the purpose of this Act; and
 - (b) set out the application of this Act; and
 - (c) define certain terms used in this Act; and
 - (d) state the primary duty of persons who trade in food; and
 - (e) specify the principles for persons with regulatory roles under this Act and summarise what those roles are.
- (3) Part 2 relates to risk-based measures, which are the main mechanisms under this Act for achieving the safety and suitability of food. In particular, it includes provisions that—
 - (a) provide for the classification of food sectors into 3 classes based on, among other things, the level of risk that they pose to public health; and
 - (b) specify which (if any) risk-based measure generally applies to food businesses in each of those 3 classes; and

- (c) require certain persons who trade in food to operate under the risk-based measure that generally applies to the food sector that the person's food business is in, unless certain specified circumstances apply; and
 - (d) set out the nature, content, and effect of risk-based measures.
- (4) Part 3 contains provisions that—
 - (a) require the safety and suitability of food imported for the purpose of sale; and
 - (b) provide for the registration of importers of that food.
- (5) Part 4 contains provisions relating to recognition, the functions of territorial authorities, administration, and enforcement. In particular, it includes provisions that—
 - (a) provide for the recognition of agencies, persons, and classes of persons for the purposes of this Act; and
 - (b) state the functions and duties of territorial authorities under this Act; and
 - (c) set out the principles for the recovery of the direct and indirect costs of administering this Act; and
 - (d) deal with enforcement matters, such as offences, penalties, evidentiary presumptions, the court's powers to make additional orders for effective enforcement, and the chief executive's powers to give directions.
- (6) Part 5 contains miscellaneous provisions, including provisions about exemptions from the application of this Act, delegation, review of decisions made by the chief executive or a person acting under the delegated authority of the chief executive, consultation, incorporation by reference, and transitional matters. It contains regulation-making powers that provide for, among other things, regulations about standards in relation to food, risk-based measures, improving the safety and suitability of food, imported food, recognised agencies, persons, and classes of persons, information, offences, and administrative matters. It also contains provisions on the issuing of notices, including emergency notices.
- (7) Schedule 1 describes the food sectors that are generally subject to a food control plan.
- (8) Schedule 2 describes the food sectors that are generally subject to a national programme. A national programme is categorised into 3 levels (level 3 to 1) in descending order of risk.
- (9) Schedule 3 describes the food sectors that are not required to operate under a food control plan or a national programme.
- (10) Schedule 4 sets out miscellaneous provisions relating to registrations under this Act.
- (11) Schedule 5 sets out provisions relating to the public registers that are required to be kept under this Act.
- (12) Schedule 6 sets out provisions relating to material incorporated by reference.

- (13) Schedule 7 sets out consequential amendments, repeals, and revocations.
- (14) This section is intended as a guide only.

4 Purpose

The purpose of this Act is to—

- (a) restate and reform the law relating to how persons trade in food; and
- (b) achieve the safety and suitability of food for sale; and
- (c) maintain confidence in New Zealand’s food safety regime; and
- (d) provide for risk-based measures that—
 - (i) minimise and manage risks to public health; and
 - (ii) protect and promote public health; and
- (e) provide certainty for food businesses in relation to how the requirements of this Act will affect their activities; and
- (f) require persons who trade in food to take responsibility for the safety and suitability of that food.

5 Application of Act

This Act applies to food for sale and food-related accessories.

6 Relationship between this Act and Animal Products Act 1999 and Wine Act 2003

- (1) The purpose of this section is to recognise the general equivalence of food safety regimes under this Act and the Animal Products Act 1999 and the Wine Act 2003 in terms of their ability to ensure the safety and suitability of any food to which they apply.
- (2) This section achieves its purpose by—
 - (a) clarifying the relationship between this Act and the Animal Products Act 1999 and the Wine Act 2003 by acknowledging that, in addition to this Act, the Animal Products Act 1999 and the Wine Act 2003 contain measures that manage the safety and suitability of any animal product or wine that is food within the meaning of this Act; and
 - (b) minimising any overlap between the food safety regime under this Act and the food safety regimes under the Animal Products Act 1999 and the Wine Act 2003.
- (3) This Act applies to—
 - (a) an animal product that is processed under the Animal Products Act 1999 (whether the animal product is for sale on the domestic market or is to be exported), if that animal product is also a food; and

- (b) wine that is made under the Wine Act 2003 (whether the wine is for sale on the domestic market or is to be exported), because wine is a food as defined in this Act.
- (4) Subsection (3) is subject to exemptions that may be granted under this Act and, in particular, under—
 - (a) sections 343 and 344 (which allow any food or classes or descriptions of food, persons who trade in food, or operations or places in relation to any trade in food to be exempted from the application of all or any requirements of this Act):
 - (b) sections 345 to 347 (which allow for exemptions for certain exports):
 - (c) sections 349 and 350 (which allow certain persons covered by the Animal Products Act 1999 or the Wine Act 2003 to be exempted from the requirement to operate under an applicable risk-based measure).
- (5) The following provisions apply to manage any overlap between the food safety regime under this Act and the food safety regimes under the Animal Products Act 1999 and the Wine Act 2003:
 - (a) section 27 (which allows winemakers to apply for their winemaking operations to be included in a registered food control plan or a national programme); and
 - (b) sections 32 to 34 of the Animal Products Act 1999 (which provide for the relationship between the food safety regime under this Act and risk management programmes under the Animal Products Act 1999 by recognising the general equivalence of food control plans and risk management programmes); and
 - (c) sections 15A to 15C of the Wine Act 2003 (which provide for the relationship between the food safety regime under this Act and wine standards management plans).
- (6) If there is any conflict, duplication, or inconsistency between the requirements of this Act and the requirements of the Animal Products Act 1999 or the Wine Act 2003 in relation to an animal product or wine, the requirements of those other Acts prevail.
- (7) If there is any conflict, duplication, or inconsistency between a power or other form of authority conferred by or under the Animal Products Act 1999 or the Wine Act 2003 and a power or other form of authority conferred by or under this Act, the power or other form of authority conferred by or under those other Acts applies instead of the power or other form of authority conferred by or under this Act.

7 Act binds the Crown

This Act binds the Crown.

Subpart 2—Interpretation

General

8 Interpretation

- (1) In this Act, unless the context otherwise requires,—

adopted joint food standard has the meaning given to it by section 397

advertise means to use any form of communication (including selling or giving away any goods or services for the purposes of any trade or business, but excluding selling or giving away any goods or services for any other purpose and excluding communications of personal opinion made by a natural person for no commercial gain) to the public or a section of the public in relation to any—

- (a) goods or services; or
- (b) brand of goods or services; or
- (c) person who provides goods or services

appropriate registration authority,—

- (a) in subpart 2 of Part 2, has the meaning given to it by section 52:
- (b) in subpart 3 of Part 2, has the meaning given to it by section 82:

approved class of persons means a class of persons approved by the chief executive under section 291

approved document, material, or facility means a document, material, or facility approved by the chief executive under section 291

approved person—

- (a) means a person approved by the chief executive under section 291; and
- (b) includes an approved class of persons

Australia New Zealand Food Standards Code means the current joint food standards code established under the Australia–New Zealand Joint Food Standards Agreement

Australia–New Zealand Joint Food Standards Agreement—

- (a) means the Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System, signed at Wellington on the 5th day of December 1995, as may be revised or amended from time to time; and
- (b) includes an agreement that replaces the agreement referred to in paragraph (a)

authorised place—

- (a) means a place where a food safety officer has authorised any imported food to be held for the purpose of inspection, verification, storage, treatment, processing and handling, or destruction; and
- (b) includes—
 - (i) a transitional facility or biosecurity control area within the meaning of the Biosecurity Act 1993; and
 - (ii) a Customs place or Customs controlled area within the meaning of the Customs and Excise Act 2018

automated electronic system means a system that is the subject of an arrangement under section 374

bulk cargo container—

- (a) includes an article of transport equipment that is a lift van, movable tank, or other similar structure and that—
 - (i) is of a permanent character and accordingly strong enough to be suitable for repeated use; and
 - (ii) is specially designed to facilitate the carriage of goods by 1 or more modes of transport, without immediate repacking; and
 - (iii) is fitted with devices permitting its ready handling and its transfer from 1 mode of transport to another; and
 - (iv) has an internal volume of 1 cubic metre or more; and
- (b) includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; but
- (c) does not include any craft, vehicle, or ordinary packing case, crate, box, or other similar article used for packing

chief executive means the chief executive of the Ministry

combined district means the area comprising the districts of territorial authorities that have combined, in accordance with section 173(2), for the purpose of performing their function as a registration authority

corrective action includes an action (for example, the recall of food) to—

- (a) restore control; or
- (b) identify any affected ingredient or food, and ensure its safety and suitability or manage its disposal; or
- (c) prevent recurrence of the loss of control

Crown entity has the meaning given to it by section 7(1) of the Crown Entities Act 2004

Customs has the meaning given to the term Customs by section 5(1) of the Customs and Excise Act 2018

district means a district of a territorial authority

domestic food standard has the meaning given to it by section 404

entertainment includes any social gathering, amusement, exhibition, performance, game, sport, or trial of skill

export, in relation to a thing,—

(a) means—

- (i) to send the thing, or cause the thing to be sent, from within New Zealand territory to outside that territory:
- (ii) to post, within the meaning of section 2(2) of the Postal Services Act 1998, to an address overseas (regardless of whether or not delivery is completed or the addressee obtains possession); and

(b) includes—

- (i) to send the thing or cause the thing to be sent to, and for it to arrive at, the place of departure for loading on board a ship, an aircraft, or any other means of conveyance, with the intention of sending it from within New Zealand territory:
- (ii) to send the thing or cause the thing to be sent to, and for it to reach, an agent for the purpose of being held before sending it from within New Zealand territory

financial year means a period of 12 months beginning on 1 July in each year and ending on 30 June in the following year

food has the meaning given to it by section 9

food business has the meaning given to it by section 10

food control plan means a plan of a kind described in section 36

food-related accessory—

- (a) means any thing that is used, or represented for use, in or for the production, processing and handling, sale, or consumption of food; and
- (b) includes a package or anything that is enclosed with, attached to, in contact with, or contained in food

food safety officer means an officer appointed under section 276(1)

food safety regime—

- (a) means the system of regulatory controls relating to trading in food; and
- (b) includes—
 - (i) provisions contained in this Act or any other enactment; and
 - (ii) risk-based measures; and
- (c) also includes measures for monitoring—
 - (i) the effectiveness of those provisions:

- (ii) the effectiveness of risk-based measures:
- (iii) the performance of all persons who trade in food

food sector means a group of 2 or more food businesses

good operating practice means procedures relating to practices that—

- (a) are required to achieve the safety and suitability of the food to which they relate; and
- (b) are appropriate to the food business to which they relate

hazard means a biological, chemical, or physical agent that—

- (a) is in food or has the potential to be in food, or is a condition of food, or has the potential to affect the condition of food; and
- (b) causes or could cause an adverse or injurious effect on human life or public health

import, in relation to a thing, means to bring the thing, or cause the thing to be brought, into New Zealand territory from outside that territory

importer—

- (a) means a person who imports any food; and
- (b) includes a person for whom food is imported; and
- (c) includes a New Zealand-based agent who—
 - (i) has an overseas-based person as a principal; and
 - (ii) arranges the importation of food for the principal; and
- (d) includes a New Zealand-based representative who—
 - (i) represents an overseas-based person; and
 - (ii) arranges the importation of food for the person; and
- (e) includes the New Zealand-based consignee of imported food; and
- (f) includes a person who is or becomes the owner of, or entitled to the possession of, or beneficially interested in, imported food on or at any time after its importation and before it has ceased to be subject to the control of Customs

infringement fee, in relation to an infringement offence, means the amount prescribed by regulations made under section 391 to be payable for the offence

infringement offence means an offence that is stated, by regulations made under section 391, to be an infringement offence for the purposes of this Act

intended use, in relation to food, means the use for the food that is specifically stated, or could reasonably be presumed to be intended, taking into account the food's nature, labelling, packaging, and identification

issuing officer, except in section 303, has the meaning given to it by section 3(1) of the Search and Surveillance Act 2012

joint food standard means a food standard or part of a food standard that—

- (a) has been developed under the Australia–New Zealand Joint Food Standards Agreement for inclusion in the Australia New Zealand Food Standards Code; and
- (b) is included in the Australia New Zealand Food Standards Code; and
- (c) has been or is intended to be given the force of law—
 - (i) in Australia and New Zealand; or
 - (ii) in New Zealand only

label includes any written, pictorial, or other descriptive matter that—

- (a) relates to any food or any package containing food; and
- (b) appears on, is attached to, or is associated with that food or package

local authority means a regional council or territorial authority

marae includes the area of land on which all buildings such as whareniui (meeting house), wharekai (dining room), ablution blocks, and any other associated buildings are situated

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

monitoring programme means a programme of a kind described in section 101

movement includes import, export, and transport

national outcomes means the national outcomes issued by the Minister under section 175

national programme means a programme of a kind described in section 74

notice of recognition means, as applicable,—

- (a) a notice of recognition given to a recognised agency or a recognised person in accordance with section 148(1)(b); or
- (b) a notification given to a recognised class in accordance with section 148(1)(c)(i)

official template or model, in relation to a food control plan, means a template or model—

- (a) issued by the chief executive under section 39;
- (b) approved by the chief executive under section 40

operate under a food control plan or **operate under a registered food control plan** means to operate under the plan, whether as the operator of the plan or as a food business to which the plan applies

operate under a national programme means to operate under the national programme as a food business to which the programme applies

operator of a food business means the owner or other person in control of the business

operator of a food control plan or **operator of a registered food control plan** means,—

- (a) if the plan applies to only 1 food business, the operator of the food business; or
- (b) if the plan applies to more than 1 food business, the person responsible for the plan

operator verification means a process to ensure that internal practices, procedures, and activities comply with the applicable requirements of this Act

package—

- (a) includes anything in or by which food for carriage or for sale may be wholly or partly encased, covered, enclosed, contained, or packed; and, for food sold or carried or intended for sale or carriage in more than 1 package, includes every such package; but
- (b) does not include any of the following:
 - (i) bulk cargo containers:
 - (ii) pallet overwraps:
 - (iii) crates and packaging that do not obscure labels on the food:
 - (iv) craft and vehicles

permissible functions and activities means verification functions and activities and other specialist functions and activities that may be carried out by a recognised agency, recognised person, or recognised class of persons for the purposes of this Act, and includes—

- (a) verification functions and activities in relation to risk-based measures:
- (b) other verification functions and activities:
- (c) the provision of independent evaluations of the validity of food control plans for the purposes of section 53(3)(b)

place—

- (a) includes—
 - (i) any premises:
 - (ii) a building:
 - (iii) a temporary or permanent structure:
 - (iv) a stall:
 - (v) a conveyance:
 - (vi) a craft:

- (vii) a vehicle;
- (viii) a bulk cargo container; and
- (b) also includes any land, water, or other area where food is produced or may be present

processing and handling has the meaning given to it by section 11

processor means, in relation to food for sale, a person who processes and handles the food

producer means a person who produces food for sale

production, in relation to anything used as food or from which food is derived, includes farming, raising, growing, harvesting, extracting, and gathering

public health means the health of—

- (a) all the people of New Zealand; or
- (b) a community or section of the people of New Zealand

recognised agency means—

- (a) a person who is recognised by the chief executive under section 135 or 136; and
- (b) a group of persons who are recognised by the chief executive under section 136

recognised class means a class of natural persons that is recognised by the chief executive under section 141

recognised person means a natural person who—

- (a) is recognised by the chief executive under section 139 or 140; or
- (b) is a member of a recognised class, but only—
 - (i) to the extent that the person carries out the specified functions and activities for which the class is recognised; and
 - (ii) while the person continues to hold the qualifications or meet the other membership criteria according to which the class is defined in the relevant public register in accordance with section 148(1)(a)

regional council means a regional council within the meaning of the Local Government Act 2002

registered importer means an importer registered under section 118

registration authority means the chief executive or, as the case may be, the relevant territorial authority

relevant appointed date for any provision of this Act means the date appointed for the purpose of that provision under subsection (3)

relevant public register means, as the case may be,—

- (a) any 1 of the public registers of food control plans kept under clause 2 of Schedule 5:

- (b) the public register of food businesses subject to a national programme kept under clause 5 of that schedule:
- (c) the public register of recognised agencies, recognised persons, and recognised classes kept under clause 8 of that schedule:
- (d) the public register of importers kept under clause 11 of that schedule:
- (e) the public register of review decisions kept under clause 14 of that schedule

relevant territorial authority has the meaning given to it by section 52(3)

requirements of this Act includes—

- (a) a requirement of or under this Act:
- (b) a requirement of a regulation under this Act:
- (c) a requirement of an adopted joint food standard or of a domestic food standard:
- (d) a requirement of a notice under this Act:
- (e) a requirement of directions under this Act:
- (f) a condition imposed by or under this Act or a regulation made under this Act

risk-based measure means any of the following:

- (a) a food control plan:
- (b) a national programme:
- (c) a monitoring programme

safety and **suitability** have the meanings given to them by section 12

sale has the meaning given to it by section 13

specified conviction—

- (a) means—
 - (i) a conviction for an offence against this Act or the Food Act 1981; or
 - (ii) a conviction (whether in New Zealand or in another country) for any offence relating to fraud or dishonesty; or
 - (iii) a conviction (whether in New Zealand or in another country) for any offence relating to management control or business activities in respect of businesses of a kind (whether in New Zealand or in another country) that—
 - (A) are regulated under this Act or any other Act administered by the Ministry; or
 - (B) are subject to an overseas food safety regime; and

- (b) for the purposes only of section 116(2)(a), includes a conviction (whether in New Zealand or in another country) for any offence relating to trading in food

specified functions and activities means the permissible functions and activities that are specified by the chief executive in a notice of recognition in accordance with section 148(2)(a) as functions and activities that—

- (a) a recognised agency is responsible for managing and carrying out; or
- (b) a recognised person may carry out; or
- (c) persons who are members of a recognised class may carry out

territorial authority means a territorial authority within the meaning of the Local Government Act 2002

trade, in relation to food or a food-related accessory, means any 1 or more of the following, as the case may be:

- (a) to import food or a food-related accessory for the purpose of sale;
- (b) to produce food or a food-related accessory for the purpose of sale;
- (c) to process and handle food or a food-related accessory for the purpose of sale;
- (d) to sell food or a food-related accessory

verification includes the application of methods, procedures, tests, and other checks to confirm ongoing—

- (a) compliance with the applicable requirements of this Act;
- (b) compliance of a food business with a risk-based measure;
- (c) applicability of a risk-based measure to the operations of a food business;
- (d) effectiveness of a risk-based measure

verification agency means a recognised agency whose specified functions and activities include managing and carrying out verification functions and activities

verifier means a recognised person whose specified functions and activities include carrying out verification functions and activities

written or **in writing** means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax, email, or other electronic means.

- (2) To avoid doubt, terms and expressions used, but not defined, in the Australia New Zealand Food Standards Code have the same meaning as in this Act.
- (3) The Governor-General may, by Order in Council, specify the relevant appointed date for the purposes of any provision of this Act for which an appointed date is required.

- (4) An order under subsection (3) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 8(1) **authorised place** paragraph (b)(ii): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 8(1) **Customs**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 8(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Meaning of food

9 Meaning of food

- (1) In this Act, unless the context otherwise requires, **food**—
- (a) means anything that is used, capable of being used, or represented as being for use, for human consumption (whether raw, prepared, or partly prepared); and
 - (b) includes—
 - (i) seeds, plants, or plant material intended for human consumption, including seeds that are intended to be sprouted and consumed as sprouts, but not other seeds, plants, or plant material intended for planting; and
 - (ii) live animals intended for human consumption at the place of purchase; and
 - (iii) live animals intended for human consumption that are sold in retail premises; and
 - (iv) any ingredient or other constituent of any food or drink, whether that ingredient or other constituent is consumed or represented for consumption on its own by humans, or is used in the preparation of, or mixed with or added to, any food or drink; and
 - (v) anything that is or is intended to be mixed with or added to any food or drink; and
 - (vi) chewing gum, and any ingredient of chewing gum, and anything that is or is intended to be mixed with or added to chewing gum; and

- (vii) anything that is declared by the Governor-General, by Order in Council made under section 393, to be food for the purposes of this Act; but
- (c) does not include—
 - (i) any tobacco; or
 - (ii) any cosmetics; or
 - (iii) any substance that—
 - (A) is used only as a medicine or is a controlled drug or psychoactive substance; but
 - (B) is not the subject of a declaration referred to in paragraph (b)(vii); or
 - (iv) any inedible food-related accessory; or
 - (v) anything that is declared by the Governor-General, by Order in Council made under section 393, not to be food for the purposes of this Act.
- (2) To avoid doubt, neither subsection (1)(b)(iv) nor (v) requires any ingredient or other constituent of any food or drink or anything that is or is intended to be mixed with or added to any food or drink to comply, on its own, with the applicable requirements of this Act that specifically relate to food in its final consumable form.
- (3) However, the food in its final consumable form must still comply with the applicable requirements of this Act.
- (4) In this section,—
 - animal** has the meaning given by section 4(1) of the Animal Products Act 1999
 - controlled drug** has the meaning given by section 2 of the Misuse of Drugs Act 1975
 - medicine** has the meaning given by section 3 of the Medicines Act 1981
 - psychoactive substance** has the meaning given by section 9 of the Psychoactive Substances Act 2013.

Section 9(1)(c)(iii): replaced, on 2 March 2018, by section 4(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 9(4): replaced, on 2 March 2018, by section 4(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Meaning of food business

10 Meaning of food business

In this Act, unless the context otherwise requires, **food business**—

- (a) means a business, activity, or undertaking that trades in food (whether in whole or in part); and
- (b) includes a business, activity, or undertaking that—
 - (i) sells food on the Internet; or
 - (ii) is declared by the Governor-General, by Order in Council made under section 393, to be a food business for the purposes of this Act; but
- (c) does not include a business, activity, or undertaking—
 - (i) merely because it carries on a business other than trading in food and, in the course of doing so, acts as an intermediary between persons who trade in food by providing, for reward, a place (including mobile premises) or services (for example, an Internet service provider or an auction site on the Internet); or
 - (ii) that is declared by the Governor-General, by Order in Council made under section 393, not to be a food business for the purposes of this Act.

Meaning of processing and handling

11 Meaning of processing and handling

In this Act, unless the context otherwise requires, **processing and handling**, in relation to food for sale, includes any 1 or more of the following:

- (a) preparing the food:
- (b) manufacturing the food:
- (c) packing the food:
- (d) labelling the food:
- (e) transporting the food:
- (f) storing the food:
- (g) displaying the food:
- (h) serving the food.

Meaning of safety and suitability

12 Meaning of safety and suitability

- (1) In this Act, unless the context otherwise requires, **safety** and **suitability**, in relation to food, have the meanings set out in subsections (2) and (3) respectively.
- (2) **Safety** means a condition in which food, in terms of its intended use, is unlikely to cause or lead to illness or injury to human life or public health.
- (3) **Suitability** means a condition in which the matters specified in—

- (a) subsection (4) are appropriate to food in terms of its intended use; and
 - (b) subsection (5) do not apply.
- (4) The matters referred to in subsection (3)(a)—
- (a) include the composition, labelling, identification, and condition of the food; but
 - (b) do not include—
 - (i) matters that are directly related to the food’s safety; or
 - (ii) matters of quality or presentation of the food that relate to a purely commercial decision by the person trading in the food.
- (5) Food is unsuitable if it—
- (a) is in a condition that is offensive:
 - (b) is damaged, deteriorated, or perished to the extent of affecting its reasonable intended use:
 - (c) contains, or has attached to it or enclosed with it, any damaged, deteriorated, perished, or contaminated substance or thing to the extent of affecting its reasonable intended use:
 - (d) contains a biological or chemical agent, or other substance or thing, that is foreign to the nature of the food and the presence of which would be unexpected and unreasonable in food prepared or packed for sale in accordance with good trade practice:
 - (e) has packaging that is damaged, deteriorated, perished, or contaminated to the extent of affecting the food’s reasonable intended use.
- (6) Food is not unsafe or unsuitable merely because—
- (a) any part of the community objects to it on moral, ethical, cultural, spiritual, or religious grounds; or
 - (b) any person objects to it because of personal preference; or
 - (c) its consumption in inappropriate quantities may damage a person’s health; or
 - (d) its presence or consumption is unhealthy for any person who has an allergy or other personal health condition.

Meaning of sale

13 Meaning of sale

- (1) In this Act, unless the context otherwise requires, **sale**, in relation to food,—
- (a) means selling food for processing and handling or for human consumption; and
 - (b) includes reselling food for processing and handling or for human consumption; and

- (c) includes the following activities relating to food for human consumption:
 - (i) offering food for sale or attempting to sell food, or receiving or having food in possession for sale, or exposing food for sale, or sending or delivering food for sale, or causing or permitting food to be sold, offered for sale, or exposed for sale:
 - (ii) bartering food:
 - (iii) selling, or offering to sell, any thing of which any food forms a part:
 - (iv) supplying food, together with any accommodation, service, or entertainment, as part of an inclusive charge:
 - (v) supplying food in exchange for payment or in relation to which payment is to be made in a shop, hotel, or restaurant, at a stall, in or on a craft or vehicle, or in any other place:
 - (vi) supplying food to an employee or other person in accordance with an employment agreement or an agreement for services:
 - (vii) for the purpose of advertisement or to promote any trade or business, giving away food or, whether or not on payment of money, offering food as a prize or reward to the public:
 - (viii) exporting food:
 - (ix) every other method of disposition of food for valuable consideration; but
 - (d) does not include—
 - (i) exchanging food for food or other goods or services as part of a personal relationship between individuals that is not commercial in nature; or
 - (ii) supplying food together with accommodation to a person residing at a private dwelling or farm in exchange for services or labour by the person; or
 - (iii) supplying food together with accommodation to a person residing for more than 2 weeks at a private dwelling or farm in exchange for payment; or
 - (iv) supplying drinking water by network reticulation to the point of supply of any dwellinghouse or commercial premises.
- (2) The sale, offer for sale, or exposure for sale of any food is to be treated, unless the contrary is proved, as a sale, an offer for sale, or an exposure for sale of the food for human consumption.
- (3) The sale of any food for the purpose of being mixed with any other food is to be treated, unless the contrary is proved, as a sale if the bulk or product

produced by the mixing, or any part of the bulk or product, is intended to be sold.

- (4) The supply of food by or on behalf of the Crown or a Crown entity to a person who is in the custody or care of the Crown or the Crown entity is to be treated as a sale of the food, unless an enactment provides otherwise.

Compare: 1981 No 45 s 4(1)–(5), (9)

Subpart 3—Primary duty of persons who trade in food

14 Primary duty of persons who trade in food

A person who trades in food must ensure that it is safe and suitable.

Subpart 4—Regulatory roles

Principles for persons with regulatory roles under this Act

15 Principles governing relationships between Minister, chief executive, and territorial authorities

In achieving the purpose of this Act, the Minister, the chief executive, and all territorial authorities must take into account the following principles:

- (a) the need to develop and maintain productive working relationships and enhanced co-operation among themselves; and
- (b) the need for a co-ordinated and aligned approach among themselves in fulfilling their respective roles and responsibilities under this Act.

16 Principles to be applied in performing functions or duties, or exercising powers, under this Act

- (1) In performing functions or duties, or exercising powers, under this Act (either individually or collectively), the Minister, the chief executive, and all territorial authorities must have regard to the following principles to the extent that they are relevant to those functions, duties, or powers:

- (a) the need to achieve the safety and suitability of food:
- (b) the need to require persons who operate food businesses or otherwise trade in food to take responsibility for the safety and suitability of food:
- (c) the need to promote standards and control mechanisms that are, as far as practicable, risk-based and science-based:
- (d) the need to minimise compliance costs for food businesses and, in particular, for food businesses that operate under a private or industry programme that achieves the purpose of this Act:
- (e) the importance of ensuring that regulatory requirements are applied consistently and fairly across sectors and groups in relation to factors such as risk, including, without limitation,—

- (i) the risks that are inherent in the type of food produced:
 - (ii) the risks that may arise from the processing and handling of food:
 - (iii) the intended use of the food, and whether it is intended to be consumed by vulnerable populations:
 - (iv) the scale of the operations of food businesses within the sector or group, and the extent of distribution of the food in which they trade:
 - (f) the importance of providing services in a co-ordinated and coherent manner as far as practicable.
- (2) If there is a conflict in any case between the need to achieve the safety of food and any other principle in subsection (1), greater weight must be given to the need to achieve the safety of food.

Outline of regulatory roles under this Act

17 Role of Minister

- (1) The Minister has the functions, duties, and powers given to him or her under this Act.
- (2) The Minister has a role in the food safety regime that includes, without limitation,—
- (a) for the purposes of this Act, issuing national outcomes in relation to the performance by territorial authorities of their functions and duties, or the exercise of their powers, under this Act; and
 - (b) recommending the making of regulations, including regulations that—
 - (i) amend Schedules 1 to 3:
 - (ii) state the scope and purpose of national programmes and prescribe other matters relating to national programmes:
 - (iii) impose national programmes:
 - (iv) prescribe fees and charges for the purposes of the cost recovery provisions in subpart 3 of Part 4:
 - (v) impose levies for the purposes of those cost recovery provisions:
 - (vi) provide for exemptions, waivers, and refunds in relation to those levies:
 - (vii) exempt persons from the application of this Act generally:
 - (viii) exempt food to be exported from certain requirements of this Act:
 - (ix) declare anything to be or not to be food for the purposes of this Act:
 - (x) declare anything to be or not to be a food business for the purposes of this Act:

- (xi) declare any Act to be an Act for the purposes of section 368(3);
- (xii) declare any person to be a person for the purposes of section 368(4); and
- (c) adopting joint food standards; and
- (d) issuing domestic food standards; and
- (e) appointing persons to conduct reviews of certain decisions made by the chief executive.

18 Role of chief executive

- (1) The chief executive has the functions, duties, and powers given to him or her under this Act.
- (2) The chief executive has a role in the food safety regime that includes, without limitation,—
 - (a) providing advice to territorial authorities on the performance of their functions and duties, or the exercise of their powers, under this Act to ensure that the purpose of this Act is achieved; and
 - (b) providing information to the food industry and the public on matters relating to the safety and suitability of food; and
 - (c) implementing, managing, monitoring, and auditing the risk-based measures for the safety and suitability of food; and
 - (d) performing the function of a registration authority; and
 - (e) for the safety and suitability of food, developing standards and implementing those standards, any adopted joint food standards, and any domestic food standards; and
 - (f) establishing and monitoring national outcomes, performance criteria, standards, and other requirements that must be met by territorial authorities, agencies, and persons who perform functions or duties, and exercise powers, under this Act; and
 - (g) implementing, managing, and monitoring the food safety regime for imported food; and
 - (h) dealing with applications for registration by importers; and
 - (i) establishing and maintaining the public registers; and
 - (j) monitoring compliance with the applicable requirements of this Act; and
 - (ja) undertaking contingency planning for incidents that may affect the safety and suitability of food; and
 - (k) monitoring and implementing the enforcement system under this Act and working collaboratively with territorial authorities and other regulatory bodies; and

- (l) co-ordinating the response to emergencies that may undermine the purpose of this Act; and
- (m) conducting, on application, reviews of certain decisions made by relevant territorial authorities or designating the persons to conduct those reviews; and
- (n) conducting, on application, reviews of certain decisions made by persons acting under his or her delegated authority; and
- (o) carrying out any functions that are incidental and related to, or consequential upon, the roles set out in paragraphs (a) to (n).

Section 18(2)(ja): inserted, on 2 March 2018, by section 5 of the Food Safety Law Reform Act 2018 (2018 No 3).

19 Role of territorial authorities

- (1) A territorial authority has the functions, duties, and powers given to it under this Act.
- (2) A territorial authority has a role in the food safety regime that includes, without limitation,—
 - (a) delivering services that are needed to achieve the purpose of this Act, including the provision of advice and the dissemination of information on matters relating to the safety and suitability of food; and
 - (b) facilitating the administration and performance of functions and activities that support the role of the chief executive under this Act; and
 - (c) contributing to the implementation and delivery of risk-based measures for the safety and suitability of food; and
 - (d) performing the function of a registration authority; and
 - (e) carrying out enforcement and other regulatory responsibilities under this Act in respect of its district; and
 - (f) carrying out the role of a recognised agency; and
 - (g) carrying out any functions that are incidental and related to, or consequential upon, the roles set out in paragraphs (a) to (f).

Part 2

Risk-based measures

Subpart 1—General

Preliminary

20 Overview of this Part

- (1) This Part contains provisions relating to risk-based measures, which are the main means under this Act for ensuring food businesses achieve safe and suitable food.
- (2) This Part—
 - (a) classifies food sectors into 3 risk classes based on, among other things, the level of risk that their activities pose to public health and assigns a risk-based measure to food businesses in a class where appropriate; and
 - (b) provides, in Schedule 1, a description of food sectors that are generally subject to a food control plan; and
 - (c) categorises national programmes into 3 levels based on, among other things, the risks involved and provides, in Schedule 2, a description of food sectors that are generally subject, in descending order of risk, to a level 3, level 2, or level 1 national programme; and
 - (d) provides, in Schedule 3, a description of food sectors that are not required to operate under a food control plan or a national programme; and
 - (e) specifies which risk-based measure generally applies if a food sector is not specified in any of Schedules 1 to 3 or if a food sector is described in more than 1 of those schedules; and
 - (f) requires a person who trades in food and whose food business is in a food sector to which a risk-based measure applies to operate the food business under that risk-based measure, unless the person is exempted from that requirement under the provisions of this Part; and
 - (g) sets out requirements about the nature, content, and effect of a food control plan and a national programme; and
 - (h) sets out the circumstances in which a monitoring programme may be imposed.
- (3) This Part also contains provisions that exempt or enable the exemption of persons, groups of persons, or food businesses from operating under food control plans or national programmes (for example, sections 31 to 33).

Classification of food sectors

21 Classification of food sectors for purpose of assigning applicable risk-based measures

- (1) The classification of food sectors under this Part—
 - (a) is based on, among other things, the level of risk that their activities pose to public health in terms of the safety and suitability of food; and
 - (b) is for the purpose of assigning a risk-based measure that generally applies to food businesses in those food sectors or for identifying those food sectors to which no risk-based measure generally applies.
- (2) Accordingly, Schedules 1 to 3 classify food sectors into 3 risk-based classes in accordance with the principles set out in subsection (3).
- (3) The principles referred to in subsection (2) are as follows:
 - (a) food sectors that generally pose a high level of risk to public health are classified in Schedule 1 and food businesses in those food sectors must operate under a food control plan:
 - (b) food sectors that generally pose a medium or medium-to-low level of risk to public health are classified in Schedule 2 and—
 - (i) food businesses in food sectors classified in Part 3 of that schedule must operate under a level 3 national programme:
 - (ii) food businesses in food sectors classified in Part 4 of that schedule must operate under a level 2 national programme:
 - (iii) food businesses in food sectors classified in Part 5 of that schedule must operate under a level 1 national programme:
 - (c) food sectors that generally pose a low level of risk to public health are classified in Schedule 3 and food businesses in those food sectors are not required to operate under a food control plan or a national programme.
- (4) The levels of national programme specified in subsection (3)(b) are listed in descending order of risk.
- (5) This section is subject to sections 25, 26, and 29.

22 Power to amend Schedules 1 to 3 by Order in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations to amend Schedule 1, 2, or 3 by doing any 1 or more of the following to any 1 or more of those schedules:
 - (a) amending the overview part of a schedule; or
 - (b) adding the name or description of any food sector to a schedule; or
 - (c) removing the name or description of any food sector from a schedule; or
 - (d) amending the name or description of any food sector in a schedule; or

- (e) moving the name or description of any food sector from 1 schedule, or Part of a schedule, and inserting that name or description in another schedule, or Part of a schedule; or
- (f) revoking a schedule or a Part of a schedule and substituting a new schedule or a new Part of a schedule.
- (2) Before recommending the making of regulations under subsection (1), the Minister must—
- (a) take both of the following matters into account:
- (i) the need to achieve the safety and suitability of food for sale; and
- (ii) the likely effect of the regulations on the efficiency of the food sector concerned and the economic impact of the regulations on that sector; and
- (b) be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) A food sector to which regulations under subsection (1) relate may be described, without limitation, by—
- (a) the type of food that the food sector trades in; or
- (b) the intended purpose or destination of food; or
- (c) the type of operations or processes carried out in relation to food; or
- (d) the type of place in which the operations or processes are carried out in relation to food; or
- (e) any combination of the matters described in paragraphs (a) to (d).
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 22(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Application of risk-based measures

23 Determining applicable risk-based measure for food businesses that come within food sectors not classified in Schedules 1 to 3

- (1) This section applies to a food business in a food sector that is not classified in any of Schedules 1 to 3.

- (2) The risk-based measure that applies to a food business to which this section applies is a level 3 national programme.
- (3) This section is subject to section 24.

24 Food business not subject to risk-based measure only because it imports food

- (1) Despite section 23, a food business is not subject to a risk-based measure under that section by reason only that it imports food.
- (2) Subsection (1) does not limit or affect the other requirements of this Act in relation to food imported for the purpose of sale.

25 Determining applicable risk-based measure for food businesses that overlap 2 or more food sectors

- (1) This section applies to a food business carrying out activities that fall into—
 - (a) more than 1 of Schedules 1 to 3;
 - (b) more than 1 of Parts 3 to 5 of Schedule 2.
- (2) The operator of the food business may, at the operator’s sole discretion, choose to—
 - (a) operate all of the food business’s activities under the risk-based measure that applies to the part of the business with the highest level of risk; or
 - (b) operate each part of the food business under the risk-based measure that applies, or under no risk-based measure if no risk-based measure applies, to that part of the food business in accordance with section 21(3).

26 Operator of food business may choose to operate under food control plan even if food business is in food sector classified under lower level of risk

Sections 21, 23, 25, and 28 do not prevent an operator of a food business from choosing to operate the food business under a food control plan even if, under section 21(3) or, as the case may be, section 25,—

- (a) the risk-based measure that would generally apply to the food business is not a food control plan; or
- (b) no risk-based measure would generally apply to the food business.

27 Winemaker may apply for winemaking operations to be included under registered food control plan or national programme

- (1) This section applies to a person—
 - (a) who is a winemaker within the meaning of section 4(1) of the Wine Act 2003; and
 - (b) who does not require an official assurance issued under section 42 of that Act; and

- (c) whose wine is not subject to export eligibility requirements under section 38 of that Act; and
 - (d) who operates, or is required to operate, under a food control plan or a national programme for activities other than winemaking.
- (2) A person to whom this section applies may apply to the chief executive to have that person's winemaking operations included under a registered food control plan or have all of the person's operations registered under a national programme.
- (3) The following (as the case may be) apply to an application under subsection (2), subject to subsections (4) and (5) and with any necessary modifications:
- (a) sections 53 to 57 in respect of an application relating to a food control plan:
 - (b) regulations made under section 76 in respect of an application relating to a national programme.
- (4) In determining the application, the chief executive must take into account the following matters:
- (a) the frequency, type, and nature of the winemaking operations:
 - (b) the feasibility, effectiveness, and efficiency of operating under a food control plan or a national programme (as the case may be):
 - (c) any other matters that the chief executive considers relevant.
- (5) If the chief executive decides to approve the application,—
- (a) the chief executive must, as soon as practicable, give the person written notice of that fact; and
 - (b) the person is no longer subject to the Wine Act 2003 for the winemaking operations covered by the registered food control plan or the national programme, unless the chief executive imposes reasonable conditions on the person that include the requirement that specified wine standards are covered by the food control plan or the national programme.
- (6) If the chief executive decides to refuse the application, the chief executive must, as soon as practicable, give the person written notice of—
- (a) the decision and the reason for it; and
 - (b) the person's right to seek a review of the decision under section 355.

Requirement to operate under applicable risk-based measure

28 Requirement to operate under applicable risk-based measure

- (1) This section applies to a person who trades in food and whose food business is in a food sector to which a risk-based measure applies,—
- (a) as specified in Schedule 1 or 2; or

- (b) if section 23 or 25 applies, as determined in accordance with that section.
- (2) The person must operate the food business under that risk-based measure or in accordance with section 25(2).

29 Exception to section 28

Section 28 does not apply—

- (a) if the operator of the food business chooses, under section 26, to operate the food business under a food control plan; or
- (b) to the extent that the operator of the food business is a person or a member of a group that is exempt under section 31 from the requirement to operate under a registered food control plan or a national programme; or
- (c) to the extent that the operator of the food business is granted an exemption under section 33; or
- (d) to the extent that the operator of the food business is a person who has an exemption under section 349 (certain persons covered by Animal Products Act 1999) or 350 (certain persons covered by Wine Act 2003).

30 Where food control plan and national programme do not apply

A person or food business that is not subject to, or required to operate under, a food control plan or a national programme—

- (a) must comply with section 14 and any other applicable requirements of this Act; and
- (b) must comply with any applicable requirements of the Animal Products Act 1999 or the Wine Act 2003, including any applicable regulations, standards, notices, or directions made under those Acts; and
- (c) is liable to prosecution if the failure to comply with any of the requirements referred to in paragraphs (a) and (b) is an offence against this Act, the Animal Products Act 1999, or the Wine Act 2003.

31 Exemption from food control plan and national programme if trading in food for certain fund-raising

- (1) This section applies if—
 - (a) a person or group of persons trades in food for the sole purpose of raising money for a charitable, benevolent, philanthropic, or cultural purpose; and
 - (b) the fund-raising activity is not carried out on more than 20 occasions in any calendar year (unless it is incidental to another charitable, benevolent, or philanthropic activity, such as a permanent stall selling donated goods at a hospice).

- (2) To the extent that the person or group is engaged in any trading described in subsection (1), the person or group is exempt from the requirement to operate under a registered food control plan or a national programme.
- (3) This section is subject to section 32.

32 Exemption does not apply in prescribed circumstances

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing that the exemption in section 31 does not apply to the following:
 - (a) any food or any 1 or more classes or descriptions of food;
 - (b) any 1 or more classes or descriptions of persons who trade in food;
 - (c) any 1 or more classes or descriptions of operations or places in relation to any trade in food;
 - (d) any combination of the things referred to in paragraphs (a) to (c).
- (2) Before recommending the making of regulations under subsection (1), the Minister must—
 - (a) take into account the need to achieve the safety and suitability of food for sale; and
 - (b) be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 32(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

33 Chief executive may grant exemption from requirement to operate under registered food control plan or national programme

- (1) The chief executive may exempt any person, group of persons, or type or description of food business within a food sector from the requirement to operate under a registered food control plan or a national programme—
 - (a) on his or her own initiative; or
 - (b) on application by any person.
- (2) The chief executive may grant an exemption on application only if he or she is satisfied that the person, group of persons, or food businesses concerned—

- (a) have demonstrated a valid and appropriate reason not to be required to operate under a registered food control plan or a national programme that outweighs the public interest in maintaining consistency of treatment of persons and food businesses in the same food sector; and
 - (b) have demonstrated understanding and awareness of the importance of hazards and other factors that are relevant in achieving safe and suitable food.
- (3) In determining whether to grant an exemption (whether on application or on his or her own initiative), the chief executive must take into account the following matters:
- (a) the hazards and other factors that are relevant in achieving safe and suitable food:
 - (b) the potential impact on consumers:
 - (c) the frequency and scale of operation:
 - (d) the feasibility, effectiveness, and efficiency of operating under a food control plan or a national programme:
 - (e) the appropriateness of regulatory control in comparison with controls specified for similar food sectors or types or descriptions of food business:
 - (f) any other matters that the chief executive considers relevant.
- (4) An exemption—
- (a) must be granted by notice under section 405; and
 - (b) may be amended or revoked at any time by the chief executive by further notice under section 405; and
 - (c) applies during the period (if any) specified in the notice; and
 - (d) is subject to conditions (if any) that may be specified in the notice.
- (5) Without limiting anything in this section, a person who may be granted an exemption under this section includes someone who—
- (a) produces in his or her own home any food for sale; and
 - (b) sells the food to a consumer only; and
 - (c) does not otherwise sell or distribute the food.
- (6) This section is not limited by sections 343 and 344.
- (7) A notice issued under section 405 in reliance on this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless the notice applies only to 1 or more named persons.

Compare: 1999 No 93 s 14

Legislation Act 2019 requirements for secondary legislation referred to in subsection (7)

Publication	The maker must:	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	• publish it on the maker's website	

- publish or notify it in the *Gazette*
- If it is notified, the maker must:
- state in the notice where it is available
 - make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides

The maker must also comply with section 408(1A)

The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019

LA19 ss 74(2), 75

Presentation It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019

LA19 s 114, Sch 1
cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives

LA19 ss 115, 116

This note is not part of the Act.

Section 33(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

34 Chief executive may delegate functions, duties, or powers under section 33 to territorial authorities

- (1) The chief executive may delegate any of the chief executive's functions, duties, or powers under section 33 to 1 or more territorial authorities.
- (2) A territorial authority to which any functions, duties, or powers are delegated under this section may perform those functions and duties, or exercise those powers,—
 - (a) in the same manner, subject to the same restrictions, and with the same effect as if they had been imposed or conferred on that territorial authority directly by this Act and not by delegation; but
 - (b) subject to any terms and conditions imposed under subsection (3) or conditions imposed by subsection (7).
- (3) However, a delegation under this section may be made on any terms and conditions that the chief executive thinks fit, and may be revoked at any time by notice to the territorial authority.
- (4) A territorial authority acting under delegation is presumed to be acting in accordance with its terms in the absence of proof to the contrary.
- (5) A delegation under this section does not affect the performance of any function or duty, or the exercise of any power, by the chief executive.
- (6) Neither the chief executive nor the Crown is responsible for any act or default of a territorial authority in the performance of any function or duty, or in the exercise of any power, delegated under this section.
- (7) A delegation of the chief executive's power to grant an exemption under section 33 must be subject to the following conditions:

- (a) the exemption may be granted only to a food business that is operating entirely within the district of the territorial authority to which the power is delegated; and
- (b) the food business must belong to a food sector that is required to be registered with the territorial authority; and
- (c) the food business must not have been registered by the chief executive; and
- (d) the territorial authority to which the power is delegated must, when issuing a notice under section 33(4)(a) or (b), comply with the requirements of that section and sections 407 and 408 as if the territorial authority were the chief executive.

Subpart 2—Food control plans

Preliminary

35 Purpose of this subpart

The purpose of this subpart is to—

- (a) set out provisions about the nature, content, and effect of a food control plan; and
- (b) require the registration of food control plans.

Food control plans

36 Food control plan: general description

A food control plan is a plan designed for a particular food business to identify, control, manage, and eliminate or minimise hazards or other relevant factors for the purpose of achieving safe and suitable food, taking into account—

- (a) each type of food that the food business trades in; and
- (b) each type of process or operation that is applied to the food; and
- (c) each place in which the food business trades in food.

Compare: 1999 No 93 s 12

37 Food control plan: coverage

- (1) A food control plan may apply to 1 food business or, if the requirements of section 50(2) are met, to more than 1 food business.
- (2) Conversely, a food business may also be covered by 1 or more food control plans.

38 Food control plan: based on official template or model

- (1) A food control plan may be based on an official template or model.

- (2) For the purposes of this Act, a food control plan that is **based on** an official template or model—
- (a) may exclude any part of the template or model that is not applicable to any food business to which the plan applies; and
 - (b) must not include any provision that is not part of an official template or model.

39 Food control plan: chief executive’s power to issue official template or model

- (1) The chief executive may, by notice under section 405, issue a template or model for different types of food sectors or food businesses.
- (2) If the chief executive issues a template or model, the chief executive must—
 - (a) make a copy of the template or model available, free of charge, on an Internet site or for public inspection at reasonable hours at the head office of the Ministry; or
 - (b) on request, supply a copy of the template or model, free of charge, to any person who cannot access it on the Internet site.
- (3) This section does not limit or affect section 40.
- (4) A notice issued under section 405 in reliance on this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (3)

Publication	The maker must: <ul style="list-style-type: none"> • publish it on the maker’s website • publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none"> • state in the notice where it is available • make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with subsection (2) and section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 39(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

40 Food control plan: chief executive’s power to approve official template or model developed by third party

- (1) The chief executive may, by notice under section 405, approve a template or model developed by a person other than the chief executive or by a food industry body.
- (2) The chief executive may give an approval under this section subject to conditions.
- (3) An approval must end within—
 - (a) 3 years from the date of approval; or
 - (b) a shorter period specified by the chief executive.
- (4) The notice under section 405 must state—
 - (a) any conditions subject to which the approval is given; and
 - (b) the date on which the approval ends.
- (5) Before an approval ends, the chief executive may issue a new notice under section 405 approving the template or model for a period of up to 3 years.
- (6) The chief executive may suspend or withdraw an approval by issuing a notice under section 405.
- (7) This section does not limit or affect section 45.
- (8) A notice issued under section 405 in reliance on this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (7)

Publication	The maker must: <ul style="list-style-type: none">• publish it on the maker’s website• publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none">• state in the notice where it is available• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 40(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

41 Food control plan: form

A food control plan must be in writing and—

- (a) be submitted for registration in a form acceptable to the appropriate authority; and
- (b) comply with the requirements of this Act.

Section 41: replaced, on 2 March 2018, by section 6 of the Food Safety Law Reform Act 2018 (2018 No 3).

42 Food control plan: contents

A food control plan must set out—

- (a) the name, trading name, and business address (including the electronic address, if available) of—
 - (i) the food business or businesses covered by the plan; and
 - (ii) if the plan applies to only 1 food business, the operator of the food business; and
 - (iii) if the plan applies to more than 1 food business, the operator of the plan and the operator of each food business covered by the plan; and
- (b) the operators' physical and electronic addresses for the purposes of section 378(3)(a); and
- (c) the physical address or, if appropriate, the location of the food business or its nominated home base; and
- (d) the name, or the position or designation, and the area of responsibility (if appropriate) of the person who is responsible for the day-to-day management of the plan, as nominated by the person in control of the food business or businesses; and
- (e) the scope of the plan, including (without limitation)—
 - (i) the type of food to which it applies; and
 - (ii) the nature of the food business or businesses covered by the plan; and
 - (iii) the trading operations under the plan; and
- (f) how the applicable requirements of this Act (as defined in section 8(1)) will be met under the plan; and
- (g) a description of the hazards and other factors that are reasonably likely to occur or arise; and
- (h) procedures to achieve the safety and suitability of food, including (without limitation)—
 - (i) good operating practice; and
 - (ii) control of all relevant hazards and other factors that are reasonably likely to occur or arise; and
 - (iii) monitoring of appropriate parameters and limits; and

- (iv) preventative actions; and
- (v) corrective actions; and
- (vi) operator verification activities; and
- (vii) document control and record keeping; and
- (ha) if subpart 1 of Part 3A applies, any matters relating to the tracing of food and recall of food that are required by any regulations made under section 133C and any notice under section 405; and
- (i) any validation information as appropriate; and
- (j) any other matters that may be specified in regulations or in notices under section 405.

Compare: 1999 No 93 s 17(1)(b), (c), (2)

Section 42(ha): inserted, on 2 March 2018, by section 7 of the Food Safety Law Reform Act 2018 (2018 No 3).

43 Regulations and notices about food control plans

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) stating matters relating to the content and purpose of a food control plan for the food sectors referred to in section 21(3)(a):
 - (b) prescribing controls, restrictions, requirements, and prohibitions in relation to a food sector, including provisions about how a food sector must manage or deal with risks that arise from trading in food:
 - (c) requiring a food control plan to be differentiated from other information kept by the operator and prescribing how this must be done:
 - (d) prescribing requirements for the registration of food control plans, including the manner and form in which the operator must provide the food control plan for registration:
 - (e) prescribing conditions, or restrictions on conditions, that the registration authority may impose on the registration of a food control plan:
 - (f) prescribing requirements for the validation and evaluation of food control plans:
 - (g) providing for any other matters that may be necessary or desirable to give effect to or to administer the registration of food control plans:
 - (h) requiring persons who operate under food control plans to demonstrate competency, in relation to the safety and suitability of food, food production, and food processing and handling, to undergo appropriate training, and to provide training for staff as appropriate:
 - (i) requiring reports to be made in respect of breaches of a food control plan:

- (j) requiring samples and tests to be carried out in relation to matters covered by a food control plan and for the results of those tests to be reported to the chief executive:
- (k) prescribing any other matters that may be necessary to ensure that a food control plan effectively minimises and manages risks to public health and protects and promotes public health:
- (l) prescribing requirements relating to the safety and suitability of food and to good operating practice:
- (m) prescribing any other matters that may be necessary for the purpose of giving effect to the implementation of food control plans.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) The chief executive may, by notice under section 405,—
- (a) set requirements as to how persons who operate under food control plans are to demonstrate competency (in relation to the safety and suitability of food, food production, and food processing and handling), the appropriate training for those persons, and the staff training to be provided:
- (b) set requirements for the validation and evaluation of food control plans:
- (c) supplement regulations made under this section.
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) regulations under this section:
- (b) a notice issued under section 405 in reliance on subsection (3).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(a)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(b)

Publication	The maker must: <ul style="list-style-type: none"> publish it on the maker's website publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none"> state in the notice where it is available make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
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	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 43 heading: amended, on 2 March 2018, by section 8(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 43(1)(c): replaced, on 2 March 2018, by section 8(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 43(1)(d): replaced, on 2 March 2018, by section 8(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 43(3): inserted, on 2 March 2018, by section 8(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 43(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Amendments to food control plans

44 Chief executive's power to amend, replace, or revoke template or model issued under section 39

- (1) The chief executive may, by notice under section 405, amend, replace, or revoke a template or model issued under section 39.
- (2) If a registered food control plan is based on a template or model that is amended or replaced in accordance with subsection (1), the operator of the plan—
 - (a) must comply with any requirements specified by the chief executive in the notice under section 405 within the time specified in that notice; but
 - (b) is not obliged to re-register the food control plan.
- (3) If a registered food control plan is based on a template or model that is revoked, and not replaced, in accordance with subsection (1),—
 - (a) the operator of the plan and the operator of a food business to which the plan applies may continue to operate under the food control plan until the expiry of the period specified in the notice under section 405; but
 - (b) the operator of the plan must, before the expiry of that period, apply to the appropriate registration authority for an alternative food control plan to be registered.
- (4) If the chief executive amends or replaces a template or model in accordance with subsection (1), the chief executive must—

- (a) make a copy of the amended or replacement template or model available, free of charge, on an Internet site or for public inspection at reasonable hours at the head office of the Ministry; or
 - (b) on request, supply a copy of the amended or replacement template or model, free of charge, to any person who cannot access it on the Internet site.
- (5) A notice issued under section 405 in reliance on this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)

Publication	The maker must: <ul style="list-style-type: none">• publish it on the maker's website• publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none">• state in the notice where it is available• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A) The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 73, 74(1)(a), Sch 1 cl 14 LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 44(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

45 Operator may amend food control plan based on template or model issued under section 39 or approved under section 40

- (1) An operator of a registered food control plan based on a template or model issued by the chief executive under section 39 or approved by the chief executive under section 40 may amend the food control plan.
- (2) If the amendment to the food control plan is not a significant amendment, the operator must give written notice of the amendment to the registration authority for that plan.
- (3) If the amendment to the food control plan is a significant amendment, the operator must apply to that registration authority for the amended plan to be registered.
- (4) If the registration authority for the plan determines that it is no longer the appropriate registration authority for that plan, that registration authority must forward the application to the appropriate registration authority.
- (5) For the purposes of this section, the chief executive may, by notice under section 405, specify what amendments to a food control plan must be treated as significant amendments.

46 Operator may amend food control plan not based on official template or model

- (1) An operator of a registered food control plan that is not based on an official template or model may amend the food control plan.

- (2) If the amendment to the food control plan is not a significant amendment, the operator must give written notice of the amendment to the appropriate registration authority for the plan.
- (3) If the amendment to the food control plan is a significant amendment, the operator must apply to the appropriate registration authority for the amended plan to be registered.
- (4) On receipt of an application under subsection (3), the appropriate registration authority may require the amended food control plan to be evaluated before registering the plan.
- (5) If the appropriate registration authority considers that the amendment to the food control plan is so extensive that it constitutes a new food control plan, the appropriate registration authority may treat the application for registration of the amended food control plan as an application for registration of a new food control plan.
- (6) For the purposes of this section, the chief executive may, by notice under section 405, specify what amendments to a food control plan must be treated as significant amendments.

47 Sections 53 to 57, 59, and 60 apply to applications for registration of amended food control plans

Sections 53 to 57, 59, and 60 apply with any necessary modifications to an application under section 45(3) or 46(3) for an amended food control plan to be registered.

Requirement to register food control plans

48 Food control plans must be registered

An operator of a food business that is required to operate under a food control plan must—

- (a) register with the appropriate registration authority the food control plan that is proposed to apply to the food business; or
- (b) ensure that there is registered with the appropriate registration authority a food control plan that applies to the food business.

Other provisions relating to registered food control plans

49 Requirements of Act to prevail in cases of inconsistency with registered food control plan

If there is any inconsistency between the requirements of a registered food control plan and the applicable requirements of this Act (whether by reason of a failure to amend or update the plan to reflect any new requirements or otherwise), the applicable requirements of this Act prevail.

Duties of operators of registered food control plans

50 Duties of operators of registered food control plans

- (1) The operator of a registered food control plan must—
 - (a) ensure that the operations of the food business or food businesses to which the food control plan applies comply with the relevant requirements set out in the plan:
 - (b) ensure that the operations of that food business or those food businesses comply with the applicable requirements of this Act:
 - (c) ensure that the plan is consistent with the applicable requirements of this Act:
 - (d) adequately implement and resource all operations under the plan, including instructing, training, and supervising staff to achieve the safety and suitability of food and ensuring that staff have the necessary competency to achieve that purpose:
 - (e) ensure that all operations under the plan are commensurate with the capability and the capacity of the place, facilities, equipment, and staff to achieve the safety and suitability of food:
 - (f) ensure that, after commencement of the operations to which the registered food control plan relates, the plan is verified by an appropriate recognised agency or recognised person:
 - (g) give relevant recognised agencies and recognised persons the freedom and access that will allow them to carry out their functions and activities under this Act (including verification functions and activities):
 - (h) keep a copy of the plan for as long as its registration is effective:
 - (i) if the plan is amended, revoked, or replaced, keep a copy of the plan (as it was before it was amended, revoked, or replaced) for a period of not less than 4 years and keep a copy of the amended or replacement plan for as long as its registration is effective:
 - (j) comply with section 51.
- (2) For a registered food control plan that applies to all or part of more than 1 food business, the operator of the plan must ensure that—
 - (a) the operator will have sufficient control, authority, and accountability for all matters covered by the plan in relation to the other food business or businesses, or part- business or businesses, subject to the plan’s coverage; and
 - (b) the operator of each food business agrees to carry out the duties under subsection (1) for the operator’s business.

- (3) The duties set out in subsection (1) also apply (so far as they are applicable to their businesses) to the operator of each food business referred to in subsection (2)(b).

Compare: 1999 No 93 s 16

51 Operator of registered food control plan must notify registration authority of significant change in circumstances

- (1) The operator of a registered food control plan must give written notice to the registration authority of any significant change in circumstances.
- (2) The notice under subsection (1) must be given—
- (a) before the significant change in circumstances occurs; or
 - (b) if compliance with paragraph (a) is not practicable, as soon as practicable after the significant change in circumstances occurs but, in any event, not later than 10 working days after the change occurs.
- (3) In this section, **significant change in circumstances**—
- (a) means—
 - (i) any change in any of the following information that the operator has provided under section 53 in respect of an application for registration of the food control plan:
 - (A) the information required under section 42(a) to (e) and (h)(ii);
 - (B) the verifier or verification agency that will carry out verification functions in respect of the plan;
 - (ii) any change in the information that the operator has provided under section 55 in respect of an application for registration of the food control plan;
 - (iii) any matter that results in the food control plan not meeting the criteria under section 56; and
 - (b) includes the death, bankruptcy, receivership, voluntary administration, or liquidation of the operator of the plan or the operator of a food business to which the plan applies.
- (4) If subsection (3)(b) applies to the operator of the plan, the person who assumes control of the operator's business must give the written notice required by subsection (1).

Registration of food control plans

52 Application for registration: who is appropriate registration authority

- (1) The appropriate registration authority for a food control plan that is based on a template or model issued by the chief executive under section 39 is the relevant territorial authority, unless the plan applies to more than 1 place

of business and the definition in subsection (3) would result in more than 1 relevant territorial authority.

- (2) The appropriate registration authority for all other food control plans is—
 - (a) the relevant territorial authority, if regulations made under this Act authorise the territorial authority (either generally or specifically) to perform this function; or
 - (b) the chief executive, in any other case.
- (3) In this Act, **relevant territorial authority** means,—
 - (a) if the application for registration relates to 1 or more fixed places of business, the territorial authority that, under this Act, is responsible for performing the function of a registration authority for the district or combined district where the 1 or more places are situated; or
 - (b) if the application for registration relates to a mobile food business, the territorial authority that, under this Act, is responsible for performing the function of a registration authority for the district or combined district where the business address of the mobile food business is situated.

53 Application for registration: form and content

- (1) An application for registration must—
 - (a) be made in writing in a form or manner approved by the appropriate registration authority; and
 - (b) include the information described in subsection (2) or, as the case may be, subsection (3); and
 - (c) be accompanied by the fee (if any) that is prescribed or set under section 204 or 205.
- (2) For a food control plan that is based on an official template or model, the information referred to in subsection (1)(b) is—
 - (a) the information required under section 42(a) to (e) that provides a comprehensive and accurate representation of all the requirements of those paragraphs; and
 - (b) the reference number of the official template or model; and
 - (c) confirmation of the operator's verifier or verification agency.
- (3) For a food control plan that is not based on an official template or model, the information referred to in subsection (1)(b) is—
 - (a) either of the following:
 - (i) the information required under section 42(a) to (e) and (h)(ii) that provides a comprehensive and accurate representation of all the requirements of those paragraphs and a list of the contents of the food control plan;
 - (ii) a copy of the entire food control plan; and

- (b) unless waived under subsection (4), a report of an independent evaluation, carried out not more than 6 months before the date of the application for registration, of the validity of the food control plan in terms of sections 41 and 42; and
- (c) confirmation of the verifier or verification agency that will carry out verification functions in respect of the plan.
- (4) The chief executive may waive the requirement to provide an independent evaluation of the validity of a food control plan—
- (a) on a case-by-case basis; or
- (b) by notice under section 405.
- (5) A notice issued under section 405 in reliance on subsection (4)(b) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless the notice applies only to 1 or more specified businesses.

Compare: 1999 No 93 s 20(2), (3)

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)

Publication	The maker must:	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	• publish it on the maker’s website	
	• publish or notify it in the <i>Gazette</i>	
	If it is notified, the maker must:	
	• state in the notice where it is available	
	• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides	
	The maker must also comply with section 408(1A)	
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 53(2): replaced, on 2 March 2018, by section 9(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 53(3)(b): amended, on 2 March 2018, by section 9(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 53(4): inserted, on 2 March 2018, by section 9(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 53(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

54 Registration authority may refuse to process application for registration

The registration authority may refuse to process an application for registration if the applicant does not provide an application that complies with section 53.

55 Registration authority may require further information

- (1) The registration authority may require an applicant to supply relevant further information or material (including the whole or part of a food control plan) before determining whether or not to register a food control plan.
- (2) An application for registration lapses if the information or material is not supplied—
 - (a) within 3 months after the date of the requirement; or
 - (b) within any further time that the registration authority allows.

Compare: 1999 No 93 s 21

56 Criteria for registration of food control plan

The registration authority must register a food control plan if satisfied that—

- (a) the food control plan complies with the applicable requirements of this Act; and
- (b) if implemented appropriately, the food control plan will enable safe and suitable food to be traded; and
- (c) either,—
 - (i) if the plan applies to 1 food business, the operator of the food business is a New Zealand resident (within the meaning of section YD 1 or YD 2 of the Income Tax Act 2007); or
 - (ii) if the plan applies to more than 1 food business, every operator of the food businesses and the operator of the plan are New Zealand residents within the meaning of either of those sections of that Act; and
- (d) either,—
 - (i) if the plan applies to 1 food business, the operator of the food business is able to comply with the requirements of this Act; or
 - (ii) if the plan applies to more than 1 food business, every operator of the food businesses and the operator of the plan are able to comply with the requirements of this Act; and
- (e) the plan is clear enough to be readily understood by the operator, the relevant registration authority, and the operator's verifier or verification agency.

Compare: 1999 No 93 s 22

Section 56(d)(ii): amended, on 2 March 2018, by section 10(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 56(e): inserted, on 2 March 2018, by section 10(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

57 Refusal to register food control plan

- (1) If the registration authority proposes to refuse to register a food control plan, the registration authority must give the applicant—
 - (a) a written notice that clearly informs the applicant of the grounds proposed for refusal; and
 - (b) a reasonable opportunity to make written submissions.
- (2) If the registration authority finally determines to refuse to register the plan, the registration authority must, as soon as practicable, give the applicant written notice of—
 - (a) the decision and the reason for it; and
 - (b) the applicant's right to seek a review of the decision under section 355.

Compare: 1999 No 93 s 23

58 Applicants for registration must notify registration authority of significant change in circumstances

- (1) An applicant for registration of a food control plan must give written notice to the registration authority of any significant change in circumstances.
- (2) The notice under subsection (1) must be given—
 - (a) before the significant change in circumstances occurs; or
 - (b) if compliance with paragraph (a) is not practicable, as soon as practicable after the significant change in circumstances occurs but, in any event, not later than 10 working days after the change occurs.
- (3) In this section, **significant change in circumstances means**—
 - (a) if the application is for registration of a food control plan under section 53(3), any change in the information that the applicant—
 - (i) has provided in the food control plan to meet the requirements of section 42(a) to (e):
 - (ii) has provided under section 55:
 - (b) any change in the procedures set out in the food control plan that relate to the matters referred to in section 42(h)(ii):
 - (c) any matter that results in the food control plan not meeting the criteria under section 56.

Section 58(3)(a): replaced, on 2 March 2018, by section 11 of the Food Safety Law Reform Act 2018 (2018 No 3).

59 Registration of food control plan

- (1) If the registration authority is the chief executive and decides to register a food control plan, the registration authority must, as soon as practicable,—
 - (a) enter the information required by clause 4 of Schedule 5 on the relevant public register; and

- (b) give the applicant written notice specifying the date on which the registration takes effect, the duration of the registration, and any conditions imposed under section 60.
- (2) If the registration authority is not the chief executive and decides to register a food control plan, the registration authority must, as soon as practicable,—
 - (a) provide the information required by clause 4 of Schedule 5 to the chief executive for entry on the relevant public register; and
 - (b) give the applicant written notice specifying the date on which the registration takes effect, the duration of the registration, and any conditions imposed under section 60.
- (3) After being provided with information under subsection (2)(a), the chief executive must, as soon as practicable, enter the information on the relevant public register.

Compare: 1999 No 93 s 22(3)

60 Registration authority may impose conditions on registration of food control plan

- (1) The registration authority may register a food control plan subject to any reasonable conditions that it may specify.
- (2) The registration authority may, at any time, vary any conditions imposed in respect of the plan.
- (3) However, if regulations have been made under section 43(1)(e), the conditions must comply with those regulations.
- (4) If the registration authority imposes or varies conditions under this section, the registration authority must, as soon as practicable, give the operator of the food control plan in question written notice of—
 - (a) the conditions and the reason for imposing or varying them; and
 - (b) the operator’s right to seek a review of the conditions under section 355.
- (5) In this section, **vary** means—
 - (a) to impose additional conditions; or
 - (b) to revoke or amend any conditions.

61 Duration of registration

- (1) The registration of a food control plan is effective from the date of registration until—
 - (a) the date that is 12 months after the date of registration; or
 - (b) a later date specified by the registration authority by written notice to the operator of the food control plan.
- (2) Subsection (1) applies unless the registration—
 - (a) expires in accordance with a condition imposed under section 60; or

- (b) is cancelled under section 67; or
 - (c) is surrendered under section 71.
- (3) The registration may be renewed for further periods in accordance with Part 2 of Schedule 4.

61A Clarity of food control plans not based on official template or model

If a registration authority considers that a food control plan that is not based on an official template or model does not comply with section 56(e),—

- (a) the authority may require the operator of the plan to amend the plan to comply with section 56(e); and
- (b) the operator must amend the plan accordingly within 6 months after the date the operator received the authority's requirement to amend the plan.

Section 61A: inserted, on 2 March 2018, by section 12 of the Food Safety Law Reform Act 2018 (2018 No 3).

Suspension of operations under registered food control plan

62 Mandatory suspension

- (1) The registration authority may, at any time, suspend all or any operations under a registered food control plan in accordance with clauses 4 and 6 of Schedule 4 if it has reasonable grounds to believe that—
- (a) the food control plan may not be, or is no longer, effective (for example, because of a failure to have the plan verified in accordance with the applicable requirements of this Act); or
 - (b) the food traded under the food control plan does not meet, or no longer meets, the applicable requirements of this Act; or
 - (c) the food traded under the food control plan may pose a risk to human life or public health; or
 - (d) there is or has been a serious failure of operations or there are or have been other matters (including non-compliance with the conditions of registration) under the plan that cast doubt on the safety and suitability of food traded under it; or
 - (e) in the case of a registered food control plan that is not based on an official template or model, the operator has failed to comply with a requirement under section 61A.
- (2) The maximum period of suspension under this section is 3 months.

Compare: 1999 No 93 s 27

Section 62(1)(d): amended, on 2 March 2018, by section 13(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 62(1)(e): inserted, on 2 March 2018, by section 13(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

63 Registration authority may extend mandatory suspension

- (1) The registration authority may extend the period of a suspension under section 62 in accordance with clause 5 of Schedule 4 if the registration authority considers it necessary in the circumstances.
- (2) The period of extension—
 - (a) may be for any further period that the registration authority notifies in writing to the operator of the food control plan before the expiry of the original suspension; but
 - (b) must not exceed 3 months.

64 Voluntary suspension

- (1) If the operator of a registered food control plan wishes to suspend all operations under the plan or the operations of 1 or more food businesses covered by the plan, the operator must suspend those operations in accordance with clause 7 of Schedule 4.
- (2) The suspension must be for a period of at least 3 months, but the operator may extend the period of suspension.
- (3) The maximum period of suspension under this section is 12 months.

65 Effect of suspension

- (1) If all or any operations under a registered food control plan are suspended under section 62 or 64 or the period of suspension of any operation is extended under section 63, the registration authority may—
 - (a) direct that any food imported, produced, or processed and handled under any affected operations must not be sold; and
 - (b) direct the operator of the food business or person in control of any affected food, food-related accessory, or operations of the food business, to take appropriate action to deal with the affected food, food-related accessory, or operations; and
 - (c) exercise any of the relevant powers under section 285.
- (2) Section 285 applies to a registration authority that is the relevant territorial authority as if references to the chief executive in that section were references to the relevant territorial authority.
- (3) The registration authority must ensure that, during the period of suspension, the suspension is recorded on the relevant public register.
- (4) A suspension under section 62 or 64 does not affect any other actions that the registration authority may take under this Act.

Compare: 1999 No 93 s 27(8)

*Removal of registration of food control plans***66 Removal from public register**

- (1) This section applies to a food control plan if the chief executive—
 - (a) cancels the plan's registration under section 67 or is notified of its cancellation by a registration authority under section 67(2)(a)(ii); or
 - (b) is notified of the surrender of the plan's registration under section 71, either by notice by the operator of the plan under section 71(1) or by notice by the registration authority under section 71(2).
- (2) As soon as practicable after this section applies to a food control plan, the chief executive must—
 - (a) record the cancellation or surrender on the relevant public register; and
 - (b) remove the food control plan from the relevant public register.

67 Cancellation of registration

- (1) The registration authority may cancel the registration of a food control plan in accordance with Part 4 of Schedule 4 if satisfied that—
 - (a) suspending operations under the plan under section 62 would be justified, but it would be more appropriate to cancel the registration of the plan because of—
 - (i) the failure of the operator of the plan to properly attend to matters that would lead to the suspension; or
 - (ii) repeated suspensions in the past under that section or section 64; or
 - (b) the period of a suspension of the plan under section 62 has expired, but the operator of the plan has failed to properly attend to matters that led to the suspension of operations under the plan and there are no reasonable grounds for believing that the operator would properly attend to those matters; or
 - (c) whether by reason of the passage of time, changing circumstances, or for any other reason, the plan is no longer capable of achieving the safety and suitability of food traded under it; or
 - (d) the plan has ceased to be relevant to the operations it purports to cover because there has been a change in—
 - (i) the operator of the food business concerned; or
 - (ii) the place where the relevant operations are carried out; or
 - (iii) the food being traded; or
 - (iv) the type of trading being carried out; or
 - (e) the operator of the plan has ceased to operate as a producer, processor, or seller of food and has either—

- (i) surrendered the registration of the plan; or
 - (ii) failed to surrender the registration of the plan despite reasonable efforts by the registration authority to contact the operator; or
 - (f) the operator of the plan has transferred the food business covered by the plan to a new operator, but the registration authority is not satisfied of the matters in section 56(c) or (d) in relation to the new operator; or
 - (g) the operator of the plan has failed to pay any fees or charges imposed or prescribed by or under this Act or any regulations made under this Act (excluding any infringement); or
 - (h) in the case of a registered food control plan that is not based on an official template or model, the operator has failed to comply with a requirement under section 61A.
- (2) If the registration authority decides to cancel the registration of a food control plan, the registration authority—
- (a) must, as soon as practicable, give written notice of the cancellation to—
 - (i) the appropriate verifier or verification agency (if any); and
 - (ii) the chief executive, if the registration authority is not the chief executive; and
 - (b) may notify the cancellation in the *Gazette*.

Compare: 1999 No 93 s 28(1)

Section 67(1)(g): amended, on 2 March 2018, by section 14(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 67(1)(h): inserted, on 2 March 2018, by section 14(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

68 Effective date of cancellation

The cancellation of the registration of a food control plan takes effect on the date specified by the registration authority in the notice given to the operator of the plan under clause 10(1)(d) of Schedule 4, which must be a date after the date of that notice.

69 Effect of cancellation of registration

- (1) If the registration of a food control plan is cancelled, the registration authority may—
- (a) direct that any food imported, produced, or processed and handled under any affected operations must not be sold; and
 - (b) direct the operator of the food business or person in control of any affected food, food-related accessories, or operations of the food business to take appropriate action to deal with the affected food, food-related accessories, or operations; and
 - (c) exercise any of the other powers under section 285.

- (2) Section 285 applies to a registration authority that is the relevant territorial authority as if references to the chief executive in that section were references to the relevant territorial authority.
- (3) A cancellation of registration does not affect any other actions that the registration authority may take under this Act.

Compare: 1999 No 93 s 28(4), (5)

70 Removal of food business from coverage of food control plan

- (1) The registration authority may remove a food business from the coverage of a registered food control plan that applies to 2 or more businesses if satisfied that cancellation of the plan's registration would be appropriate under section 67 if the food business were the only one operating under the plan.
- (2) In determining whether to exercise the power conferred by subsection (1), the registration authority must take into account the effect of removing the food business from the coverage of the food control plan on any food business or food businesses that will continue to be covered by the plan and whether the plan will continue to achieve safe and suitable food.
- (3) Sections 66 to 69 and Part 4 of Schedule 4 apply, subject to any necessary modifications, in relation to the removal of the business from the coverage of the food control plan as if references in those sections or that schedule to cancellation of the plan's registration were references to removal of a food business from the coverage of the plan.

Compare: 1999 No 93 s 28A

71 Surrender of registration

- (1) The operator of a registered food control plan may, at any time, surrender the plan's registration by written notice to the registration authority.
- (2) If the registration authority is not the chief executive and is notified of a surrender under subsection (1), the registration authority must, as soon as practicable after being notified, notify the chief executive of the surrender.
- (3) A surrender does not affect any other actions that the registration authority may take under this Act.

Compare: 1999 No 93 s 29(1)

72 Effective date of surrender

A surrender takes effect—

- (a) on the date specified in the notice given to the registration authority under section 71(1), which must be a date later than the date of the notice; or
- (b) if no date is specified, on the date on which the registration authority receives that notice.

Subpart 3—National programmes

Preliminary

73 Purpose of this subpart

The purpose of this subpart is to set out provisions about the nature, content, and effect of a national programme.

National programmes

74 National programme: general description

- (1) A national programme is a programme designed to identify, control, manage, and eliminate or minimise hazards or other relevant factors for the purpose of achieving safe and suitable food by—
 - (a) imposing controls on a food business in relation to matters such as (without limitation) good operating practice, documentation requirements, verification requirements, registration requirements, and traceability and recall requirements; and
 - (b) managing the relevant risks in a manner that ensures the level of control placed on food businesses in a food sector is, among other things, proportional to the level of risk that the food sector generally poses to public health.
- (2) A national programme must require every person or food business that is subject to it to comply with the applicable requirements of this Act.
- (3) A national programme may be 1 of the 3 levels specified in section 21(3)(b) and each of those levels may differ in the level of control or the set of requirements that it imposes, depending on how high or low the level is.
- (4) Accordingly, a level 3 national programme generally imposes a higher level of control on a food business than a level 2 or level 1 national programme, and a level 2 national programme generally imposes a higher level of control than a level 1 national programme.

Section 74(1)(a): amended, on 2 March 2018, by section 15 of the Food Safety Law Reform Act 2018 (2018 No 3).

75 How national programme may be imposed

- (1) A national programme may be imposed by regulations made under section 76.
- (2) Any regulations made under section 76 or notice referred to in section 76(3) may—
 - (a) apply to particular food businesses or food sectors or to classes of food businesses or food sectors:
 - (b) specify different requirements for different food businesses or food sectors or different classes of food businesses or food sectors:

- (c) make different provision for different food businesses or food sectors or classes of food businesses or food sectors.
- (3) To avoid doubt, section 405(3) applies if the chief executive issues a notice setting specifications for the purposes of subsection (1).

Compare: 1999 No 93 ss 38(2), 39(3), (4)

Section 75(1): replaced, on 2 March 2018, by section 16(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 75(2): amended, on 2 March 2018, by section 16(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

76 Regulations and notices about national programmes

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) prescribing controls, restrictions, requirements, and prohibitions in relation to a food sector, including provisions about how a food sector must manage or deal with risks that arise from trading in food:
 - (b) prescribing verification requirements, including provisions that deal with the frequency, intensity, and cost of verification:
 - (c) prescribing procedures and requirements for the registration of food businesses, including who the appropriate registration authority should be, the form and content of registration, and the fees and charges payable for registration (if any):
 - (d) prescribing conditions, or restrictions on conditions, that may be imposed by the registration authority on the registration of a food business that is subject to a national programme:
 - (e) prescribing the duration of the registration of a food business that is subject to a national programme:
 - (f) providing for any other matters that may be necessary or desirable to give effect to or to administer the registration of a food business that is subject to a national programme:
 - (g) prescribing requirements relating to the safety and suitability of food and to good operating practice:
 - (h) requiring persons who operate under a national programme to demonstrate competency, in relation to the safety and suitability of food, food production, and food processing and handling, to undergo appropriate training, and to provide training for staff as appropriate:
 - (i) requiring reports to be made in respect of breaches of a national programme:
 - (j) requiring samples and tests to be carried out in relation to matters under a national programme and for the results of those tests to be reported to the chief executive:

- (k) prescribing any other matters that may be necessary to ensure that a national programme effectively minimises and manages risks to public health and protects and promotes public health;
 - (l) prescribing any other matters that may be necessary for the purpose of giving effect to a national programme.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) The chief executive may, by notice under section 405,—
- (a) set requirements as to how persons who operate under national programmes are to demonstrate competence (in relation to the safety and suitability of food, food production, and food processing and handling), the appropriate training for those persons, and the staff training to be provided; and
 - (b) specify information or other material (including any declarations) that must be provided in an application for registration; and
 - (c) supplement regulations made under this section.
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) regulations under this section:
 - (b) a notice issued under section 405 in reliance on subsection (3).

Compare: 1999 No 93 s 39(1)

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(a)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(b)

Publication	<p>The maker must:</p> <ul style="list-style-type: none"> • publish it on the maker's website • publish or notify it in the <i>Gazette</i> <p>If it is notified, the maker must:</p> <ul style="list-style-type: none"> • state in the notice where it is available • make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides <p>The maker must also comply with section 408(1A)</p> <p>The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result</p>	<p>LA19 ss 73, 74(1)(a), Sch 1 cl 14</p> <p>LA19 ss 74(2), 75</p>
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the maker may also have to comply with s 75 of the
Legislation Act 2019

Presentation It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019 LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116
This note is not part of the Act.

Section 76 heading: amended, on 2 March 2018, by section 17(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 76(3): inserted, on 2 March 2018, by section 17(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 76(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

77 National programme not invalid on certain grounds

A national programme may not be held invalid merely because it—

- (a) confers any discretion on, or allows any matter to be determined or approved by, the Minister, the chief executive, the registration authority, or any food safety officer; or
- (b) allows the Minister or the chief executive to impose specifications or other requirements as to the performance of any activities.

Compare: 1999 No 93 s 39(2)

78 Requirements of national programme to prevail in cases of inconsistency with other regulations or notices made under this Act

If there is any inconsistency between the requirements of a national programme and the provisions of any other regulations or notices made under this Act, the requirements of the national programme prevail.

Section 78 heading: amended, on 2 March 2018, by section 18(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 78: amended, on 2 March 2018, by section 18(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Requirement for food businesses subject to national programme to register

79 Food businesses subject to national programme must be registered

An operator of a food business that is subject to a national programme must ensure that the food business is registered with the appropriate registration authority under section 88.

Duties of operators of food businesses subject to national programme

80 Duties of operators of food businesses subject to national programme

The operator of a food business subject to a national programme must—

- (a) comply with this section and section 81:

- (b) ensure that the operations of the food business comply with the relevant requirements set out in the national programme:
- (c) ensure that the operations of the food business comply with the applicable requirements of this Act:
- (d) adequately implement and resource all operations under the national programme, including instructing, training, and supervising staff to achieve the safety and suitability of food and ensuring that staff have the necessary competency to achieve that purpose:
- (e) ensure that, after commencement of the operations to which the national programme registration relates, compliance of the food business with the national programme is verified by an appropriate recognised agency or recognised person and with the frequency required in the national programme:
- (f) comply with sections 294 and 295:
- (g) keep a copy of all documents required to be kept under the national programme.

81 Operators of food businesses subject to national programme must notify registration authority of significant change in circumstances

- (1) The operator of a food business subject to a national programme must give written notice to the registration authority of any significant change in circumstances.
- (2) The notice under subsection (1) must be given—
 - (a) before the significant change in circumstances occurs; or
 - (b) if compliance with paragraph (a) is not practicable, as soon as practicable after the significant change in circumstances occurs but, in any event, not later than 10 working days after the change occurs.
- (3) In this section, **significant change in circumstances**—
 - (a) means—
 - (i) any change in any of the information that the operator has provided under section 83(b) to (h) in respect of the application for registration of the food business:
 - (ii) any change in the nature of the food business that would affect the level of national programme applicable to that food business or would require it to operate under a food control plan; and
 - (b) includes the death, bankruptcy, receivership, voluntary administration, or liquidation of the operator of the food business.
- (4) If subsection (3)(b) applies, the person who assumes control of the food business must give the written notice required by subsection (1).

Registration of food businesses subject to national programme

82 Application for registration: who is appropriate registration authority

The appropriate registration authority is either the chief executive or the relevant territorial authority, as provided for by regulations made under section 76.

83 Application for registration: form and content

An application for registration must—

- (a) be made in writing in a form or manner approved by the appropriate registration authority; and
- (b) include the full name and business address (including the electronic address, if available) of the operator of the food business; and
- (c) include the operator's physical and electronic address for the purposes of section 378(3)(a); and
- (d) include the trading name of the food business; and
- (e) include the physical address or, if appropriate, the location of the food business or its nominated home base; and
- (f) include the position or designation of the person who is responsible for the day-to-day management of the food business, as nominated by the person in control of the food business; and
- (g) include the scope of the operations of the food business; and
- (h) include confirmation of the verifier or verification agency that will carry out the verification functions in respect of the food business; and
- (i) include any further information or other material (including declarations, if appropriate) that may be required by any regulations made under this Act or any notice under section 405; and
- (j) be accompanied by the fee (if any) that is prescribed or set under section 204 or 205.

Section 83(i): replaced, on 2 March 2018, by section 19 of the Food Safety Law Reform Act 2018 (2018 No 3).

84 Registration authority may refuse to process application for registration

The registration authority may refuse to process an application for registration if the applicant does not provide an application that complies with section 83.

85 Registration authority may require further information

- (1) The registration authority may require an applicant to supply further information or material before determining whether or not to register the food business to which the applicant's application for registration relates.
- (2) An application for registration lapses if the information or material is not supplied—

- (a) within 3 months after the date of the requirement; or
- (b) within any further time that the registration authority allows.

86 Criteria for registration of food business subject to national programme

The registration authority must register a food business that is subject to a national programme if satisfied that—

- (a) the relevant application for registration complies with section 83; and
- (b) the operator of the food business is a New Zealand resident (within the meaning of section YD 1 or YD 2 of the Income Tax Act 2007).

87 Refusal to register food business subject to national programme

- (1) If the registration authority proposes to refuse to register a food business that is subject to a national programme, the registration authority must give the applicant concerned—
 - (a) a written notice that clearly informs the applicant of the grounds proposed for refusal; and
 - (b) a reasonable opportunity to make written submissions.
- (2) If the registration authority finally determines to refuse to register the food business, the registration authority must, as soon as practicable, give the applicant written notice of—
 - (a) the decision and the reason for it; and
 - (b) the applicant's right to seek a review of the decision under section 355.

88 Registration of food business subject to national programme

- (1) If the registration authority is the chief executive and decides to register a food business that is subject to a national programme, the registration authority must, as soon as practicable,—
 - (a) enter the information required by clause 7 of Schedule 5 on the relevant public register; and
 - (b) give the operator written notice specifying the date on which the registration takes effect, the duration of registration (if prescribed by regulations made under section 76(1)(e)), and any conditions imposed under section 89.
- (2) If the registration authority is not the chief executive and decides to register a food business that is subject to a national programme, the registration authority must, as soon as practicable,—
 - (a) provide to the chief executive for entry on the relevant public register the details of the food business, as required for the purposes of clause 7 of Schedule 5, and the date of registration of the food business and (if prescribed by regulations made under section 76(1)(e)) the duration of registration; and

- (b) give the operator written notice specifying the date on which the registration takes effect and the conditions of registration (if any) imposed by the registration authority.
- (3) The chief executive must, as soon as practicable after being notified, enter on the relevant public register the details as required by clause 7 of Schedule 5.
- (4) The registration of a food business may be renewed in accordance with Part 2 of Schedule 4.

89 Registration authority may impose conditions on registration of food business

- (1) The registration authority may register a food business subject to any reasonable conditions that it may specify.
- (2) The registration authority may, at any time, vary any conditions imposed in respect of the food business.
- (3) However, if regulations have been made under section 76(1)(d), the conditions must comply with those regulations.
- (4) If the registration authority imposes or varies conditions under this section, the registration authority must, as soon as practicable, give the operator of the food business in question written notice of—
 - (a) the conditions and the reason for imposing or varying them; and
 - (b) the operator's right to seek a review of the conditions under section 355.
- (5) In this section, **vary** means—
 - (a) to impose additional conditions; or
 - (b) to revoke or amend any conditions.

Suspension of operations of registered food business under national programme

90 Mandatory suspension

- (1) The registration authority may, at any time, suspend all or any operations of a registered food business that is subject to a national programme in accordance with clause 4 of Schedule 4 if it has reasonable grounds to believe that—
 - (a) the food traded by the food business does not meet, or no longer meets, the applicable requirements of this Act; or
 - (b) the food traded by the food business may pose a risk to human life or public health; or
 - (c) there is or has been a serious failure of operations or there are or have been other matters (including non-compliance with the conditions of registration) under the national programme that cast doubt on the safety and suitability of food traded by the food business.

- (2) The maximum period of suspension under this section is 3 months.

91 Registration authority may extend mandatory suspension

- (1) The registration authority may extend the period of a suspension under section 90 in accordance with clause 5 of Schedule 4 if the registration authority considers it necessary in the circumstances.
- (2) The period of extension—
- (a) may be for any further period that the registration authority notifies in writing to the operator of the food business before the expiry of the original suspension; but
 - (b) must not exceed 3 months.

92 Voluntary suspension

- (1) If the operator of a registered food business that is subject to a national programme wishes to suspend all operations of the food business under the national programme, the operator must suspend those operations in accordance with clause 7 of Schedule 4.
- (2) The suspension must be for a period of at least 3 months, but the operator may extend the period of suspension.
- (3) The maximum period of suspension under this section is 12 months.

93 Effect of suspension

- (1) If all or any operations of a registered food business that is subject to a national programme are suspended under section 90 or 92 or the suspension is extended under section 91, the registration authority may—
- (a) direct that any food imported, produced, or processed and handled under any affected operations must not be sold; and
 - (b) direct the operator of the food business, or the person in control of any affected food, food-related accessory, or operations of the food business, to take appropriate action to deal with the affected food, food-related accessory, or operations; and
 - (c) exercise any of the relevant powers under section 285.
- (2) Section 285 applies to a registration authority that is the relevant territorial authority as if references to the chief executive in that section were references to the relevant territorial authority.
- (3) The registration authority must ensure that, during the period of suspension, the suspension is recorded on the relevant public register.
- (4) A suspension under section 90 or 92 does not affect any other actions that the registration authority may take under this Act.

*Removal of registration of food business***94 Removal from public register**

- (1) This section applies to a food business that is subject to a national programme if the chief executive—
 - (a) cancels the registration of the food business under section 95 or is notified of its cancellation by a registration authority under section 95(2)(b); or
 - (b) is notified of the surrender of the registration of the food business under section 98, either by notice by the operator of the business under section 98(1) or notice by the registration authority under section 98(2).
- (2) As soon as practicable after this section applies to a food business, the chief executive must—
 - (a) record the cancellation or surrender on the relevant public register; and
 - (b) remove the food business from the relevant public register.

95 Cancellation of registration

- (1) The registration authority may cancel the registration of a food business that is subject to a national programme in accordance with Part 4 of Schedule 4 if satisfied that—
 - (a) suspending operations of the food business under section 90 would be justified, but it would be more appropriate to cancel the registration of the food business because of—
 - (i) the failure of the operator of the food business to properly attend to matters that would lead to the suspension; or
 - (ii) repeated suspensions in the past under that section; or
 - (b) the period of a suspension of the food business under section 90 has expired, but the operator of the food business has failed to properly attend to matters that led to the suspension of operations and there are no reasonable grounds for believing that the operator would properly attend to those matters; or
 - (c) the operator of the food business has ceased to operate as a producer, processor, or seller of food and has either—
 - (i) surrendered the registration of the food business; or
 - (ii) failed to surrender the registration of the food business despite reasonable efforts by the registration authority to contact the operator; or
 - (d) the operator of the food business has failed to pay any fees or charges imposed or prescribed by or under this Act or any regulations made under this Act (excluding any infringement fee).

- (2) If the registration authority decides to cancel the registration of a food business that is subject to a national programme, the registration authority must, as soon as practicable, give written notice of the cancellation to—
 - (a) the appropriate verifier or verification agency (if any); and
 - (b) the chief executive, if the registration authority is not the chief executive.

96 Effective date of cancellation

The cancellation of the registration of a food business that is subject to a national programme takes effect on the date specified by the registration authority in the notice given to the operator of the food business under clause 10(1)(d) of Schedule 4, which must be a date after the date of that notice.

97 Effect of cancellation of registration

- (1) If the registration of a food business that is subject to a national programme is cancelled, the registration authority may—
 - (a) direct that any food imported, produced, or processed and handled under any affected operations must not be sold; and
 - (b) direct the operator of the food business or person in control of any affected food, food-related accessories, or operations of the food business to take appropriate action to deal with the affected food, food-related accessories, or operations; and
 - (c) exercise any of the other powers under section 285.
- (2) Section 285 applies to a registration authority that is the relevant territorial authority as if references to the chief executive in that section were references to the relevant territorial authority.
- (3) A cancellation of registration does not affect any other actions that the registration authority may take under this Act.

98 Surrender of registration

- (1) The operator of a food business that is subject to a national programme may, at any time, surrender the registration of the food business by written notice to the registration authority.
- (2) If the registration authority is not the chief executive and is notified of a surrender under subsection (1), the registration authority must, as soon as practicable after being notified, notify the chief executive of the surrender.
- (3) A surrender does not affect any other actions that the registration authority may take under this Act.

99 Effective date of surrender

A surrender takes effect—

- (a) on the date specified in the notice given to the registration authority under section 98(1), which must be a date later than the date of the notice; or
- (b) if no date is specified, on the date on which the registration authority receives that notice.

Subpart 4—Monitoring programmes

100 Purpose of this subpart

The purpose of this subpart is to set out provisions about the nature, content, and effect of a monitoring programme.

101 Monitoring programme: general description

- (1) A monitoring programme is used to impose, in the circumstances described in subsection (2), monitoring measures and related activities that are necessary—
 - (a) for determining the safety or suitability of food; or
 - (b) for ensuring the effectiveness of the food safety regime; or
 - (c) for enhancing, or determining the need for, adopted joint food standards, domestic food standards, or national outcomes; or
 - (d) for determining regulatory performance against the objectives of minimising and managing the food risks in respect of public health.
- (2) The circumstances are as follows:
 - (a) the monitoring measures and related activities need to be provided for on a sector or industry basis because food businesses in the sector or industry are not generally subject to the requirement to operate under a food control plan or a national programme; or
 - (b) it is not feasible or practicable to provide for the monitoring measures and related activities by means of other risk-based measures.
- (3) A monitoring programme may be imposed on any food sector despite the fact that the sector is already subject to a risk-based measure.

102 Monitoring programme: scope

A monitoring programme must specify its purpose, and may—

- (a) apply to all or any class or classes of importer, food, persons or business, process or operation, place, or area;
- (b) set out how monitoring will take place;
- (c) provide for matters such as surveying, monitoring, surveillance, data collection, sampling, and testing of or in relation to food and any thing in the environment;
- (d) provide for reporting requirements relating to certain results (including specified contaminants or pathogens in food):

- (e) provide for technical matters and specifications and matters of detail:
- (f) authorise or provide for operational matters to give effect to the monitoring programme (for example, periodic sampling plans).

103 Regulations and notices about monitoring programmes

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or both of the following purposes:
 - (a) prescribing 1 or more monitoring programmes:
 - (b) authorising the chief executive to exempt, after taking into account the matters specified in subsection (2), any person or group of persons from compliance with, or from the application of, any provisions of a monitoring programme.
- (2) The matters referred to in subsection (1)(b) are—
 - (a) the circumstances specified in section 101(2); and
 - (b) the particular circumstances of the person or group of persons that would make it unreasonable or impracticable for them to comply with the monitoring programme.
- (3) Before recommending the making of regulations under this section, the Minister must—
 - (a) be satisfied that 1 or both of the circumstances specified in section 101(2) apply; and
 - (b) be satisfied that the monitoring programme is a cost-effective way of providing for the monitoring measures and related activities; and
 - (c) take into account the following matters:
 - (i) the need to meet the purpose of this Act:
 - (ii) the relative cost of having the monitoring programme or not having it, and who bears the cost:
 - (iii) any other matters that the Minister considers relevant; and
 - (d) be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (4) The chief executive may, by notice under section 405, supplement regulations made under this section.
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (6) If the regulations authorise the granting of exemptions under subsection (1)(b),—
 - (a) the instrument granting an exemption is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless the instrument applies only to 1 or more named persons; and

- (b) the regulations must contain a statement to that effect.
- (7) A notice issued under section 405 in reliance on subsection (4) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1999 No 93 s 39(3), (4)

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (6)(a)

Publication	See the relevant publication, presentation, and disallowance table in the secondary legislation referred to in subsection (5)	LA19 ss 73, 74, Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives, unless a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (7)

Publication	The maker must: <ul style="list-style-type: none"> publish it on the maker's website publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none"> state in the notice where it is available make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 103 heading: amended, on 2 March 2018, by section 20(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 103(4): inserted, on 2 March 2018, by section 20(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 103(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 103(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 103(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

105 Monitoring programme not invalid on certain grounds

A monitoring programme may not be held invalid merely because it—

- (a) confers any discretion on, or allows any matter to be determined or approved by, the Minister, the chief executive, or any food safety officer; or
- (b) allows the Minister or the chief executive to impose specifications or other requirements as to the performance of any activities.

Compare: 1999 No 93 s 39(2)

Part 3

Food imported for purpose of sale

Preliminary

106 Purpose of this Part

The purpose of this Part is—

- (a) to require the safety and suitability of food imported for the purpose of sale; and
- (b) to provide for the registration of certain importers of that food.

107 Interpretation

In this Part, a reference to food imported for the purpose of sale includes a reference to food that—

- (a) is imported for processing and handling; and
- (b) is then subsequently exported.

108 Restriction on importation of food for purpose of sale

- (1) A person must not import any food for the purpose of sale unless—
 - (a) the person is a registered importer; or
 - (b) if the person is not a registered importer, the person is importing the food through an agent who is a registered importer.
- (2) The importation of food in a quantity that is more than that which a reasonable person would consider to be reasonably required for the purpose of personal consumption must, unless the contrary is proved, be treated as an importation of the food for the purpose of sale.

109 Food clearance

- (1) A food safety officer may give any imported food a clearance for entry into New Zealand if subsection (2) or (3) applies.
- (2) This subsection applies if all of the following apply:

- (a) the importer of the food—
 - (i) is a registered importer; or
 - (ii) is acting through an agent who is a registered importer; and
- (b) any regulations made under section 387 are complied with; and
- (c) any applicable notices issued under section 405 are complied with; and
- (d) there are no discrepancies that suggest that it may be unwise for the food safety officer to rely on the documentation accompanying the food, either—
 - (i) in the documentation itself; or
 - (ii) between the documentation and the food.
- (3) This subsection applies if a food safety officer is satisfied (including, but not exclusively, by declaration by the importer) that the food is not imported for the purpose of sale.
- (4) A food safety officer may give a clearance for entry under this section—
 - (a) unconditionally; or
 - (b) subject to any conditions that the food safety officer thinks necessary or desirable to achieve the safety and suitability of food.
- (5) A clearance for entry given under this section does not affect the application of the provisions of any other Act.

Duties of importers and registered importers

110 Duties of importer

- (1) An importer of food for the purpose of sale must—
 - (a) ensure that the importer's operations comply with any applicable requirements of this Act; and
 - (b) import only food that meets all applicable requirements of this Act; and
 - (c) maintain procedures and processes to demonstrate that the record-keeping requirements of this Act in relation to the traceability and processing and handling of the food imported by the importer are being complied with; and
 - (d) comply with section 294 and comply with section 295, which, if the importer's food business is not operating under a risk-based measure, applies as if the reference to a recognised person or recognised agency (other than a verifier or verification agency) were a reference to any recognised person or recognised agency (including a verifier or verification agency).
- (2) To avoid doubt, subsection (1) applies whether or not the importer is registered under this Act.

Compare: 1999 No 93 s 51

Section 110(1)(c): amended, on 2 March 2018, by section 22(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 110(1)(d): amended, on 2 March 2018, by section 22(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

111 Duty of registered importer

Without limiting section 110, a registered importer must comply with any applicable requirements of this Act.

Registration of importers

112 Who must be registered

For every consignment of food imported for sale into New Zealand, there must be a person who is a New Zealand resident (within the meaning of section YD 1 or YD 2 of the Income Tax Act 2007) and who is registered as an importer under this Act.

113 Application for registration

An application for registration must—

- (a) be made in writing to the chief executive in a form or manner specified by the chief executive by notice under section 405; and
- (b) include the applicant's name, trading name, and business address (including the electronic address, if available); and
- (c) include the applicant's physical and electronic address for the purposes of section 378(3)(a); and
- (d) be accompanied by the prescribed fee (if any).

114 Chief executive may refuse to process application for registration

The chief executive may refuse to process an application for registration if the applicant does not provide an application that complies with section 113.

115 Chief executive may require further information

- (1) The chief executive may require an applicant to supply further information or material before determining whether or not to register the applicant.
- (2) An application for registration lapses if the information or material is not supplied—
 - (a) within 3 months after the date of the requirement; or
 - (b) within any further time that the chief executive may allow by written notice to the applicant.

Compare: 1999 No 93 s 54(4), (5)

116 Criteria for approval of application for registration

- (1) The chief executive must approve an application for registration that complies with section 113 if satisfied that the applicant is a fit and proper person to be registered as an importer.
- (2) In determining whether an applicant is a fit and proper person for the purposes of subsection (1), the chief executive may take into account the following matters:
 - (a) any specified conviction entered against the applicant or against any director, manager, or significant shareholder of the applicant:
 - (b) whether there has in the past been a serious or repeated failure by the applicant, or by any director, manager, or significant shareholder of the applicant, to comply with the duties of an importer in section 110 or the duty of a registered importer in section 111:
 - (c) whether there are other grounds for considering that the applicant is likely in the future to fail to comply with those duties:
 - (d) any other matters that the chief executive considers relevant.
- (3) In this section, **significant shareholder** means a shareholder whose shareholding in the applicant enables the shareholder to exercise control over the affairs of the applicant.

117 Refusal to register

- (1) If the chief executive proposes to refuse to register an applicant, the chief executive must give the applicant—
 - (a) a written notice that clearly informs the applicant of the grounds proposed for refusal; and
 - (b) a reasonable opportunity to make written submissions.
- (2) If the chief executive finally determines to refuse to register the applicant, the chief executive must, as soon as practicable, give the applicant written notice of—
 - (a) the decision and the reason for it; and
 - (b) the applicant's right to seek a review of the decision under section 355.

Compare: 1999 No 93 s 56

118 Registration

If the chief executive approves an application for registration, the chief executive must, as soon as practicable,—

- (a) enter the information required by clause 13 of Schedule 5 on the relevant public register; and
- (b) give the applicant written notice specifying the date on which the registration takes effect and the duration of the registration.

119 Duration of registration

- (1) An importer's registration is effective from the date of registration until—
 - (a) the date that is 12 months after the date of registration; or
 - (b) a later date specified by the chief executive by written notice to the importer.
- (2) Subsection (1) applies unless the registration—
 - (a) is cancelled under section 127; or
 - (b) is surrendered under section 130.
- (3) The registration may be renewed for further periods in accordance with Part 2 of Schedule 4.

120 Registration may not be transferred

An importer's registration—

- (a) may not be transferred to any other person; and
- (b) may not vest by operation of law in any person other than the importer registered under this Act.

121 Registered importers must notify chief executive of significant change in circumstances

- (1) A registered importer must give written notice to the chief executive of any significant change in circumstances within 10 working days after the change.
- (2) In this section, **significant change in circumstances**—
 - (a) means—
 - (i) any change in the information that the registered importer has provided under sections 113 and 115 for an application for registration;
 - (ii) any matter that may result in that person not meeting the criteria under section 116; and
 - (b) includes the death, bankruptcy, receivership, voluntary administration, or liquidation of the registered importer.
- (3) In a case to which subsection (2)(b) applies, the person who assumes control of the importer's business must give the notice under subsection (1).

*Suspension of registered importer's operations***122 Mandatory suspension**

- (1) The chief executive may, at any time, suspend all or any specified part of a registered importer's operations in accordance with clause 4 of Schedule 4 if the chief executive considers that—

- (a) the food imported by the importer may pose a risk to human life or public health; or
 - (b) there is or has been a serious failure of operations or there are or have been other matters that cast doubt on the safety and suitability of the food imported by the importer.
- (2) The maximum period of suspension under this section is 3 months.

123 Chief executive may extend mandatory suspension

- (1) The chief executive may, in accordance with clause 5 of Schedule 4, extend the period of a suspension under section 122 if the chief executive considers it necessary in the circumstances.
- (2) The period of extension—
- (a) may be for any further period that the chief executive notifies to the registered importer in writing before the expiry of the original suspension; but
 - (b) must not exceed a further 3 months.

124 Voluntary suspension

- (1) A registered importer may, at any time, suspend all of the importer's operations in accordance with clause 7 of Schedule 4.
- (2) The suspension must be for a period of at least 3 months, unless the chief executive approves a period of suspension shorter than 3 months.
- (3) The registered importer may extend the period of suspension up to a maximum period of 12 months.

125 Effect of suspension

- (1) If all or any of a registered importer's operations are suspended under section 122 or 124 or the period of a suspension of any operations is extended under section 123, the chief executive may—
- (a) direct that any food imported, produced, or processed and handled under any affected operations must not be sold; and
 - (b) direct the registered importer to take appropriate action to deal with the affected food; and
 - (c) exercise any of the relevant powers under section 285.
- (2) The chief executive must ensure that, during the period of suspension, the suspension is recorded on the relevant public register.
- (3) A suspension under section 122 or 124 or an extension of a period of a suspension of any operations under section 123 does not affect any other actions that the chief executive may take under this Act.

*Removal of importer's registration***126 Removal from public register**

- (1) This section applies to an importer if the chief executive—
 - (a) cancels the importer's registration under section 127; or
 - (b) is notified of the surrender of the importer's registration under section 130.
- (2) As soon as practicable after this section applies to an importer, the chief executive must—
 - (a) record the cancellation or surrender on the relevant public register; and
 - (b) remove the importer from the relevant public register.

127 Cancellation of registration

- (1) The chief executive may cancel the registration of an importer in accordance with Part 4 of Schedule 4 if satisfied that the importer—
 - (a) is no longer a fit and proper person to be registered, taking into account the matters referred to in section 116(2)(b) that—
 - (i) arose after the registration of the importer; or
 - (ii) first came to the attention of the chief executive after the registration of the importer; or
 - (b) has failed to pay any fees or charges imposed or prescribed by or under this Act or any regulations made under this Act (excluding any infringement fee).
- (2) If the chief executive decides to cancel the registration of an importer, the chief executive must, as soon as practicable, give written notice of the cancellation to the appropriate verifier or verification agency (if any).

Compare: 1999 No 93 s 58(1)

128 Effective date of cancellation

The cancellation of an importer's registration takes effect on the date specified by the chief executive in the notice given to the importer under clause 10(1)(d) of Schedule 4, which must be a date after the date of that notice.

129 Effect of cancellation of registration

- (1) If an importer's registration is cancelled, the chief executive may—
 - (a) direct that any food imported, produced, or processed and handled under any affected operations must not be sold; and
 - (b) direct the importer to take appropriate action to deal with any affected food, food-related accessories, or operations; and
 - (c) exercise any of the other powers under section 285.

- (2) A cancellation of registration does not affect any other actions that the chief executive may take under this Act.

Compare: 1999 No 93 s 28(4), (5)

130 Surrender of registration

- (1) An importer may, at any time, surrender that importer's registration by written notice to the chief executive.
- (2) A surrender does not affect any other actions that the chief executive may take under this Act.

131 Effective date of surrender

A surrender takes effect—

- (a) on the date specified in the notice given to the chief executive under section 130(1), which must be a date later than the date of the notice; or
- (b) if no date is specified, on the date on which the chief executive receives that notice.

Provisions relating to border information supplied using JBMS

132 Border information supplied using JBMS must be supplied in approved form and manner

- (1) This section applies to a requirement by or under this Act to supply to the Ministry any border information.
- (2) Any person who uses a JBMS (Joint Border Management System) to comply with the requirement (including, without limitation, by supplying the information to the Customs, or to an appointed agency, in accordance with section 41D or 41H of the Biosecurity Act 1993) must supply the information in a form and manner—
- (a) for complying with the requirement by using the JBMS; and
- (b) for the time being generally approved in writing by the chief executive.
- (3) The approved form and manner referred to in subsection (2)—
- (a) must be notified via an Internet site that is, so far as practicable, publicly available free of charge; and
- (b) may be set out in rules under section 325 of the Customs and Excise Act 2018.
- (4) In this section and section 133,—
- border information** and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993

Ministry has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 8(1) of this Act.

Section 132(2): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 132(3)(b): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

133 Duty to use JBMS to supply border information

- (1) This section applies to a requirement by or under this Act to supply to the Ministry any border information.
- (2) After the commencement of this section, the only ways in which a person can comply with the requirement are—
 - (a) by using a JBMS; or
 - (b) by using another means for the time being generally or specifically approved in writing by the chief executive.

Section 133(2)(a): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Part 3A Tracing, recall, and verification

Part 3A: inserted, on 2 March 2018, by section 23 of the Food Safety Law Reform Act 2018 (2018 No 3).

Subpart 1—Tracing and recall

Subpart 1: inserted, on 2 March 2018, by section 23 of the Food Safety Law Reform Act 2018 (2018 No 3).

133A Application of this subpart

This subpart applies to a person who—

- (a) trades in food; and
- (b) is specified by regulations made under section 133C(1)(a) as a person to whom this subpart applies.

Section 133A: inserted, on 2 March 2018, by section 23 of the Food Safety Law Reform Act 2018 (2018 No 3).

133B Tracing and recall

A person to whom this subpart applies must, in accordance with any regulations made under section 133C and any notice under section 405,—

- (a) have in place procedures for—
 - (i) tracing food; and
 - (ii) recalling food; and
- (b) conduct simulations or other tests of those procedures; and
- (c) implement those procedures to trace and recall food.

Section 133B: inserted, on 2 March 2018, by section 23 of the Food Safety Law Reform Act 2018 (2018 No 3).

133C Regulations and notices relating to tracing and recall of food

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) specifying a person who trades in food as a person to whom this subpart applies:
 - (b) setting requirements that apply to that person in relation to—
 - (i) the content of procedures referred to in section 133B(a); and
 - (ii) the conducting of simulations and other tests of those procedures; and
 - (iii) the implementation of those procedures to trace food and recall food:
 - (c) specifying matters in relation to tracing and recall that must be included (if applicable) in a food control plan or a national programme.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) The chief executive may, by notice under section 405, supplement regulations made under this section.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (5) A notice issued under section 405 in reliance on subsection (3) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)

Publication	The maker must: <ul style="list-style-type: none">• publish it on the maker's website• publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none">• state in the notice where it is available• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
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	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 s 115, 116

This note is not part of the Act.

Section 133C: inserted, on 2 March 2018, by section 23 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 133C(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 133C(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 2—Verification

Subpart 2: inserted, on 2 March 2018, by section 23 of the Food Safety Law Reform Act 2018 (2018 No 3).

133D Application

This subpart applies to a person who—

- (a) trades in food; and
- (b) is specified by regulations made under section 133F(1)(a) as a person to whom this subpart applies.

Section 133D: inserted, on 2 March 2018, by section 23 of the Food Safety Law Reform Act 2018 (2018 No 3).

133E Verification

A person to whom this subpart applies must ensure that the person's operations are verified in accordance with any regulations made under section 133F and any notice under section 405.

Section 133E: inserted, on 2 March 2018, by section 23 of the Food Safety Law Reform Act 2018 (2018 No 3).

133F Regulations and notices relating to verification

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) specifying a person who trades in food as a person to whom this subpart applies;
 - (b) specifying the operations or the part of the person's operations that must be verified;
 - (c) prescribing requirements relating to the exercise, carrying out, and managing of verification functions and activities:

Part 4

Provisions relating to recognition, territorial authorities, administration, and enforcement

Subpart 1—Recognised agencies, persons, and classes of persons

134 Outline of this subpart

This subpart—

- (a) establishes a procedure for the recognition of agencies (including verification agencies) that are responsible for managing and carrying out specified functions and activities for the purposes of this Act; and
- (b) establishes a procedure for the recognition of persons (including verifiers) or classes of persons who are to carry out specified functions and activities for the purposes of this Act; and
- (c) sets out the duties of recognised agencies, recognised persons, and recognised classes, and when their recognition can be suspended or withdrawn; and
- (d) provides for the establishment and maintenance of a public register of recognised agencies, recognised persons, and recognised classes, and for the public to access the register.

Recognition of agencies, persons, and classes of persons

135 Recognition of agencies

- (1) The chief executive may, on the application of a person, recognise that person as an agency that is responsible for the management and carrying out of specified functions and activities.
- (2) Before recognising an applicant, the chief executive must—
 - (a) consider whether to impose a condition under section 147(1) requiring the applicant to manage or supply recognised persons to carry out some or all of the permissible functions and activities for which recognition is sought; and
 - (b) be satisfied that the applicant is a fit and proper person to manage and carry out the permissible functions and activities for which recognition is sought.
- (3) In determining whether an applicant is a fit and proper person, the chief executive—
 - (a) must take into account the following matters:
 - (i) the competencies and resources of the applicant to manage and carry out the permissible functions and activities for which recognition is sought; and

- (ii) any specified conviction entered against the applicant or any director or manager of the applicant; and
 - (iii) the applicant's character and reputation, including, if appropriate, the character and reputation of the directors of the applicant or of those responsible for its management or control; and
 - (iv) the applicant's ability to maintain an appropriate degree of impartiality and independence in managing and carrying out the permissible functions and activities for which recognition is sought; and
 - (v) any applicable requirements of this Act; and
- (b) may take into account any other matters that the chief executive considers relevant.
- (4) This section is subject to section 137(5).

136 Recognition of certain agencies without application

- (1) The chief executive may, without receiving an application under section 135(1), recognise any of the following, or any group of persons within each of the following, as an agency that is responsible for the management and carrying out of specified functions and activities:
- (a) the Ministry;
 - (b) a department as defined in section 5 of the Public Service Act 2020.
- (2) Section 135(2) and (3) apply to subsection (1) accordingly, with all necessary modifications.
- (3) This section is subject to section 137(5).

Section 136(1)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

137 Recognition of territorial authorities for certain verification functions and activities

- (1) A territorial authority is recognised as the agency that is responsible for the management and carrying out of verification functions and activities in relation to a food business that is—
- (a) operating under a food control plan that is based on a template or model issued under section 39; and
 - (b) operating entirely within the district of that territorial authority; and
 - (c) selling food primarily directly to consumers.
- (2) The recognition of a territorial authority under subsection (1) must be treated as if it were recognition by the chief executive under section 136 for an indefinite duration.
- (3) However, sections 158 to 167 do not apply in respect of a territorial authority's recognition under subsection (1).

- (4) To avoid doubt,—
- (a) other provisions of this subpart that apply to an agency recognised under section 136 (such as section 147) apply in respect of a territorial authority's recognition under subsection (1); and
 - (b) nothing in this section limits or affects the application of sections 184 to 197 in respect of a territorial authority managing and carrying out verification functions and activities described in subsection (1).
- (5) The chief executive must not recognise any person besides a territorial authority as an agency that is responsible for the management and carrying out of the verification functions and activities described in subsection (1).

138 Review of operation of section 137

As soon as practicable after the expiry of the Act's introductory period (as defined in section 415), the chief executive must—

- (a) review the operation of section 137 since the date of commencement of that section; and
- (b) consider whether any amendments to the law are necessary or desirable and, in particular, whether there is a need to retain, amend, or repeal section 137; and
- (c) present a report of the review to the Minister within 6 months of commencing the review.

139 Recognition of persons

- (1) The chief executive may, on the application of a natural person, recognise that person to carry out specified functions and activities.
- (2) Before recognising an applicant, the chief executive must—
- (a) consider whether to impose a condition under section 147(1) requiring the applicant to be managed, employed, or engaged by a recognised agency to carry out some or all of the permissible functions and activities for which recognition is sought; and
 - (b) be satisfied that the applicant is a fit and proper person to carry out the permissible functions and activities for which recognition is sought.
- (3) In determining whether an applicant is a fit and proper person, the chief executive—
- (a) must take into account the following matters:
 - (i) the competency of the applicant to carry out the permissible functions and activities for which recognition is sought; and
 - (ii) any specified conviction entered against the applicant; and
 - (iii) the applicant's character and reputation; and

- (iv) the applicant's ability to maintain an appropriate degree of impartiality and independence in carrying out the permissible functions and activities for which recognition is sought; and
- (v) any applicable requirements of this Act; and
- (b) may take into account any other matters that the chief executive considers relevant.

140 Recognition of certain persons without application

- (1) The chief executive may, without receiving an application under section 139(1), recognise any of the following natural persons to carry out specified functions and activities:
 - (a) any officer or employee of the Ministry;
 - (b) any officer or employee of any department as defined in section 5 of the Public Service Act 2020;
 - (c) any officer or employee of a territorial authority.
- (2) Section 139(2) and (3) apply to subsection (1) accordingly, with all necessary modifications.

Section 140(1)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

141 Recognition of classes of persons

- (1) The chief executive may recognise a class of natural persons to carry out specified functions and activities.
- (2) The chief executive may recognise a class of natural persons—
 - (a) on the application of any person who the chief executive is reasonably satisfied—
 - (i) represents that class of persons; or
 - (ii) is an appropriate person to make an application on behalf of that class of persons; or
 - (b) without receiving an application.
- (3) Before recognising a class of natural persons, the chief executive must—
 - (a) consult the members of the class and the applicant (if any) in accordance with section 169 about the application for recognition of the class; and
 - (b) be satisfied that the class is an appropriate class to carry out the permissible functions and activities for which the class is proposed to be recognised.
- (4) In determining whether a class is an appropriate class, the chief executive—
 - (a) must take into account the following matters:
 - (i) whether the class can be defined with appropriate accuracy and specificity; and

- (ii) the degree to which members of the class share common characteristics (for example, qualifications, skills, and experience); and
 - (iii) the degree to which the ordinary qualifications, skills, functions, and activities of members of the class correspond with, and demonstrate adequate competency to carry out, the permissible functions and activities for which the class is proposed to be recognised; and
 - (iv) whether the class is supervised, regulated, governed, or controlled by or under a professional or regulatory body or system (for example, a disciplinary body or system), or an enactment; and
 - (v) whether the class is subject to a code of ethics or standards of professional conduct to which members must adhere; and
 - (vi) any applicable requirements of this Act; and
- (b) may take into account any other matters that the chief executive considers relevant.
- (5) If the chief executive recognises a class of persons under this section, the chief executive may, if he or she considers on reasonable grounds that it is appropriate to do so, exclude 1 or more members of the class, or categories of members of the class, from the recognised class (*see* section 146).

142 Interrelationship between sections 135, 136, and 139 to 141

To avoid doubt, a natural person may be recognised under any 1 or more of sections 135, 136, and 139 to 141 despite already being recognised in another capacity under any 1 or more of those sections.

Recognition process

143 Application for recognition

An application for recognition under section 135, 139, or 141 must—

- (a) be in the appropriate form and manner provided or approved by the chief executive for that purpose; and
- (b) be accompanied by the prescribed application fee (if any).

144 Chief executive may require further information

- (1) The chief executive may require a person who applies for recognition to supply further information or material before determining whether to grant the recognition.
- (2) An application for recognition lapses if the additional information or other material is not supplied—
 - (a) within 3 months after the date of the requirement; or

- (b) within any further time that the chief executive allows by notice in writing.

145 Proposal to refuse application to recognise agency, person, or class of persons

- (1) If the chief executive proposes to refuse an application for recognition in whole or in part, the chief executive must consult the applicant in accordance with section 169 about the proposed refusal.
- (2) The notification given to the applicant in accordance with section 169(a)(i) must—
 - (a) specify the grounds for proposing to refuse the application; and
 - (b) include a copy (or an adequate summary) of all material information the chief executive relies on in proposing to refuse the application.
- (3) If the chief executive finally determines to refuse the application (in whole or in part), the chief executive must, as soon as practicable, give the applicant written notice of—
 - (a) the decision and the chief executive’s reasons for it; and
 - (b) the applicant’s right to seek a review of that decision under section 355.

146 Proposal to exclude members, or categories of members, from recognition of class

- (1) If the chief executive proposes to exclude any members, or categories of members, from the recognition of a class, the chief executive must consult those members and the applicant (if any) in accordance with section 169 about the exclusion of the members.
- (2) The notification given to the members and the applicant (if any) in accordance with section 169(a) must—
 - (a) specify the grounds for proposing to exclude the members; and
 - (b) include a copy (or an adequate summary) of all material information the chief executive relies on in proposing to exclude the members.
- (3) If the chief executive finally determines to exclude any members, or categories of members, from the recognition of a class, the chief executive must, as soon as practicable, give those members and the applicant (if any) written notice of—
 - (a) the decision and the chief executive’s reasons for it; and
 - (b) the members’ and the applicant’s right to seek a review of that decision under section 355.

147 Chief executive may impose or vary conditions of recognition

- (1) The chief executive may impose any conditions the chief executive thinks fit when he or she recognises an agency, a person, or a class of persons under any of sections 135, 136, and 139 to 141.
- (2) The chief executive may vary any conditions by, as appropriate,—
 - (a) giving a recognised agency or a recognised person written notice of the variation; or
 - (b) notifying a recognised class of the variation in accordance with section 168.
- (3) However, before varying a condition the chief executive must consult the recognised agency, recognised person, or recognised class in accordance with section 169 about the proposed variation, unless the agency is, or is within, the Ministry or the person is within the Ministry.
- (4) If the chief executive varies a condition, the recognised agency, the recognised person, or a member of the recognised class to whom the condition applies may seek a review of the variation under section 355.
- (5) Subsections (3) and (4) do not apply if the variation is made on the application of the recognised agency, recognised person, or recognised class in accordance with the terms of that application.
- (6) In this section, **vary** means—
 - (a) to impose additional conditions; or
 - (b) to revoke or amend any conditions.

148 Grant of recognition

- (1) If the chief executive recognises an agency, a person, or a class of persons, the chief executive must, as soon as practicable,—
 - (a) enter the name of the recognised agency or recognised person, or a definition of the class that allows the class to be accurately and readily identified, in the relevant public register; and
 - (b) for a recognised agency or a recognised person, give the agency or person a notice of recognition; and
 - (c) for a recognised class,—
 - (i) notify the class in accordance with section 168 of its recognition; and
 - (ii) if there was an applicant, give the applicant written notice of the recognition of the class.
- (2) A notice of recognition must specify—
 - (a) the permissible functions and activities for which the recognition is granted; and

- (b) for a recognised class, any members or categories of members that are excluded from the recognised class in accordance with section 141(5); and
- (c) any conditions of recognition imposed under section 147(1); and
- (d) the duration of the recognition under section 150.

149 Scope, effect, and transfer of recognition

- (1) Recognition of a recognised agency or a recognised person applies only to the particular agency or particular person specified in the notice of recognition.
- (2) If a class of persons is recognised,—
 - (a) that recognition applies—
 - (i) to the class as defined in the relevant public register; and
 - (ii) to each member of that class, but only—
 - (A) to the extent that the member carries out the specified functions and activities for which the class is recognised; and
 - (B) while the member continues to hold the qualifications or meet the other membership criteria according to which the class is defined in the relevant public register in accordance with section 148(1)(a); and
 - (b) each member of the class—
 - (i) is a recognised person; and
 - (ii) is subject to the duties of recognised persons set out in section 156; and
 - (iii) may independently carry out the specified functions and activities for which the class is recognised; and
 - (iv) may have the recognition of the class of which he or she is a member suspended or withdrawn for him or her only; and
 - (c) all conditions of recognition imposed on the class under section 147, and all directions or other requirements that apply to the class, also apply to, and must be complied with by, each member of the class individually; and
 - (d) a suspension or withdrawal of the recognition of the class, and any condition or corrective action imposed under section 158(3) on the suspension of the class, also applies to each member of the class individually; and
 - (e) each member of the class who carries out the specified functions and activities for which the class is recognised—
 - (i) does so on his or her own account; and
 - (ii) is personally responsible for his or her own actions or omissions.

- (3) Further to subsection (2), this subpart applies to a recognised person who is recognised by virtue of being a member of a recognised class, as far as applicable and with all necessary modifications, as if—
- (a) a reference to a recognised person's specified functions and activities were a reference to the specified functions and activities of the recognised class of which he or she is a member; and
 - (b) a reference to a recognised person's recognition were a reference to the class's recognition; and
 - (c) a reference to a recognised person's notice of recognition were a reference to the class's notice of recognition.
- (4) Recognition may not be transferred to a different agency, person, or class of persons, and may not vest by operation of law in any person other than the agency, person, or class of persons specified in the notice of recognition.

150 Duration of recognition

- (1) Recognition has effect for—
- (a) a specified period commencing and ending on the dates stated in a notice of recognition in accordance with section 148(2)(d); or
 - (b) if no period is specified, an indefinite period.
- (2) However,—
- (a) recognition ends if it is withdrawn under section 162 or 163 or surrendered under section 165; and
 - (b) recognition has no effect while it is suspended under section 158 or 159.

151 Renewal of recognition before expiry

- (1) If an agency, a person, or a class of persons is recognised for a specified period, then no later than 1 month before the end of that period—
- (a) the agency, the person, or an appropriate representative may apply to the chief executive for renewal of the recognition; or
 - (b) the chief executive may renew the recognition without application if the agency, person, or class was initially recognised by the chief executive without application.
- (2) In determining whether to renew the recognition of an agency, a person, or a class of persons, the chief executive must consider the matters set out in (as applicable) section 135(2) and (3), 139(2) and (3), or 141(3)(b) and (4) unless the chief executive is satisfied that—
- (a) either—
 - (i) the circumstances of the agency, person, or class have not changed; or

- (ii) if the circumstances of the agency, person, or class have changed, those changes do not adversely affect the current recognition; and
 - (b) the reasons why the chief executive recognised the agency, person, or class still apply; and
 - (c) the agency or person has, or a sufficient proportion of the members of the class have, complied with all applicable conditions of recognition imposed under section 147 and requirements of this Act during the period of recognition.
- (3) If the chief executive proposes to vary any conditions of recognition imposed on the agency, person, or class of persons under section 147 when the chief executive renews the recognition, the chief executive—
 - (a) must vary the conditions in accordance with section 147(2) to (6); and
 - (b) may, by notice in writing to the agency, person, or class, temporarily extend the specified period of the existing recognition in order to allow consultation in accordance with section 147(3) (if required) to be completed before the period of recognition ends.
- (4) Sections 144 to 150 apply with all necessary modifications to applications under this section.
- (5) An application under this section that is received by the chief executive after the deadline specified in subsection (1) must be treated as if it were a new application for recognition under section 135, 139, or 141, as applicable.
- (6) In this section, **appropriate representative** means any person who the chief executive is reasonably satisfied—
 - (a) represents the recognised class; or
 - (b) is an appropriate person to make an application on behalf of the class.

152 Application for renewal of recognition

An application for renewal of recognition under section 151 must—

- (a) be in the appropriate form and manner provided or approved by the chief executive for that purpose; and
- (b) be accompanied by the prescribed application fee (if any).

153 Substituted notice of recognition

- (1) A recognised agency or a recognised person may apply to the chief executive for a new notice of recognition to be issued in substitution for an existing notice of recognition if—
 - (a) any conditions of recognition imposed on the agency or person are varied under section 147(2); or
 - (b) the existing notice has become disfigured or dilapidated, or contains a mistake; or

- (c) the existing notice has been lost or destroyed.
- (2) The chief executive must cancel the existing notice of recognition and give a new notice of recognition in substitution for it if—
 - (a) an application for a substituted notice of recognition is made to the chief executive in the appropriate form and manner provided or approved by the chief executive for that purpose; and
 - (b) the application is accompanied by the prescribed application fee (if any).

154 Ongoing recognition fees, charges, or levies

Recognised agencies and recognised persons must pay the prescribed fee, charge, or levy (if any) for ongoing recognition for the prescribed period on or before the date provided or approved by the chief executive for that purpose.

Performance of specified functions and activities

155 Duties of recognised agencies

- (1) When carrying out its specified functions and activities, a recognised agency must ensure that it—
 - (a) carries out only functions and activities that are within the scope of those specified; and
 - (b) is adequately resourced and its systems are maintained to a level that ensures it is able to carry out those functions and activities; and
 - (c) has documented policies and procedures to safeguard the confidentiality of the information obtained or created while carrying out those functions and activities; and
 - (d) has systems, processes, and procedures to manage appropriately any conflict of interest that might arise while carrying out those functions and activities; and
 - (e) complies with all applicable requirements of this Act.
- (2) When carrying out its specified functions and activities, a recognised agency must also ensure that each recognised person that the agency manages and supplies (if any)—
 - (a) maintains all competency requirements applicable to his or her recognition; and
 - (b) is not placed in a position or a situation that compromises his or her impartiality and independence in carrying out his or her specified functions and activities.
- (3) The duties in section 156 apply to a recognised agency (in addition to the duties in subsection (1)), but only to the extent that the agency is recognised to carry out its specified functions and activities itself (instead of being recog-

nised to manage or supply a recognised person to carry out its specified functions and activities).

156 Duties of recognised persons

When carrying out his or her specified functions and activities, a recognised person must ensure that he or she—

- (a) carries out only functions and activities that are within the scope of those specified; and
- (b) maintains all competency requirements applicable to his or her recognition; and
- (c) maintains an appropriate degree of impartiality and independence; and
- (d) maintains appropriate confidentiality (particularly in respect of commercially sensitive matters) relating to operations and activities the person comes into contact with in the course of carrying out those functions and activities (except to the extent that the person is required to report under paragraph (e) or otherwise for the purposes of this Act), including matters relating to design, technology, systems, personnel, and practices; and
- (e) reports to the registration authority, in accordance with any applicable requirements of this Act,—
 - (i) a failure to comply with, or any inadequacy in, a food control plan;
 - (ii) a failure to comply with a national programme;
 - (iii) a failure to comply with a monitoring programme;
 - (iv) any other matter that a recognised person is required to report; and
- (f) complies with all applicable requirements of this Act.

157 Recognised agency or person may act in other capacities

Nothing in section 155 or 156 prevents a recognised agency or a recognised person from carrying out functions and activities that are outside the scope of the agency's or person's specified functions and activities, provided that the agency or person does not do so—

- (a) in the agency's or person's capacity as a recognised agency or a recognised person; or
- (b) while purporting to act as a recognised agency or a recognised person.

157A Recognised agency and recognised person accountable to chief executive

- (1) A recognised agency is, in carrying out its specified functions and activities in relation to a food business, accountable to the chief executive.
- (2) A recognised person is, in carrying out his or her specified functions and activities in relation to a food business, accountable to the chief executive.

Section 157A: inserted, on 2 March 2018, by section 24 of the Food Safety Law Reform Act 2018 (2018 No 3).

Suspension of recognition

158 Suspension of recognition of recognised agency, etc

- (1) The chief executive may suspend all or part of the recognition of a recognised agency, recognised person, or recognised class if the chief executive has reasonable grounds to believe that—
 - (a) the performance of the agency, person, or a significant proportion of the members of the class is unsatisfactory, taking into account the requirements of the recognition; or
 - (b) the agency, person, or a significant proportion of the members of the class no longer meets 1 or more of the criteria on which that agency, person, or class was recognised under whichever of sections 135, 136, and 139 to 141 applies; or
 - (c) the agency, person, or a significant proportion of the members of the class has failed to comply with section 155 or 156 or any other applicable requirements of this Act, and that failure causes the chief executive to question the ability of the agency, person, or class to carry out the specified functions or activities of the agency, person, or class; or
 - (d) for an agency or a person, the agency or person has failed to pay an ongoing recognition fee, charge, or levy within 30 days after the date on which it was due and payable.
- (2) The maximum period of suspension under this section is 3 months.
- (3) The chief executive may do either or both of the following:
 - (a) impose conditions that must be satisfied before the suspension is lifted:
 - (b) require a suspended agency, person, or class to take appropriate corrective action to remedy the deficiency or failure that resulted in the suspension.

159 Chief executive may extend suspension

- (1) The chief executive may extend the period of a suspension under section 158 if the chief executive has reasonable grounds to believe that—
 - (a) any conditions imposed under that section have not been satisfied within the suspension period; or
 - (b) any corrective actions imposed under that section have not been fulfilled within the suspension period.
- (2) The period of extension—
 - (a) may be for any further period that the chief executive notifies in writing to the agency or the person, or notifies to the class in accordance with section 168, before the expiry of the original suspension; but

- (b) must not exceed a further 3 months.
- (3) The chief executive may (in addition to any conditions or requirements imposed under section 158(3)) do either or both of the following:
 - (a) impose conditions that must be satisfied before the extended period of suspension is lifted:
 - (b) require a suspended agency, person, or class to take appropriate corrective action to remedy the deficiency or failure that resulted in the suspension.

160 Method of suspension of recognition

- (1) The chief executive must, as soon as practicable after deciding to suspend, or extend the suspension of, a recognised agency, recognised person, or recognised class, notify—
 - (a) a recognised agency or recognised person of the suspension of the agency or person; and
 - (b) a recognised agency of the suspension of a recognised person for whom the agency is responsible; and
 - (c) a recognised person of the suspension of any recognised agency that is responsible for that person; and
 - (d) a recognised class of the suspension of the class.
- (2) A notice of suspension must—
 - (a) be given to a recognised agency or a recognised person by notice in writing; and
 - (b) be given to a recognised class by notifying the class in accordance with section 168; and
 - (c) specify—
 - (i) the reason for the suspension; and
 - (ii) the date and time the suspension starts; and
 - (iii) the period of the suspension; and
 - (iv) the specified functions and activities that the suspension relates to; and
 - (v) any conditions or corrective actions imposed under section 158(3) or 159(3); and
 - (d) set out the right of the recognised agency, recognised person, or recognised class (under section 355) to seek a review of the decision to suspend the recognition.
- (3) The chief executive may notify any suspension of recognition in the *Gazette*.
- (4) In subsections (1) to (3), **suspension** includes an extension of a suspension.

161 Suspension does not limit other actions

A suspension under section 158 or an extension of a suspension under section 159 does not affect any other actions that the chief executive may take under this Act.

*Withdrawal of recognition***162 Withdrawal of recognition of recognised agency or recognised person**

- (1) The chief executive may withdraw all or part of the recognition of a recognised agency or a recognised person if the chief executive has reasonable grounds to believe that—
 - (a) suspending all or part of the agency's or person's recognition under section 158 (or extending a suspension under section 159) would be justified, but repeated suspensions in the past have been ineffective; or
 - (b) the agency or person is no longer a fit and proper person to carry out the agency's or person's specified functions and activities; or
 - (c) the agency or person has failed to comply with section 155 or 156 or any other applicable requirements of this Act, and that failure causes the chief executive to question the agency's or the person's ability to carry out the agency's or person's specified functions or activities; or
 - (d) the agency or person has ceased to operate as a recognised agency or a recognised person; or
 - (e) the agency or person has continued to fail to pay an ongoing recognition fee, charge, or levy after the agency's or person's recognition has been suspended on the ground set out in section 158(1)(d); or
 - (f) the agency or person has failed to comply with or maintain any criteria or competencies that led to the recognition of the agency or person; or
 - (g) the agency is no longer the appropriate agency to hold the recognition, but only if the agency is, or is within, the Ministry or a department as defined in section 5 of the Public Service Act 2020.
- (2) However, before withdrawing recognition, the chief executive must consult the agency or person in accordance with section 169 about the proposed withdrawal of recognition, unless the agency is, or is within, the Ministry or the person is within the Ministry.
- (3) The notification given to the agency or person in accordance with section 169(a)(i) must—
 - (a) specify the grounds for the proposed withdrawal; and
 - (b) include a copy (or an adequate summary) of all material information the chief executive relies on in proposing to withdraw the recognition.

Section 162(1)(g): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

163 Withdrawal of recognition of recognised class

- (1) The chief executive may withdraw all or part of the recognition of a recognised class if the chief executive has reasonable grounds to believe that a significant proportion of the members of the class—
 - (a) have ceased to hold a qualification or meet 1 or more other membership criteria according to which the class is defined in the relevant public register in accordance with section 148(1)(a); or
 - (b) have failed to comply with section 156 or any other applicable requirements of this Act, and that failure causes the chief executive to question the class's ability to carry out the class's specified functions or activities.
- (2) However, before withdrawing recognition on the ground set out in subsection (1)(b), the chief executive must consult the recognised class in accordance with section 169 about the proposed withdrawal of recognition.
- (3) The notification given to the recognised class in accordance with section 169(a)(ii) must—
 - (a) specify the grounds for the proposed withdrawal; and
 - (b) include a copy (or an adequate summary) of all material information the chief executive relies on in proposing to withdraw the recognition.

164 Method of withdrawal of recognition

- (1) The chief executive must, as soon as practicable after deciding to withdraw all or part of the recognition of a recognised agency, recognised person, or recognised class, notify—
 - (a) a recognised agency or recognised person of the withdrawal of recognition of the agency or person; and
 - (b) a recognised agency of the withdrawal of recognition of a person for whom the agency is responsible; and
 - (c) a recognised person of the withdrawal of recognition of any recognised agency that is responsible for that person; and
 - (d) a recognised class and, if there was an applicant on behalf of the class, the applicant of the withdrawal of recognition of the class.
- (2) A notice of withdrawal must—
 - (a) be given to a recognised agency, a recognised person, or an applicant by notice in writing; and
 - (b) be given to a recognised class by notifying the class in accordance with section 168; and
 - (c) specify—
 - (i) the reason for the withdrawal; and
 - (ii) the date and time the withdrawal takes effect; and

- (iii) the specified functions and activities that the withdrawal relates to; and
 - (d) set out the right of the recognised agency, recognised person, or recognised class (under section 355) to seek a review of the decision to withdraw the recognition.
- (3) The chief executive may notify any withdrawal of recognition in the *Gazette*.
- (4) An agency or a person who is recognised under any of sections 135, 136, 139, and 140 and whose recognition is withdrawn must return the agency's or person's notice of recognition to the chief executive as soon as practicable after the withdrawal of recognition takes effect.
- (5) An agency or a person whose recognition is withdrawn must, as soon as practicable after the withdrawal of recognition takes effect, take reasonable steps to notify each person who was a client of the agency or person immediately before the withdrawal that the agency's or person's recognition has been withdrawn.

Surrender of recognition

165 Surrender of recognition

- (1) A recognised agency or recognised person may—
 - (a) surrender his, her, or its recognition by written notice to the chief executive; and
 - (b) specify in the notice a future date on which the surrender is to take effect.
- (2) Before the date on which a surrender takes effect, the recognised agency or recognised person that is surrendering his, her, or its recognition must,—
 - (a) for a recognised agency, notify the surrender to any recognised persons for whom the agency is responsible; and
 - (b) for a recognised person, notify the surrender to any recognised agency that is responsible for that person; and
 - (c) take reasonable steps to notify each person who will be a client of the agency or person immediately before the surrender that the agency's or person's recognition is surrendered.

166 Effective date of surrender

A surrender takes effect on the later of—

- (a) the date specified in the notice given under section 165(1); or
- (b) the date on which the chief executive records the surrender in the relevant public register under clause 10(1)(b)(v) of Schedule 5 or removes the agency or person from the relevant public register under section 167(3).

Removal of registration of recognised agencies, recognised persons, and recognised classes

167 Removal from public register

- (1) The chief executive must, as soon as practicable, remove the name of a recognised agency, recognised person, or recognised class from the relevant public register if the period for which the recognition is granted expires and is not extended under section 151(3)(b) or renewed.
- (2) Subsection (3) applies if the recognition of a recognised agency, a person who is recognised under section 139, or a recognised class is—
 - (a) withdrawn under section 162 or 163; or
 - (b) surrendered under section 165.
- (3) The chief executive must, as soon as practicable after withdrawing the recognition or being notified of the surrender,—
 - (a) record the withdrawal or surrender and the date on which it takes effect; and
 - (b) remove that agency, person, or class from the relevant public register.

Miscellaneous matters

168 Notification to category or class of persons

- (1) If any matter is required to be notified to a category or class of persons or a recognised class under this subpart, it must be notified in 1 or more of the following ways:
 - (a) by notice in the *Gazette*;
 - (b) by publication in all major metropolitan daily newspapers on at least 2 occasions;
 - (c) by notifying a person who the chief executive is reasonably satisfied represents the category or class or is an appropriate person to receive a notification on behalf of the category or class;
 - (d) if there was an applicant for the recognition of the class, by notifying that applicant;
 - (e) by publication, either temporarily or permanently, on the Ministry's public Internet site;
 - (f) by post or email to all members of the category or class;
 - (g) in any other manner that the chief executive is reasonably satisfied will ensure that the matter is sufficiently notified to the category or class.
- (2) In deciding which methods of notification are most appropriate in any particular case, the chief executive must consider—
 - (a) the nature and significance of the matter required to be notified; and

- (b) the size and type of the category or class of persons and its characteristics, geographical spread, and degree of representation and organisation.

169 Means of consultation

If the chief executive is required to consult a person or a category or class of persons under this subpart, the chief executive must—

- (a) notify the person or persons of the matter to be consulted on (the **matter**) by, as applicable,—
- (i) giving the person written notice; or
 - (ii) notifying the category or class of persons in accordance with section 168; and
- (b) give all persons who are notified of the matter a reasonable opportunity to make a written submission on the matter; and
- (c) if provided for in the notice (at the discretion of the chief executive), give all persons who are notified of the matter a reasonable opportunity to make an oral submission on the matter; and
- (d) consider any submissions that he or she receives on the matter from any person who was notified of the matter.

170 Chief executive may require notification of termination of contracts

- (1) The chief executive may, by notice under section 405, require any verifier or verification agency to notify the chief executive of the termination of any contract with a client for managing or carrying out verification functions and activities.
- (2) The notice may apply generally or to any particular case or class of case.
- (3) The verifier or verification agency must notify the chief executive in writing of the termination as soon as practicable, and in no case later than 7 days after it occurs.
- (4) A notice issued under section 405 in reliance on this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)

Publication	The maker must:	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	<ul style="list-style-type: none"> • publish it on the maker's website • publish or notify it in the <i>Gazette</i> 	
	If it is notified, the maker must:	
	<ul style="list-style-type: none"> • state in the notice where it is available • make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides 	
	The maker must also comply with section 408(1A)	
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result	LA19 ss 74(2), 75

	the maker may also have to comply with s 75 of the Legislation Act 2019	
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 170(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

171 Chief executive must consider exemption, waiver, or refund of fees

- (1) The chief executive must consider whether an exemption, a waiver, or a refund of all or part of a prescribed fee, charge, or levy is appropriate if—
 - (a) an application is made under section 143 by 1 person for more than 1 type of recognition (for example, if a person applies to be recognised as both a recognised agency and a recognised person); or
 - (b) an application is made under section 151 by 1 person to renew more than 1 type of recognition; or
 - (c) 1 person is liable under section 154 to pay a prescribed fee, charge, or levy for ongoing recognition under more than 1 of sections 135, 136, and 139 to 141.
- (2) However, subsection (1) only applies if regulations prescribing the relevant fee, charge, or levy authorise the chief executive to grant an exemption, a waiver, or a refund in these circumstances (*see* section 208).

172 Liability for loss

- (1) The following are not liable for any loss arising through the actions or omissions of a recognised agency or a recognised person:
 - (a) the Crown;
 - (b) the chief executive;
 - (c) an employee of the Ministry.
- (2) However, subsection (1) does not apply to a recognised agency or to a recognised person who is—
 - (a) the Ministry, or a group of persons within the Ministry, and granted recognition as a recognised agency under section 136; or
 - (b) an officer or employee of the Ministry who is granted recognition as a recognised person under section 140; or
 - (c) a department as defined in section 5 of the Public Service Act 2020, a group of persons within a department who are recognised as a recognised agency under section 136, or an officer or employee of a department who is recognised as a recognised person under section 140.
- (3) A person recognised as a recognised person under section 139 may not be treated as an employee of the Ministry only by reason of that appointment.

Section 172(2)(c): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Subpart 2—Territorial authorities

Functions and duties of territorial authorities

173 Functions of territorial authority

- (1) A territorial authority has the following functions:
 - (a) to perform the function of a registration authority:
 - (b) to manage and train its staff to carry out functions and activities in relation to this Act:
 - (c) to manage verification functions (including acting as a recognised agency) in relation to certain food control plans and national programmes, and as otherwise provided for under this Act:
 - (d) to investigate non-compliance and complaints regarding the safety and suitability of food in relation to food control plans or, as the case may be, food businesses subject to national programmes registered by the territorial authority, or to investigate any other matters:
 - (e) to instigate appropriate corrective and preventative actions for matters described in paragraph (d):
 - (f) to enable its food safety officers to enforce the applicable requirements of this Act:
 - (g) to respond to recalls and to respond in an emergency situation:
 - (h) to disseminate information and provide advice promoting the safety and suitability of food to food businesses and the public:
 - (i) to perform administrative functions relating to this Act, including—
 - (i) gathering information:
 - (ii) receiving applications for registration of food control plans and of food businesses subject to national programmes:
 - (iii) transferring information to the Ministry:
 - (iv) if requested under section 184(1)(b), reporting to the chief executive:
 - (j) in relation to its district, to carry out monitoring and information-gathering activities for the purpose of ascertaining compliance with the applicable requirements of this Act:
 - (k) to perform any other function relevant to its role.
- (2) A territorial authority may, by written agreement, combine with 1 or more other territorial authorities for the purpose of performing the function of a registration authority referred to in subsection (1)(a) in the combined district of the territorial authorities that are parties to the agreement.

- (3) If 2 or more territorial authorities have combined under subsection (2), they may designate any of them as the territorial authority responsible for performing the function of a registration authority for the combined district.
- (4) A territorial authority may not contract out any of the following functions, except to another territorial authority:
 - (a) the function of a recognised agency; and
 - (b) any of the functions referred to in subsection (1)(a) and (d) to (h).
- (5) A territorial authority may not contract out the function referred to in subsection (1)(c) to a person who is not recognised to carry out that function under this Act.
- (6) If a territorial authority contracts out 1 or more of its functions, it continues to have responsibility for that function.

174 Duties of territorial authority

- (1) A territorial authority must—
 - (a) take all reasonable steps to ensure it has adequate resources and capability to carry out its role, functions, and duties and to exercise its powers under this Act:
 - (b) take all reasonable steps to ensure its functions, duties, and powers under this Act are managed, performed, and exercised in accordance with any relevant national outcomes issued under section 175:
 - (c) take all reasonable steps to ensure that relevant persons who are employed or engaged by the territorial authority are able to carry out their functions and activities under this Act, including verification, investigation, and enforcement activities:
 - (d) take all reasonable steps to ensure that relevant persons who are employed or engaged by the territorial authority for the purposes of this Act maintain their competencies:
 - (e) take all reasonable steps to ensure that any person who is employed, engaged, or used by the territorial authority is not placed in a situation that compromises his or her impartiality or independence in relation to the performance of his or her functions or activities under this Act:
 - (f) monitor its performance of its functions and duties and its exercise of its powers under this Act and provide written reports on these matters to the chief executive annually or at intervals specified in a notice referred to in subsection (2):
 - (g) provide capability to respond as required in an emergency situation:
 - (h) if it is being reviewed under section 185, facilitate the conduct of the review and provide any information required under section 189 by the person conducting the review:

- (i) carry out any other function, duty, or direction imposed or given by or under this Act.
- (2) The chief executive may, by notice under section 405, specify the intervals at which the reports required by subsection (1)(f) must be provided and any details to be included in the reports.
- (3) A notice issued under section 405 in reliance on this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (3)

Publication	The maker must: <ul style="list-style-type: none"> • publish it on the maker's website • publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none"> • state in the notice where it is available • make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 174(1)(f): amended, on 2 March 2018, by section 25(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 174(2): inserted, on 2 March 2018, by section 25(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 174(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

National outcomes for territorial authorities

175 Minister may issue national outcomes for territorial authorities

- (1) For the purposes of this Act, the Minister may—
 - (a) issue national outcomes in relation to the performance or exercise by territorial authorities of functions, duties, and powers under this Act, including the measures to determine whether territorial authorities achieve those outcomes:
 - (b) amend or revoke a national outcome issued under paragraph (a).
- (2) The Minister must not issue, amend, or revoke a national outcome under this section unless the Minister—
 - (a) has first consulted the Minister of Local Government; and

- (b) is satisfied that consultation has been carried out in accordance with section 379 with respect to issuing, amending, or revoking that national outcome.
- (3) If the Minister issues, amends, or revokes a national outcome, the Minister must, as soon as practicable, notify that fact—
 - (a) to every territorial authority; and
 - (b) in the *Gazette*.

Transfer of territorial authority's functions, duties, and powers to another territorial authority or regional council

176 Transfer of functions, duties, and powers to territorial authority or regional council

- (1) A territorial authority that has functions, duties, and powers under this subpart may, under the Local Government Act 2002, transfer any of those functions, duties, and powers to another territorial authority or to a regional council if the other territorial authority or the regional council—
 - (a) agrees in writing to the transfer; and
 - (b) is able to meet any national outcomes issued under section 175 for the relevant district.
- (2) However, a territorial authority may not transfer the function of a recognised agency.

177 Effect of transfer to territorial authority or regional council

- (1) If a territorial authority transfers any functions, duties, or powers under section 176, the territorial authority ceases to be responsible for the performance or exercise of those functions, duties, and powers.
- (2) If functions, duties, and powers are transferred under section 176 to a territorial authority, that territorial authority is responsible for the performance or exercise of those functions, duties, and powers.
- (3) If functions, duties, and powers are transferred under section 176 to a regional council, the regional council is to be treated as a territorial authority for the purposes of this Act.

178 Records of transfer

- (1) A territorial authority that transfers any functions, duties, or powers to another territorial authority or to a regional council under section 176 must—
 - (a) keep and maintain a record of the transfer (including a record of the relevant transfer arrangement made under that section); and
 - (b) as soon as practicable after the transfer, provide a summary to the chief executive of the following:

- (i) the functions, duties, and powers that have been transferred; and
 - (ii) to whom they have been transferred; and
 - (iii) if applicable, for how long they have been transferred.
- (2) A territorial authority or regional council to whom any functions, duties, or powers are transferred under section 176 must keep and maintain a record of the transfer (including a record of the relevant written agreement under that section).

Transfer of territorial authority's functions, duties, and powers to chief executive

179 Transfer of functions, duties, and powers to chief executive

- (1) A territorial authority that has functions, duties, and powers under this subpart may transfer those functions, duties, and powers to the chief executive if the chief executive agrees to the transfer.
- (2) However, subsection (1) is subject to subsections (3) and (4).
- (3) A territorial authority may not transfer all or any of the following, including any related powers or duties:
 - (a) its power to transfer functions, duties, and powers under subsection (1):
 - (b) its function of receiving applications for registration of food control plans and of food businesses subject to national programmes:
 - (c) its function of disseminating information and providing advice to promote the safety and suitability of food to food businesses and the public:
 - (d) its function as a recognised agency:
 - (e) any administrative and reporting functions relating to paragraphs (a) to (d).
- (4) A territorial authority may not transfer any functions, duties, or powers under this section unless the requirements of section 180 are satisfied and either of the following applies:
 - (a) the territorial authority has included the proposal for the transfer in its long-term council community plan; or
 - (b) the territorial authority has done both of the following:
 - (i) used the special consultative procedure set out in section 83 of the Local Government Act 2002; and
 - (ii) given prior notice to the chief executive of the proposal.

180 Transfer agreement

A transfer of functions, duties, or powers under section 179 must—

- (a) be made in writing; and

- (b) be made by agreement between the territorial authority concerned and the chief executive; and
- (c) include any terms and conditions that are agreed, including any financial arrangements.

181 Effect of transfer to chief executive

- (1) If a territorial authority transfers any functions, duties, or powers under section 179, that territorial authority ceases to be responsible for the performance or exercise of those functions, duties, and powers.
- (2) If functions, duties, and powers are transferred under section 179,—
 - (a) the chief executive is responsible for the performance or exercise of those functions, duties, and powers; and
 - (b) the functions, duties, and powers of the chief executive are deemed to be extended as necessary to enable the chief executive to carry out, perform, and exercise the functions, duties, and powers transferred to him or her; and
 - (c) the chief executive may contract out, or enter into, arrangements for the carrying out of the transferred functions, duties, and powers.

182 Change, revocation, or relinquishment of transfer

- (1) A territorial authority that has transferred any functions, duties, and powers under section 179 may,—
 - (a) if the chief executive agrees, change the transfer at any time by amendment to the transfer agreement;
 - (b) revoke the transfer by following sections 179(4) and 180 as if they applied to revocation.
- (2) If an amendment to the transfer agreement has the effect of adding to or removing any function, duty, or power (excluding any extensions to the period of transfer) then section 179(4) must be complied with.
- (3) The chief executive may relinquish the transfer in accordance with the transfer agreement.

183 Records of transfer, change, etc

- (1) A territorial authority must keep and maintain a record of—
 - (a) any transfer to the chief executive made under section 179 (including a record of the relevant transfer agreement required by section 180); and
 - (b) any change, revocation, or relinquishment made under section 182.
- (2) A territorial authority must provide the records to the chief executive as soon as practicable after the transfer, change, revocation, or relinquishment has been completed.

Monitoring performance of functions and duties, and exercise of powers, by territorial authorities

184 Powers of chief executive for monitoring performance of functions and duties and exercise of powers

- (1) The chief executive may—
 - (a) monitor the performance of functions and duties and the exercise of powers by territorial authorities under this Act; and
 - (b) request a report from a territorial authority in relation to the carrying out of its role specified in sections 19 and 173.
- (2) For the purposes of this section, the chief executive—
 - (a) must have full access at all reasonable times to—
 - (i) all relevant information that is in the possession or control of a territorial authority; and
 - (ii) any place where that information is kept:
 - (b) may impose any requirements on a territorial authority as to the form and content of reports and the frequency of reporting;
 - (c) may require a territorial authority to—
 - (i) supply any relevant information; or
 - (ii) answer any question that relates to its performance of functions and duties and the exercise of its powers under this Act:
 - (d) may, by written notice, require a person with possession or control of any relevant information to supply to the chief executive, in a manner specified in the notice, all or any of that information.
- (3) Subsection (2) does not limit any Act that imposes a prohibition or restriction on the availability of any information.
- (4) In this section, **relevant information**—
 - (a) means any information of any description that relates to the performance by a territorial authority of its functions and duties, and the exercise of its powers, under this Act; and
 - (b) includes information that is kept in any form (whether in electronic form or otherwise).

Review of territorial authorities

185 Reviews initiated by Minister

- (1) The Minister may initiate a review of—
 - (a) a territorial authority's performance of all or any of its functions and duties under this Act;
 - (b) a territorial authority's exercise of all or any of its powers under this Act.

- (2) However, the Minister must consult the Minister of Local Government before exercising the powers given to the Minister by subsection (1).

186 Terms of reference

- (1) The Minister may determine the terms of reference for each review of a territorial authority.
- (2) The terms of reference must include—
- (a) the territorial authority’s performance during the time of review and any earlier period as determined by the Minister; and
 - (b) the impact on the territorial authority’s potential future performance.
- (3) In considering the territorial authority’s performance under subsection (2), the Minister must consider the performance of all or any, as appropriate to the scope of the review, of the functions and activities of the territorial authority, taking into account, without limitation, the following factors:
- (a) the extent to which it has exercised its powers under this Act; and
 - (b) the extent to which it has established strategies, policies, processes, and systems relating to its functions, duties, and powers; and
 - (c) the extent to which it is resourced and has built capacity to enable it to perform its functions and duties, and to exercise its powers; and
 - (d) the extent to which and the manner in which it has, or has attempted to, transfer or contract out its functions, duties, and powers.

187 Minister to consult on terms of reference

- (1) The Minister must—
- (a) consult the territorial authority concerned about the terms of reference; and
 - (b) take into account any representations made under paragraph (a).
- (2) The Minister may consult any other person, as the Minister considers appropriate, about the terms of reference.

188 Appointment of person to conduct review

- (1) The Minister may appoint the person (the **reviewer**) to conduct a review of a territorial authority.
- (2) The Minister must—
- (a) consult the territorial authority concerned before making an appointment under subsection (1); and
 - (b) take into account any representations made under paragraph (a).

189 Powers of reviewer

- (1) The reviewer may examine a territorial authority's strategies, policies, systems, processes, and records.
- (2) The reviewer may, during business hours,—
 - (a) enter any place—
 - (i) the territorial authority occupies for the purpose of its business; or
 - (ii) where documents relating to the territorial authority are held or are likely to be held:
 - (b) examine, inquire about, and copy any documents or other records (including records in electronic or other form) held by the territorial authority, or by or on behalf of the territorial authority, that relate to the territorial authority's performance of its functions and duties, or the exercise of its powers, under this Act.
- (3) For the purposes of subsection (2)(b), the reviewer may—
 - (a) remove documents or records to another place for a reasonable time for the purpose of copying them; and
 - (b) require a person who has control or knowledge of the documents or records to reproduce or to assist in reproducing in usable form information recorded or stored in a computer or any other device or system.

190 Conduct of review

A review of a territorial authority must be conducted in accordance with the terms of reference determined by the Minister under section 186.

191 Report of review

- (1) Once a review has been completed, the reviewer must—
 - (a) prepare a written draft report of the review that includes—
 - (i) the conclusions reached; and
 - (ii) any recommendations formulated as a result of conducting the review; and
 - (b) provide the chief executive and the territorial authority with a copy of the draft; and
 - (c) give the chief executive and the territorial authority a reasonable opportunity to make written submissions on the draft; and
 - (d) take those submissions (if any) into account.
- (2) The reviewer, after complying with subsection (1), must—
 - (a) prepare a written final report on the conclusions reached and recommendations formulated as a result of conducting the review and considering any comments from the chief executive and the territorial authority; and

- (b) give a copy of the final report to the Minister, the chief executive, and the territorial authority.
- (3) The final report must include—
 - (a) the review’s conclusions; and
 - (b) the facts on which those conclusions were based.

192 Part 10 of Local Government Act 2002 not affected

Sections 185 to 191 do not affect the powers of the responsible Minister under Part 10 of the Local Government Act 2002 to assist local authorities or to intervene in their affairs in certain situations.

Non-performance by territorial authority

193 Powers of Minister in relation to non-performance by territorial authority

- (1) If the Minister considers that either or both of the grounds in subsection (2) exist, the Minister may appoint, on terms and conditions that the Minister thinks fit, the chief executive, another territorial authority, a regional council, or a recognised agency to perform and exercise all or any of a territorial authority’s functions, duties, and powers under this Act.
- (2) The grounds are that—
 - (a) the territorial authority has had a reasonable opportunity to address any concerns set out in a final report under section 191 about the performance of all or any of its functions and duties, or the exercise of all or any of its powers, under this Act, but has not addressed those concerns to the satisfaction of the Minister:
 - (b) the territorial authority is not able to perform or exercise all or any of its functions, duties, or powers under this Act to the extent that the Minister considers necessary to achieve the purposes of this Act, and the Minister considers it necessary to take action without a review.
- (3) The Minister must not make an appointment under subsection (1) unless—
 - (a) the Minister has given the territorial authority concerned at least 20 working days’ written notice of his or her intention to do so and in that notice has invited the territorial authority to make submissions within the notified period; and
 - (b) the Minister has considered any submissions received by him or her that were made within the notified period; and
 - (c) the chief executive, other territorial authority, regional council, or recognised agency agrees to the appointment in accordance with section 194.
- (4) In making an appointment under subsection (1), the Minister must state the functions, duties, or powers, or any of those functions, duties, or powers,

that are transferred to the chief executive, other territorial authority, regional council, or recognised agency.

- (5) However, the Minister may not transfer a territorial authority's function of a recognised agency.

194 Requirements for appointment

An appointment under section 193 must—

- (a) be made in writing; and
- (b) be made by agreement between the Minister and the chief executive, other territorial authority, regional council, or recognised agency concerned; and
- (c) include any terms and conditions that are agreed, including any financial arrangements.

195 Effect of appointment

- (1) If an appointment is made under section 193,—
- (a) the territorial authority from whom all or any functions, duties, or powers are transferred ceases to be responsible for the performance or exercise of those functions, duties, and powers; and
 - (b) the chief executive, other territorial authority, regional council, or recognised agency is responsible for the performance or exercise of those functions, duties, and powers; and
 - (c) the functions, duties, and powers of the chief executive, other territorial authority, regional council, or, as the case may be, recognised agency are deemed to be extended as necessary to enable them to carry out, perform, and exercise the transferred functions, duties, and powers; and
 - (d) the chief executive, other territorial authority, regional council, or, as the case may be, recognised agency may contract out, or enter into arrangements for the carrying out of, the transferred functions, duties, and powers.
- (2) If appointed under section 193, the chief executive, other territorial authority, regional council, or, as the case may be, recognised agency—
- (a) may perform or exercise the transferred functions, duties, or powers, or any of those functions, duties, or powers, only in place of the territorial authority; and
 - (b) must perform or exercise the functions, duties, or powers of a territorial authority under this Act as if they were the territorial authority, and the provisions of this Act apply accordingly.
- (3) Subsection (1)(d) is subject to section 173(4) and (5).

196 Duration of appointment

- (1) The Minister must specify the duration of an appointment made under section 193.
- (2) The Minister may renew an appointment.
- (3) When determining whether an appointment should be renewed or whether a new appointment should be made, the Minister must—
 - (a) consider any evidence that the territorial authority from which the transfer was made is or will be capable of performing or exercising its functions, duties, and powers under this Act; and
 - (b) if he or she considers that the territorial authority is or will be so capable, direct the territorial authority to resume all or any of those functions, duties, and powers.

197 Costs, charges, and expenses incurred

All costs, charges, and expenses incurred for the purposes of section 193 by the chief executive, other territorial authority, regional council, or recognised agency in performing or exercising any functions, duties, and powers of a territorial authority may be recovered from the territorial authority from which the function, duty, or power was transferred as a debt due to—

- (a) the Crown, if the chief executive is appointed; or
- (b) the other territorial authority, regional council, or recognised agency, if it is appointed.

Subpart 3—Cost recovery

198 Principles of cost recovery

- (1) The Minister and the chief executive must take all reasonable steps to ensure that the direct and indirect costs of the Ministry in administering this Act that are not provided for by money that is funded by the Crown for the purpose are recovered under this subpart, whether by way of fees, levies, or otherwise.
- (2) In determining the most appropriate method of cost recovery under section 199, the Minister and the chief executive must take into account, as far as is reasonably practicable, the following criteria:
 - (a) equity, in that funding for a particular function, power, or service, or a particular class of function, power, or service, should generally, and to the extent practicable, be sourced from the users or beneficiaries of the relevant functions, powers, or services at a level commensurate with their use or benefit from the function, power, or service;
 - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:

- (c) justifiability, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the provision or exercise of the relevant function, power, or service:
 - (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided.
- (3) Costs should not be recovered under this subpart unless—
- (a) there has been appropriate consultation with persons or organisations that the chief executive considers representative of the interests of persons likely to be substantially affected by the exercise of the power; and
 - (b) the persons involved have been given sufficient time and information to make an informed contribution.
- (4) Subsection (3) does not require consultation in relation to specific fees or charges, or the specific levels of fees or charges, so long as the fees or charges set are reasonably within the scope of any general consultation or any consultation carried out for the purposes of section 379 or 380.
- (5) A failure to comply with subsection (3) does not affect the validity of any regulations made for the purposes of this subpart.
- (6) This section does not require a strict apportionment of the costs to be recovered for a particular function or service based on usage.
- (7) Without limiting the way in which fees or charges may be set under this subpart, a fee or charge may be set at a level or in a way that—
- (a) is determined by calculations that involve an averaging of costs or potential costs:
 - (b) takes into account costs or potential costs of services (that are not directly to be provided to the person who pays the fee or charge but which are an indirect or potential cost) arising from the delivery of the service to a class of persons or all persons who use the service.

199 Methods of cost recovery

The methods by which costs may be recovered under this subpart are as follows:

- (a) fixed fees or charges:
- (b) fees or charges based on a scale or formula or at a rate determined on an hourly or other unit basis:
- (c) the recovery by way of fee or charge of actual and reasonable costs expended in or associated with the performance of a service or function:
- (d) estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service or function, followed by recon-

ciliation and an appropriate further payment or refund after provision of the service or function:

- (e) refundable or non-refundable deposits paid before provision of the service or performance of the function:
- (f) fees or charges imposed on users of services or on third parties:
- (g) levies:
- (h) any combination of the above.

200 Territorial authority responsible for collection

A territorial authority—

- (a) must collect an amount payable if—
 - (i) the amount is prescribed by regulations made under this subpart; and
 - (ii) the regulations provide for the territorial authority to be the collection agent; and
 - (iii) the requirement to pay the amount in the particular case has not been waived or exempted under this subpart; and
- (b) may, if allowed by regulations made under section 204, recover the costs of collection at a rate not exceeding the maximum rate of collection costs specified in the regulations; and
- (c) must forward the amount collected (other than the costs of collection) to the Ministry.

201 Cost recovery to relate generally to financial year

- (1) Except as provided in subsection (2), any regulations under this subpart that set a fee, charge, or levy that applies in any financial year—
 - (a) must have been made before the start of that financial year; but
 - (b) except as the regulations may otherwise provide, apply in that year and all subsequent years until revoked or replaced.
- (2) Subsection (1) does not prevent the alteration or setting during any financial year of a fee, charge, or levy payable in that year if—
 - (a) the fee, charge, or levy is reduced or removed (or restated without substantive alteration); or
 - (b) in the case of an increase or a new fee, charge, or levy,—
 - (i) appropriate consultation has been carried out with persons or representatives of persons substantially affected by the alteration or setting; and
 - (ii) the Minister is satisfied that those persons, or their representatives, agree or substantially agree with the alteration or setting.

- (3) Subsection (1) does not prevent the amendment of any regulations that set a fee, charge, or levy if any substantive alteration effected by the amendment is for the purpose of correcting an error.
- (4) Recovery may be made in any financial year of any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).

202 Three-yearly review of cost recovery

- (1) The Minister must review the levels and methods of cost recovery in relation to any class of food or food product, food product business, persons, or other matter at least once in every 3-year period occurring since the original setting of, or latest change to, the cost recovery for those things.
- (2) The Minister must ensure that appropriate consultation in accordance with section 379 takes place in relation to each review.
- (3) A review may make provision for recovery in any relevant financial year of any shortfall in cost recovery for any of the preceding 4 financial years, or make allowance for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).
- (4) Subsection (1) does not—
 - (a) require all areas of cost recovery to be reviewed at the same time:
 - (b) impose any time limit on the making of regulations to implement the results of a review.

203 Regulations about fees, charges, and levies

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing and setting fees, charges, levies, and other cost recovery mechanisms for the purposes of this Act in accordance with the requirements for regulations made under sections 204 and 207, including—
 - (a) fees or charges for applications, renewals, or related matters under this Act:
 - (b) fees, charges, or levies that are payable on an ongoing basis by a person given a particular status under this Act.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 s 115, 116
This note is not part of the Act.

Section 203(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

204 Regulations may impose fees and charges

- (1) Regulations may be made under this section, on the recommendation of the Minister, prescribing fees and charges for the purposes of this subpart.
- (2) The fees may be prescribed using any 1 or more of the methods specified in section 199.
- (3) Different fees and charges, or different rates or types of fees or charges, may be prescribed in respect of different classes or descriptions of food, food products, persons or businesses, operations, or other matters, or any combination of them.
- (4) Without limiting subsection (3), the fees and charges prescribed may—
 - (a) differ depending on whether or not a special or an urgent service is provided:
 - (b) include more than 1 level of fee or charge for the same service provided in different ways, or provided in or in respect of different places:
 - (c) differ for otherwise similar services provided in different ways:
 - (d) differ for otherwise similar services provided to different categories of persons:
 - (e) differ depending on the amount of service required or the components of the service required for the particular person or class of persons.
- (5) If regulations prescribe a formula for determining a fee or charge, the value to be attributed to a component of that formula may—
 - (a) be specified in the formula; or
 - (b) be specified by the chief executive by notice under section 405.
- (6) The Minister may not recommend the making of regulations under this section unless satisfied that, to the extent appropriate in the circumstances, the requirements of sections 198 and 201 have been met.
- (7) This section does not limit or affect section 205.
- (8) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (9) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication PCO must publish it on the legislation website and notify it in the *Gazette* LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 s 115, 116
<i>This note is not part of the Act.</i>		

Section 204(5): replaced, on 2 March 2018, by section 26 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 204(9): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

205 Territorial authority to set fees

- (1) A territorial authority may, by resolution, fix fees to recover the direct and indirect costs of any of the following functions under this Act:
 - (a) registration:
 - (b) verification:
 - (c) compliance and monitoring activities.
- (2) In making any resolution under this section, the territorial authority must use the special consultative procedure as provided in section 83 of the Local Government Act 2002.
- (3) Any fee fixed under this section must be for a function specified in subsection (1) and a territorial authority must not provide for the recovery of more than the reasonable costs incurred by the territorial authority in performing that function.
- (4) Subsection (3) is subject to and not limited by subsection (5) or (9).
- (5) In fixing fees under this section, the territorial authority—
 - (a) must take into account the criteria in section 198(2); and
 - (b) has the options provided by sections 198(6) and (7) and 199 (other than paragraph (g)); and
 - (c) must comply with any regulations made under section 206.
- (6) An increase in fees for any financial year must not come into effect other than at the commencement of that financial year.
- (7) Subsection (6) does not prevent the fixing during any financial year of an increased fee or a new fee payable in that year if, following the special consultative procedure, the territorial authority is satisfied that the persons, or their representatives, affected by the increase in fees or the new fees agree or substantially agree with the alteration or fixing.
- (8) Subsection (6) does not prevent the amendment of any resolution that fixes a fee if any substantive alteration effected by the amendment is for the purpose of correcting an error.
- (9) Section 204(3) to (5) applies with the necessary modifications for the purposes of this section.

- (10) To avoid doubt, section 150 of the Local Government Act 2002 does not apply to the fixing of fees by territorial authorities for the purposes of this Act.

206 Regulations may prescribe methodology or framework for fee fixing

- (1) Regulations may be made under this section, on the recommendation of the Minister, that prescribe a methodology or framework to be applied by a territorial authority in fixing any fees under section 205.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 s 115, 116

This note is not part of the Act.

Section 206(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

207 Regulations may impose levies

- (1) Regulations may be made under this section, on the recommendation of the Minister, prescribing levies for the purposes of this subpart.
- (2) Any levies prescribed by regulation are payable to the chief executive.
- (3) Different levies or rates of levy, or bases on which an amount of levy is to be calculated or ascertained, may be prescribed for—
- (a) different purposes:
 - (b) different classes or descriptions of food material, food products, persons or businesses, operations, or other matters, or any combination of them.
- (4) Without limiting subsection (1), regulations imposing levies may—
- (a) specify when and how a levy is to be paid:
 - (b) require that a levy, or estimated amount of levy, be paid in advance of the performance of the services or functions to which it relates:
 - (c) specify persons, other than persons primarily responsible for paying the levy, who are to be responsible for collecting a levy, and provide for retention of any part of the levy money collected as a fee for that service:
 - (d) require, or empower the chief executive to require, the provision of information and returns in relation to levies:

- (e) require the keeping of separate trust accounts for levy money received or deducted by persons responsible for collecting levies, and prescribe matters in relation to those trust accounts:
- (f) prescribe a method of arbitration or mediation for disputes as to the following, and provide for related matters, including procedures and remuneration for arbitrators or mediators:
 - (i) whether or not any person is required to pay, or collect, the levy concerned; or
 - (ii) the amount of levy any person is required to pay or collect.
- (5) The Minister may not recommend the making of regulations under this section unless satisfied that, to the extent he or she considers appropriate in the circumstances, the requirements of sections 198 and 201 have been met.
- (6) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (7) Regulations under this section—
 - (a) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
 - (b) must be confirmed by an Act (*see* subpart 3 of Part 5 of the Legislation Act 2019).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 207(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

208 Regulations may provide for exemptions, waivers, and refunds

- (1) Regulations may be made under this section, on the recommendation of the Minister, that—
 - (a) provide for exemptions from, or waivers or refunds of, any fee, charge, or levy payable under this subpart, in whole or in part, in any class of case:
 - (b) authorise the chief executive to grant an exemption, waiver, or refund in any particular case or class of case:
 - (c) authorise a territorial authority to grant an exemption, waiver, or refund in any particular case or class of case.
- (2) Regulations made under this section must—

- (a) expire within a specified period not exceeding 5 years; and
 - (b) set out the circumstances in which the exemption, waiver, or refund may be granted.
- (3) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (5) If the regulations authorise the granting of an exemption, waiver, or refund under subsection (1)(b),—
- (a) the instrument granting an exemption, waiver, or refund is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless the instrument applies only to a particular case; and
 - (b) the regulations must contain a statement to that effect.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)(a)

Publication	See the relevant publication, presentation, and disallowance table in the secondary legislation referred to in subsection (4)	LA19 ss 73, 74, Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives, unless a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 208(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 208(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

209 Trust accounts required to be kept by persons collecting levies

- (1) If regulations made under section 207 require the operation of a trust account for any levy money by the person responsible for collecting the levy,—
- (a) any amount held on trust that is due to be paid to the chief executive by the levy collector is to be treated as levy money held on trust for the chief executive; and

- (b) any amount held on trust is not available for the payment of any creditor (other than the chief executive) of the levy collector, and is not liable to be attached or taken in execution at the instance of any such creditor; and
 - (c) a person who ceases to be responsible for collecting a levy must continue to maintain the trust account until all the levy money payable to the chief executive for the period during which the person was responsible for collecting the levy has been paid.
- (2) Subsection (1)(c) does not affect any obligation or liability under this Act of any other person who has become responsible for collecting the levy concerned.

210 Other charges not requiring to be prescribed

- (1) This subpart does not prevent the chief executive from requiring a reasonable charge to be paid for any—
- (a) of the services the Ministry provides in relation to the administration of this Act; or
 - (b) actual and reasonable expenses incurred in providing those services.
- (2) However, subsection (1) does not apply to any services in respect of which a fee or charge or levy is prescribed under this subpart.
- (3) Without limiting subsection (1), and to avoid doubt, the chief executive may—
- (a) operate a telephone information service for which each caller pays—
 - (i) according to the caller's usage; or
 - (ii) on an averaged basis:
 - (b) charge persons for the cost of posting, faxing, emailing, or couriering information to them:
 - (c) charge for the cost of written material, unless that material is required by an Act or by regulations made under this Act to be provided free of charge:
 - (d) charge for access to any Internet site, or for information or services provided by any Internet site, operated by the Ministry:
 - (e) charge for access to any library or research services provided in relation to matters pertaining to food material, food products, or food-related accessories:
 - (f) charge any person for administrative services provided in relation to a food product business or otherwise under this Act.
- (4) Any money received by the Ministry for charges made under this section must be paid into the Departmental Bank Account.

211 Fees, charges, and levies to constitute debt

- (1) Any fee, charge, or levy that has become payable to the Crown is—
 - (a) a debt due to the chief executive; and
 - (b) recoverable as a debt by the chief executive in any court of competent jurisdiction.
- (2) Any fee or charge that has become payable to a territorial authority is—
 - (a) a debt due to the territorial authority; and
 - (b) recoverable as a debt by the territorial authority in any court of competent jurisdiction.
- (3) Until the fee, charge, or levy is paid in full, it remains a debt due to the chief executive or the territorial authority, as the case may be.

212 Penalties for failure to pay fee, charge, or levy

- (1) If a person has failed to pay to the chief executive by the due date any fee, charge, or levy payable under this subpart,—
 - (a) section 215 applies to increase the amount payable; and
 - (b) section 216 applies to allow the chief executive, in appropriate cases, to waive the payment of all or any of the amount of any such increase; and
 - (c) section 217 applies to allow the chief executive to withdraw, or refuse to provide the person in default with, any service of the kind to which the debt relates.
- (2) For the purposes of subsection (1)(c) and section 217, and without limiting section 216, the references in those provisions to the withdrawal or refusal to provide any service are to be treated as also authorising the chief executive, in an appropriate case, to—
 - (a) withhold or suspend any approval under this Act;
 - (b) refuse to perform any function under this Act in relation to the person in default;
 - (c) withhold the registration of any food control plan.
- (3) If the withdrawal of any approval or registration under this section, or any suspension of operations, requires the chief executive to provide any further service, perform any further function, or incur any further costs in the interests of ensuring the fitness, for the intended purpose, of the food involved in the withdrawal or suspension, the chief executive may recover any reasonable amount for the additional service, function, or costs as a debt due from the person who owns or is responsible for the operation concerned.
- (4) This section does not apply to any debt owed to the Ministry by a territorial authority.

213 Dispute does not suspend obligation to pay fee, charge, levy, or penalty

A dispute between a person and the chief executive about the person's liability to pay a fee, charge, levy, or penalty under this subpart does not suspend—

- (a) the obligation of the person to pay the fee, charge, levy, or penalty; or
- (b) the right of the chief executive to receive and recover the fee, charge, levy, or penalty.

214 Levy regulations are confirmable instruments

[Repealed]

Section 214: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 4—Payment of statutory debt**215 Penalty for failure to pay statutory fees, etc**

- (1) In this section, and in sections 216 and 217, **statutory debt**—
 - (a) means any fee, charge, or levy required to be paid to the Ministry or the holder of any specified office by or under this Act; but
 - (b) does not include any debt owed to the Ministry by a territorial authority.
- (2) If, after the expiry of the time provided for by or under this Act or by subsection (4), all or any part of a statutory debt remains unpaid, the debt increases by an amount calculated in accordance with subsection (3).
- (3) The amount by which an unpaid statutory debt, or any unpaid part of a statutory debt, increases is the sum of—
 - (a) 10% of the debt (or of that part of the debt that remained unpaid after the expiry of the time provided for the debt's payment); and
 - (b) for every complete period of 6 months after that expiry during which the debt or any part of it (including any deemed increase calculated under this subsection) has remained unpaid, 10% of the debt or that part.
- (4) If a time for payment is not provided for by or under this Act, the debt must be paid within 20 working days after the written demand for payment from the Ministry is received by the person responsible for payment.
- (5) When the Ministry notifies a person of the incurring of a statutory debt, it must also notify that person of the consequences of non-payment under this section.
- (6) This section applies only in respect of statutory debts that first arise after the commencement of this Act.

216 Waiver of penalty

- (1) The chief executive may waive the payment of all or any part of the penalty added to the debt under section 215 if he or she is satisfied that the failure or refusal of a person to pay all or any part of a statutory debt was a result of a

genuine dispute between the person and the Ministry as to either or both of the following:

- (a) the person's liability to pay the debt:
 - (b) the amount of the debt.
- (2) The chief executive may also waive the payment of all or any part of the penalty if he or she is satisfied that there is some other good reason for waiving payment.
 - (3) In any action for the recovery of a statutory debt, the court may waive the payment of all or any part of the penalty added to the debt under section 215 if the court is satisfied that the failure or refusal of a person to pay all or any part of a statutory debt was a result of a genuine dispute between the person and the Ministry as to either or both of the following:
 - (a) the person's liability to pay the debt:
 - (b) the amount of the debt.

217 Services may be withdrawn until debt paid

- (1) If the chief executive is satisfied under subsection (2), he or she may give written notice to the person liable to pay the statutory debt stating that service of the kind to which the debt relates may be withdrawn or no longer provided to the person unless—
 - (a) the debt is paid within 20 working days; or
 - (b) the chief executive agrees that the debt or part of the debt is not payable.
- (2) The chief executive must be satisfied that—
 - (a) a statutory debt has been correctly calculated; and
 - (b) the time provided by or under this Act (or by section 215(4)) for the debt's payment has expired; and
 - (c) the debt has not been paid.
- (3) The chief executive may withdraw or refuse to provide the service concerned if—
 - (a) 20 or more working days have expired since the chief executive gave any person notice under subsection (1); and
 - (b) the person concerned has not—
 - (i) paid the statutory debt or part of the statutory debt concerned; or
 - (ii) satisfied the chief executive that it is not payable.
- (4) If the chief executive has withdrawn or refused to supply a service under subsection (3), the chief executive is not required to reinstate or supply it until a court holds that—
 - (a) the debt or part of the debt concerned is paid; or
 - (b) the debt or part of the debt is not payable; or

- (c) some lesser amount is payable, and the amount is so paid.

Subpart 5—Offences

Infringement offences

218 Proceedings for infringement notices

- (1) This section applies when a person is alleged to have committed an infringement offence.
- (2) The person may—
 - (a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be served with an infringement notice as provided in section 219 and, in that case, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- (3) Proceedings commenced in the way described in subsection (2)(a) do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

219 Issue and cancellation of infringement notices

- (1) An infringement notice may be served on a person if a food safety officer—
 - (a) observes the person committing an infringement offence; or
 - (b) reasonably believes that the person is committing an infringement offence; or
 - (c) reasonably believes that the person has committed an infringement offence.
- (2) An infringement notice may be cancelled by a food safety officer if—
 - (a) the interests of justice require cancellation; and
 - (b) neither the particulars of a reminder notice nor a notice of hearing relating to the infringement notice has been filed in the District Court.
- (3) An infringement notice is cancelled by the service of a cancellation notice.
- (4) An infringement notice or a cancellation notice may be served by a food safety officer personally delivering it to the person alleged to have committed the infringement offence. A different food safety officer from the one who issued the notice may deliver the notice and the notice served may be a copy.
- (5) Alternatively, an infringement notice or a cancellation notice may be served by post addressed to,—
 - (a) if the person is a natural person,—
 - (i) the address of the person's last-known place of residence; or
 - (ii) the address on the person's driving licence; or

- (iii) the person's address on the latest electoral roll; or
- (iv) the person's last-known registered address, if the person has or has had a registered address for any purpose; or
- (v) the person's address in the latest telephone directory; or
- (vi) the address of the person's last-known place of business; or
- (b) if the person is not a natural person,—
 - (i) the person's last-known registered address, if the person has or has had a registered address for any purpose; or
 - (ii) the person's address in the latest telephone directory; or
 - (iii) the address of the person's last-known place of business.
- (6) For the purposes of the Summary Proceedings Act 1957, an infringement notice or a cancellation notice served under subsection (5) is treated as having been served on the person when it was posted.

Section 219(2)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

220 Form of infringement notice

- (1) An infringement notice must be in the form prescribed under section 391.
- (2) The prescribed form must contain the following details:
 - (a) sufficient details to inform the person served with the notice of the time, place, and nature of the alleged offence; and
 - (b) the amount of the infringement fee prescribed for the offence; and
 - (c) the time within which the infringement fee must be paid; and
 - (d) the address of the place at which the infringement fee must be paid; and
 - (e) a statement of the person's right to ask for a hearing; and
 - (f) a statement of the person's right to ask for cancellation of the notice; and
 - (g) a statement of what will happen if the person does not pay the infringement fee or ask for a hearing or ask for cancellation of the notice; and
 - (h) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957.

221 Payment of infringement fees

All infringement fees paid for infringement offences must be paid to the body—that is, the Ministry or a territorial authority—on whose behalf the food safety officer issued the infringement notice.

*Offences***222 Offence involving knowingly or recklessly endangering or harming**

- (1) A person commits an offence if the person breaches or fails to comply with an applicable requirement of this Act and—
 - (a) the person knows that the breach or failure endangers or harms or is likely to endanger or harm the lives or health of members of the public or the life or health of an individual; or
 - (b) the person is reckless as to whether the breach or failure endangers or harms or is likely to endanger or harm the lives or health of members of the public or the life or health of an individual.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$500,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 5 years; and
 - (ii) a fine not exceeding \$100,000.

223 Offence involving knowingly or recklessly creating or increasing risk

- (1) A person commits an offence if the person breaches or fails to comply with an applicable requirement of this Act and—
 - (a) the person knows that the breach or failure—
 - (i) directly or indirectly creates a risk to the lives or health of members of the public or to the life or health of an individual; or
 - (ii) directly or indirectly increases the likelihood of an existing risk to the lives or health of members of the public or to the life or health of an individual being realised; or
 - (b) the person is reckless as to whether the breach or failure—
 - (i) directly or indirectly creates a risk to the lives or health of members of the public or to the life or health of an individual; or
 - (ii) directly or indirectly increases the likelihood of an existing risk to the lives or health of members of the public or to the life or health of an individual being realised.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$300,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 2 years; and
 - (ii) a fine not exceeding \$75,000.

224 Offence involving negligently endangering, harming, creating risk, or increasing risk

- (1) A person commits an offence if the person breaches or fails to comply with an applicable requirement of this Act and the person ought reasonably to have known that the breach or failure may—
 - (a) endanger or harm the lives or health of members of the public or the life or health of an individual; or
 - (b) directly or indirectly create a risk to the lives or health of members of the public or the life or health of an individual; or
 - (c) directly or indirectly increase the likelihood of an existing risk to the lives or health of members of the public or the life or health of an individual being realised.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 1 year; and
 - (ii) a fine not exceeding \$50,000.

225 Offences involving intentionally defeating purpose of Act or deceiving in relation to documents or information

- (1) A person commits an offence if the person, with intent to deceive and for the purpose of obtaining any material benefit or avoiding any material detriment,—
 - (a) provides a document or information to a food safety officer or a person performing a function or duty, or exercising a power, under this Act that—
 - (i) an applicable requirement of this Act requires to be provided to the officer or person; and
 - (ii) is false or misleading in a material detail; or
 - (b) fails to provide a document or information to a food safety officer or a person performing a function or duty, or exercising a power, under this Act, contrary to an applicable requirement of this Act; or
 - (c) alters, conceals, or destroys a document or information, contrary to an applicable requirement of this Act.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$500,000;
 - (b) for an individual, to—

- (i) imprisonment for a term not exceeding 5 years; and
- (ii) a fine not exceeding \$100,000.

226 Offences involving documents or information

- (1) A person commits an offence if the person—
 - (a) provides a document or information to a food safety officer or a person performing a function or duty, or exercising a power, under this Act that—
 - (i) an applicable requirement of this Act requires to be provided to the officer or person; and
 - (ii) is false or misleading in a material detail; or
 - (b) fails to provide a document or information to a food safety officer or a person performing a function or duty, or exercising a power, under this Act, contrary to an applicable requirement of this Act; or
 - (c) alters, conceals, or destroys a document or information, contrary to an applicable requirement of this Act.
- (2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (3) Section 251 contains defences to a prosecution for an offence against this section.
- (4) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to a fine not exceeding \$50,000.

227 Offences involving intentionally defeating purpose of Act or deceiving in relation to identifying or representing food

- (1) A person commits an offence if the person, with intent to deceive and for the purpose of obtaining any material benefit or avoiding any material detriment,—
 - (a) alters, falsifies, misapplies, misrepresents, misuses, removes, or fails to apply a form of identification of food, contrary to an applicable requirement of this Act; or
 - (b) adulterates, misrepresents, or tampers with food or a food-related accessory so that it does not conform with—
 - (i) its label;
 - (ii) its package;
 - (iii) a statement made under section 290.
- (2) A person who commits an offence against this section is liable on conviction,—

- (a) for a body corporate, to a fine not exceeding \$500,000:
- (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 5 years; and
 - (ii) a fine not exceeding \$100,000.
- (3) In this section, **misrepresentation**, in relation to food or a food-related accessory, includes both a graphic and verbal misrepresentation in all forms as to the source, consignment, characteristics, description, labelling, safety and suitability, intended use, composition, ingredients or other constituents, and the proportion of ingredients or other constituents of the food or food-related accessory.

228 Offences involving identifying or representing food

- (1) A person commits an offence if the person—
 - (a) alters, falsifies, misapplies, misrepresents, misuses, removes, or fails to apply a form of identification of food, contrary to an applicable requirement of this Act; or
 - (b) adulterates, misrepresents, or tampers with food or a food-related accessory so that it does not conform with—
 - (i) its label:
 - (ii) its packaging:
 - (iii) a statement made under section 290.
- (2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (3) Section 251 contains defences to a prosecution for an offence against this section.
- (4) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$250,000:
 - (b) for an individual, to a fine not exceeding \$50,000.
- (5) In this section, **misrepresentation**, in relation to food or a food-related accessory, includes both a graphic and verbal misrepresentation in all forms as to the source, consignment, characteristics, description, labelling, safety and suitability, intended use, composition, ingredients or other constituents, and the proportion of ingredients or other constituents of the food or food-related accessory.

229 Offences involving intentionally defeating purpose of Act or deceiving in relation to sampling, testing, or evidence

- (1) A person commits an offence if the person, with intent to deceive and for the purpose of obtaining any material benefit or avoiding any material detriment, falsifies, suppresses, or tampers with—
 - (a) a sample of food taken, an example of a food-related accessory taken, test procedures done, or test results produced,—
 - (i) for the purposes of a risk-based measure or an applicable requirement of this Act, by or for a person who operates under the risk-based measure; or
 - (ii) for the purposes of the person's compliance with section 312(2)(c) or with any other applicable requirement of this Act; or
 - (b) a sample of food taken, an example of a food-related accessory taken, test procedures done, test results produced, or evidence taken—
 - (i) by a food safety officer or recognised agency or recognised person in performing a function or duty, or exercising a power, under this Act; or
 - (ii) by an approved laboratory or an approved person in performing a function or duty, or exercising a power, under this Act.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$500,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 5 years; and
 - (ii) a fine not exceeding \$100,000.

230 Offences involving intentionally defeating purpose of Act or deceiving in relation to statements

- (1) A person commits an offence if the person, with intent to deceive and for the purpose of obtaining any material benefit or avoiding any material detriment,—
 - (a) makes a statement that purports to be a statement made under section 290 or a statement of the New Zealand Government's assurance about food or a consignment of food; or
 - (b) falsifies or misuses a statement made under section 290.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$500,000;
 - (b) for an individual, to—

- (i) imprisonment for a term not exceeding 5 years; and
- (ii) a fine not exceeding \$100,000.

231 Offences involving statements

- (1) A person commits an offence if the person—
 - (a) makes a statement that purports to be a statement made under section 290 or a statement of the New Zealand Government’s assurance about food or a consignment of food; or
 - (b) falsifies or misuses a statement made under section 290.
- (2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (3) Section 251 contains defences to a prosecution for an offence against this section.
- (4) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$250,000:
 - (b) for an individual, to a fine not exceeding \$50,000.

232 Offence involving knowingly or recklessly selling non-complying food

- (1) A person commits an offence if—
 - (a) the person sells food that—
 - (i) is not safe or suitable for its intended purpose; or
 - (ii) has not been produced or processed and handled as required by an applicable requirement of this Act; or
 - (iii) does not comply with an applicable requirement of this Act; and
 - (b) the person—
 - (i) knows that the food is as described in paragraph (a); or
 - (ii) is reckless as to whether the food is as described in paragraph (a).
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$500,000:
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 2 years; and
 - (ii) a fine not exceeding \$100,000.

233 Offences involving knowingly or recklessly importing non-complying food

- (1) A person commits an offence if—
 - (a) the person imports food to sell that is not safe or not suitable; and

- (b) the person—
 - (i) knows that the food is not safe or not suitable; or
 - (ii) is reckless as to whether the food is safe or suitable.
- (2) A person commits an offence if—
 - (a) the person breaches prescribed requirements for imported food; and
 - (b) the person—
 - (i) knows that the person is breaching the requirements; or
 - (ii) is reckless as to whether the person is breaching the requirements.
- (3) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$500,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 2 years; and
 - (ii) a fine not exceeding \$100,000.

234 Offences involving imported food

- (1) A person commits an offence if the person—
 - (a) sells food that was imported on the basis that it was for personal consumption only; or
 - (b) sells food for human consumption that was imported on the basis that it was not for human consumption; or
 - (c) breaches or fails to comply with section 108.
- (2) A person commits an offence if the person,—
 - (a) knowing that or being reckless as to whether food was imported on the basis that it was for personal consumption only, sells that food; or
 - (b) knowing that or being reckless as to whether food was imported on the basis that it was not for human consumption, sells that food; or
 - (c) knowing that the person is not a registered importer or being reckless as to whether the person is a registered importer, breaches or fails to comply with section 108.
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant intended to commit the offence.
- (4) Sections 251 and 253 contain defences to a prosecution for an offence against subsection (1).
- (5) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$200,000;
 - (b) for an individual, to a fine not exceeding \$50,000.

- (6) A person who commits an offence against subsection (2) is liable on conviction,—
- (a) for a body corporate, to a fine not exceeding \$500,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 2 years; and
 - (ii) a fine not exceeding \$100,000.

235 Offence involving intentionally hindering or obstructing official

- (1) A person commits an offence if the person intentionally hinders or obstructs a person—
- (a) who is one of the following:
 - (i) a food safety officer; or
 - (ii) an officer of a territorial authority performing a function or duty, or exercising a power, under this Act; or
 - (iii) a person assisting an officer described in subparagraph (i) or (ii); or
 - (iv) a person employed by a recognised agency; or
 - (v) a recognised person; or
 - (vi) a person appointed under section 357(2); and
 - (b) who is performing a function or duty, or exercising a power, under—
 - (i) a risk-based measure; or
 - (ii) an applicable requirement of this Act.
- (2) Without limiting what constitutes intentionally hindering or obstructing, intentionally hindering or obstructing includes failing to allow a person to perform a function or duty or to exercise a power under this Act.
- (3) A person who commits an offence against this section is liable on conviction,—
- (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 3 months; and
 - (ii) a fine not exceeding \$50,000.

236 Offence involving threatening or assaulting official

- (1) A person commits an offence if the person threatens or assaults a person—
- (a) who is one of the following:
 - (i) a food safety officer; or
 - (ii) an officer of a territorial authority performing a function or duty, or exercising a power, under this Act; or

- (iii) a person assisting an officer described in subparagraph (i) or (ii); or
 - (iv) a person employed by a recognised agency; or
 - (v) a recognised person; or
 - (vi) a person appointed under section 357(2); and
 - (b) who is performing a function or duty, or exercising a power, under—
 - (i) a risk-based measure; or
 - (ii) an applicable requirement of this Act.
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 3 months; and
 - (ii) a fine not exceeding \$50,000.

237 Offence involving intentionally deceiving by pretending to be official

- (1) A person commits an offence if, with intent to deceive, the person pretends to be—
- (a) a food safety officer; or
 - (b) an officer of a territorial authority performing a function or duty, or exercising a power, under this Act; or
 - (c) a person assisting an officer described in paragraph (a) or (b); or
 - (d) a person employed by a recognised agency; or
 - (e) a recognised person; or
 - (f) a registration authority performing a function or duty, or exercising a power, under this Act.
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 3 months; and
 - (ii) a fine not exceeding \$50,000.

238 Offences involving publishing non-complying advertisement

- (1) A person commits an offence if both subsections (2) and (3) apply.
- (2) This subsection applies if the person publishes an advertisement relating to food or a food-related accessory that—

- (a) does not comply with all applicable requirements of this Act relating to advertising or promoting food or food-related accessories; or
 - (b) is false as to the age, composition, effects, nature, origin, purity, quality, or strength of the food or the safety or suitability of the food or the safety or suitability of the food-related accessory; or
 - (c) is likely to deceive a buyer as to the age, composition, effects, nature, origin, purity, quality, or strength of the food or the safety or suitability of the food or the safety or suitability of the food-related accessory; or
 - (d) is prohibited by a requirement of this Act from being marked on or attached to the kind of food or the kind of food-related accessory or packages containing that kind of food or that kind of food-related accessory; or
 - (e) makes a statement prohibited by a requirement of this Act to be made in an advertisement relating to the kind of food or the kind of food-related accessory; or
 - (f) expressly or impliedly qualifies, or is contrary to, details required by a requirement of this Act to be marked on or attached to the kind of food or the kind of food-related accessory or packages containing that kind of food or that kind of food-related accessory; or
 - (g) omits from the name or description of the food or the food-related accessory any word or words required by a requirement of this Act to be included in the name or description marked on or attached to the kind of food or the kind of food-related accessory or packages containing that kind of food or that kind of food-related accessory; or
 - (h) fails to make a statement required by a requirement of this Act to be made in an advertisement relating to the kind of food or the kind of food-related accessory; or
 - (i) fails to show, in an advertisement shown on a screen, a word or words or a statement required by paragraph (g) or (h) in clearly legible lettering for a sufficient length of time for an ordinary viewer to read them.
- (3) This subsection applies if the person publishes the advertisement as—
- (a) the person selling, promoting the sale, or appearing to promote the sale of the food or the food-related accessory; or
 - (b) the agent or employee of the person selling, promoting the sale, or appearing to promote the sale of the food or the food-related accessory.
- (4) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (5) Section 252 contains a defence to a prosecution for an offence against this section.

- (6) A person who commits an offence against this section is liable on conviction,—
- (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to a fine not exceeding \$50,000.

239 Offences involving automated electronic system

- (1) A person commits an offence who intentionally obstructs or hinders an automated electronic system doing an action under section 374(2).
- (2) A person commits an offence who knowingly damages or impairs an automated electronic system.
- (3) A person who commits an offence against this section is liable on conviction,—
- (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 3 months; and
 - (ii) a fine not exceeding \$50,000.

240 Offence involving breaching or failing to carry out duty

- (1) A person commits an offence if the person breaches or fails to carry out the duty specified in section 14.
- (2) A person commits an offence if the person breaches or fails to carry out a duty specified in section 48 (food control plans must be registered) or section 79 (food businesses subject to national programme must be registered).
- (3) A person who is the operator of a food control plan or the operator of a food business to which the plan applies commits an offence if the person breaches or fails to carry out a duty specified in section 50(1)(a) to (g).
- (4) A person who is the operator of a food business subject to a national programme commits an offence if the person breaches or fails to carry out a duty specified in section 80.
- (5) A person who is an importer commits an offence if the person breaches or fails to carry out a duty under section 110 or 111.
- (6) A person commits an offence if the person breaches or fails to carry out a duty specified in section 155 (duties of recognised agencies) or section 156 (duties of recognised persons).
- (7) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (8) Sections 251 and 253 contain defences to a prosecution for an offence against this section.
- (9) A person who commits an offence against this section is liable on conviction,—

- (a) for a body corporate, to a fine not exceeding \$200,000;
- (b) for an individual, to a fine not exceeding \$50,000.

241 Offence involving breaching or failing to comply with suspension, direction, or improvement notice

- (1) A person commits an offence if the person breaches or fails to comply with—
 - (a) a suspension imposed under section 62, 90, or 122 (including a suspension extended under section 63, 91, or 123); or
 - (b) a direction given under any of sections 279, 281, and 282 to 286; or
 - (c) a direction given under any of sections 300, 301, 304, and 305; or
 - (d) an improvement notice issued by a food safety officer under section 302; or
 - (e) a requirement imposed by a food safety officer under any of sections 301, 306, and 308; or
 - (f) a direction given by a food safety officer executing a search warrant; or
 - (g) a requirement imposed by a food safety officer executing a search warrant.
- (2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (3) Section 251 contains a defence to a prosecution for an offence against this section.
- (4) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$300,000;
 - (b) for an individual, to a fine not exceeding \$50,000.

242 Offence involving breaching or failing to comply with order

- (1) A person commits an offence if the person breaches or fails to comply with an order made under any of sections 272, 273, 334, 335, and 337(6)(a).
- (2) A person commits an offence if the person fails or refuses to make property available to the Crown in accordance with section 271(6).
- (3) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (4) Section 251 contains a defence to a prosecution for an offence against this section.
- (5) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$300,000;
 - (b) for an individual, to a fine not exceeding \$75,000.

- (6) If an order is made under any of sections 272, 273, 334, 335, and 337(6)(a) and an appeal is filed in any court against the making of the order, the court appealed to may grant a stay of proceedings or any other interim relief in respect of the operation of the order as it thinks fit pending the determination of the appeal by that court.

243 Offence involving breaching or failing to comply with food standard, etc

- (1) A person commits an offence if the person breaches or fails to comply with—
- (a) a requirement in an adopted joint food standard or a domestic food standard; or
 - (b) a condition imposed under any of sections 27(5)(b), 33(4)(d), 60, 147, 158(3)(a), and 291(6) or under clause 4(4)(e) or 9 of Schedule 4; or
 - (c) a requirement imposed on the person by regulations made under section 383.
- (2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (3) Sections 251 and 253 contain defences to a prosecution for an offence against this section.
- (4) A person who commits an offence against this section is liable on conviction,—
- (a) for a body corporate, to a fine not exceeding \$100,000;
 - (b) for an individual, to a fine not exceeding \$20,000.

244 Offence involving breaching or failing to comply with requirement

- (1) A person commits an offence if the person breaches or fails to comply with—
- (a) a requirement in this Act; or
 - (b) a requirement in regulations made under this Act; or
 - (c) a requirement in a notice given under this Act; or
 - (d) any other requirement under this Act.
- (2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (3) Sections 251 and 253 contain defences to a prosecution for an offence against this section.
- (4) A person who commits an offence against this section is liable on conviction,—
- (a) for a body corporate, to a fine not exceeding \$20,000;
 - (b) for an individual, to a fine not exceeding \$5,000.

Liability for offences

245 Liability of body corporate

- (1) This section applies when—
 - (a) a body corporate is charged with an offence against this Act; and
 - (b) for the purpose of the prosecution, it is necessary to establish the body corporate's state of mind.
- (2) It is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of his or her actual or apparent authority, had the state of mind.

246 Liability of body corporate, principal, or individual

- (1) This section applies when—
 - (a) a body corporate is charged with an offence against this Act for an action or omission of a director, an employee, or an agent:
 - (b) a principal is charged with an offence against this Act for an action or omission of an agent:
 - (c) an individual is charged with an offence against this Act for an action or omission of an employee or agent.
- (2) The action or omission is treated as also the action or omission of the body corporate, principal, or individual.
- (3) In this section, **agent** includes a contractor.

247 Liability of director or manager of body corporate

- (1) This section applies when a body corporate commits an offence against this Act.
- (2) A director or manager of the body corporate is also guilty of the offence if it is proved that the director or manager—
 - (a) authorised, permitted, consented, or participated in the act or omission that constituted the offence; or
 - (b) knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all practicable steps to prevent or stop it.
- (3) A director or manager may be convicted of an offence against this section even though the body corporate has not been charged with that offence or a similar offence.

248 Parties to offences

- (1) Section 66 of the Crimes Act 1961 applies to offences against this Act.
- (2) Section 310 of the Crimes Act 1961 applies to offences against this Act.

- (3) In addition, if a body corporate commits an offence against this Act, a director or an agent of the body corporate is a party to the offence if the director or agent—
- (a) authorised, permitted, consented, or participated in the offence; or
 - (b) knew that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.
- (4) In addition, a person described in subsection (5) is a party to an offence against this Act that occurs in the following circumstances:
- (a) a person buys food in a package; and
 - (b) the person sells the food in that package; and
 - (c) the person does not open that package before selling the food; and
 - (d) no employee or agent of the person opens the package before the person sells the food; and
 - (e) the sale of the food constitutes an offence against this Act.
- (5) The persons are—
- (a) a person who appears from a statement or label on, attached to, or associated with the package to be the person who imported, produced, or processed and handled the food;
 - (b) the person who is the owner of the rights of manufacture of the food;
 - (c) a person who packaged the food;
 - (d) an employee or agent of a person referred to in any of paragraphs (a) to (c) if the employee or agent knew that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.
- (6) Accordingly, a person described in subsection (5) is liable in the same manner and to the same extent as if the person had actually sold the food at the time and place at which the sale was made.

249 Defences for liability arising under section 246 or 248

- (1) Section 254 contains a defence to a prosecution in which liability arises under section 246.
- (2) Section 255 contains a defence to a prosecution in which liability arises under section 248(4) to (6).

Provisions about charging documents

250 Charging documents

Despite anything to the contrary in the Criminal Procedure Act 2011, a charging document in respect of any offence against this Act may be filed in any

case within 4 years after the time when the offence was committed or within any longer time allowed by that other Act.

Defences

251 Defence in prosecution for strict liability offence, except advertising offence

- (1) This section applies in a prosecution for an offence against any of sections 226, 228, 231, 234(1), and 240 to 244.
- (2) The defendant has a defence if the defendant proves that—
 - (a) the commission of the offence was due to—
 - (i) the act or omission of another person; or
 - (ii) an accident; or
 - (iii) some other cause outside the defendant's control; and
 - (b) the defendant took all reasonable precautions and exercised due diligence to avoid the commission of the offence or offences of the same kind.

252 Defences in prosecution for advertising offence

- (1) This section applies in a prosecution for an offence against section 238.
- (2) The defendant has a defence if the defendant proves that—
 - (a) the commission of the offence—
 - (i) was the act or omission of another person; or
 - (ii) was an accident; or
 - (iii) resulted from some other cause outside the defendant's control; and
 - (b) the defendant took all reasonable precautions and exercised due diligence to avoid the commission of the offence.
- (3) The defendant has a defence if the defendant proves that—
 - (a) the defendant carried on the business of publishing or arranging for the publication of advertisements; and
 - (b) the defendant published or arranged for the publication of the advertisement in the ordinary course of the business.
- (4) Subsection (3) does not apply if the defendant—
 - (a) was informed that publication of the advertisement would constitute an offence—
 - (i) before the advertisement was published; and
 - (ii) in writing; and

- (iii) by a food safety officer or a person performing functions or duties, or exercising powers, under this Act; or
- (b) ought reasonably to have known that the publication of the advertisement was an offence; or
- (c) is the operator of a food business for which the advertisement was published; or
- (d) is involved in the management of a food business for which the advertisement was published.

253 Defences in prosecution for selling non-complying food

- (1) This section applies in a prosecution for an offence against any of sections 234(1), 240, 243, and 244.
- (2) The defendant has a defence if the defendant proves that—
 - (a) the defendant bought the food in reliance on a statement as to the nature of the food that was in writing and supplied by or on behalf of the person from whom the defendant bought the food; and
 - (b) the defendant's sale of the food would not have constituted the offence with which the defendant is charged if the food had in fact conformed to the statement; and
 - (c) a reasonable person would have had no reason to suspect that the food did not conform to the statement or that the statement was not genuine; and
 - (d) when the defendant sold the food, it was in the same condition as it was when the defendant bought it.
- (3) The defendant has a defence if the defendant proves that—
 - (a) the defendant bought the food in a package and sold it in the same package and in the same condition as it was in when the defendant bought it; and
 - (b) the defendant could not reasonably have found out that selling the food would constitute the offence with which the defendant is charged.
- (4) The defences provided by this section only apply to offences involving the sale of non-complying food.

254 Defence in prosecution of body corporate, principal, or individual for action of director, agent, or employee

- (1) This section applies when a defendant's liability to prosecution arises under section 246.
- (2) The defendant has a defence if the defendant proves that the defendant took all reasonable steps to prevent the commission of—
 - (a) the particular offence; or

- (b) all offences of the class committed.
- (3) Subsection (2) is subject to subsection (4).
- (4) The defence under subsection (2) is available to a defendant only to the extent that it can be proved in relation to the act or omission of the relevant other person referred to in section 246, unless the court is satisfied that it would be repugnant to justice for that defence to be so limited, having regard to—
 - (a) any likely or possible benefit accruing to, or detriment suffered by, the person or body corporate from the act or omission in respect of which the proceedings are brought had the alleged offence remained undetected; and
 - (b) the purpose or motive of the relevant other person; and
 - (c) the relationship between the defendant and the relevant other person, or between the defendant and any person appearing or likely to benefit from the alleged offence; and
 - (d) if the defendant is a body corporate, whether or not any person responsible for, or closely associated with, the management of the body corporate appears to have benefited from the act or omission, or would have been likely to benefit if the alleged offence had remained undetected; and
 - (e) whether or not the defendant had taken all reasonable steps and exercised due diligence to control the activities of the relevant other person to ensure that the act or omission did not occur.

255 Defence in prosecution of importer, producer, processor and handler, manufacturing rights owner, or packer

- (1) This section applies when a defendant's liability to prosecution arises under section 248(4) to (6).
- (2) In a prosecution relating to the condition of food, the defendant has a defence if the defendant proves that the food was in a condition that would not have given rise to the offence when the package in which the food was packed left the defendant's possession.
- (3) In a prosecution relating to the safety of food, the defendant has a defence if the defendant proves that, when or before the food left the defendant's possession, the defendant gave notice to the person to whom the defendant consigned or delivered the food that it was not intended for human consumption.
- (4) In a prosecution relating to a label or package, the defendant has a defence if the defendant proves that the offence with which the defendant is charged arises from an alteration made to the label or package after the label or package left the defendant's possession.

256 Employees and agents have same defences

The defences in sections 251 to 255 are available to an employee or agent of a body corporate, a principal, or an individual in the same manner and to the same extent as they would be available to the body corporate, principal, or individual if the body corporate, principal, or individual were charged with the offence.

257 Prosecutor to be notified of defences

- (1) The defences in sections 251 to 255 are available only if the defendant—
 - (a) prepares a written notice for the prosecutor that complies with subsection (2); and
 - (b) gives the notice to the prosecutor—
 - (i) at least 15 working days before the hearing date; or
 - (ii) within another time that the court allows.
- (2) The notice must—
 - (a) state the defendant's intention to rely on the defence; and
 - (b) include,—
 - (i) in the case of the defence in section 255(3), information about the identity of the person to whom the defendant consigned or delivered the food or an explanation as to why the defendant is unable to identify that person:
 - (ii) in the case of the defence in section 251 or 252, notice in writing identifying the person or the nature of the accident or cause relied on by the defendant:
 - (iii) in any other case, the facts or circumstances that support the defence.

258 Standard of proof for establishing defence

The standard of proof for establishing a defence provided by this Part for an offence against this Act is the balance of probabilities.

*Evidence***259 Evidence of requirement of this Act**

- (1) This section applies to the production in evidence of the documents described in subsection (2) in a prosecution for an offence against this Act.
- (2) The documents are—
 - (a) a document presented by a food safety officer purporting to be a requirement of this Act; and
 - (b) a copy of the *Gazette* in which the requirement was notified, if applicable.

- (3) The production in evidence of the documents is sufficient evidence, in the absence of evidence to the contrary, of the existence, notification, and contents of the requirement.

260 Evidence of person's documents

- (1) This section applies to the production in evidence of a document described in subsection (2) in a prosecution for an offence against this Act.
- (2) The document is one that—
 - (a) is an application, form, record, report, return, transaction, or other means of stating information; and
 - (b) purports to be completed, kept, or provided by a person or on the person's behalf.
- (3) The production in evidence of the document is sufficient evidence, in the absence of evidence to the contrary, that the person completed, kept, or provided the document.

261 Evidence of testing

- (1) This section applies to evidence of a test under this Act or the Agricultural Compounds and Veterinary Medicines Act 1997, Animal Products Act 1999, Biosecurity Act 1993, Customs and Excise Act 2018, Fisheries Act 1996, Hazardous Substances and New Organisms Act 1996, Health Act 1956, or Wine Act 2003.
- (2) The evidence may be produced by way of—
 - (a) a certificate given by an employee of a recognised agency; or
 - (b) a certificate given by a recognised person; or
 - (c) a certificate given by an employee of a recognised person; or
 - (d) a certificate given by an employee of an approved laboratory; or
 - (e) some other means acceptable to the court.
- (3) When produced in a prosecution for an offence against this Act, the evidence must not be ruled inadmissible or disregarded only because compliance with the relevant Act's requirements on the taking or testing of a sample of food or of an example of a food-related accessory has been reasonable instead of strict.
- (4) However, the evidence is inadmissible if—
 - (a) the prosecutor (or a person authorised by the prosecutor) does not—
 - (i) serve a copy of the certificate or summary of that evidence on the defendant or the defendant's agent or lawyer at least 20 working days before the hearing at which the certificate or evidence is to be tendered; and

- (ii) at the same time inform the person served, in writing, that the prosecutor does not propose to call the person who signed the certificate or summary as a witness at the hearing; or
 - (b) not less than 5 working days before the hearing (or any lesser period that the court in the special circumstances of the case thinks fit) and on the application of the defendant made within 10 working days after receipt of the certificate or summary, the court orders that the certificate or evidence is inadmissible as evidence in the proceedings.
- (5) The court must not make an order under subsection (4) unless it is satisfied that there is reasonable doubt as to—
 - (a) the accuracy of the information contained or referred to in the certificate or summary of evidence; or
 - (b) the validity of the certificate or summary of evidence.

Section 261(1): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

262 Evidence of office

- (1) The chief executive may give a certificate stating that a person holds a particular office or position under or relevant to this Act.
- (2) A certificate given under subsection (1) is admissible in any proceedings in a New Zealand court that relate to an offence alleged or proved to have been committed against this Act and is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the certificate.
- (3) It is not necessary to prove the signature on a certificate given under this section.

Presumptions

263 Application of sections 264 to 267

- (1) Sections 264 to 267 apply in a prosecution for an offence against any of sections 226, 228, 231, 234, and 238 to 244.
- (2) Sections 264 and 265 do not apply in a prosecution for an offence against any of sections 222 to 225, 227, 229, 230, 232, 233, and 235 to 237.
- (3) Sections 266 and 267 apply in a prosecution for an offence against any of sections 222 to 225, 227, 229, 230, 232, 233, and 235 to 237.

264 Presumption as to contents and label

- (1) The contents of a package are presumed to conform with the description of the contents on the package's label until the contrary is proved.
- (2) Any information on the label that identifies the person who imported, produced, or processed and handled the food in the package is presumed to be correct until the contrary is proved.

265 Presumption as to possession for sale

- (1) This section applies when food is found at a place a person uses for—
 - (a) the sale of food; or
 - (b) the production, processing and handling, and merchandising of food for sale.
- (2) The food is presumed to be in the person's possession for the purpose of sale for human consumption until the contrary is proved.

266 Presumption as to sample

- (1) This section applies to a sample of food—
 - (a) taken from an identified quantity of food; and
 - (b) taken as required by a requirement of this Act; and
 - (c) interpreted as required by a requirement of this Act.
- (2) The sample is presumed to be representative of the quantity of food from which the sample was taken until the contrary is proved.
- (3) The sample is also presumed to be representative of the batch, lot, or production run from which the identified quantity was taken until the contrary is proved.

267 Presumption as to electronic identification

- (1) This section applies when information sent electronically purports to have been sent by a particular person because—
 - (a) it has the person's signature on it; or
 - (b) it identifies the person as the sender in some other way.
- (2) The information is presumed to have been sent by the person until the contrary is proved.

Sentencing

268 Application of sections 269 to 273

A court may make an order under any of sections 269 to 273 in addition to, or instead of, a penalty that the court may impose under the relevant offence provision.

269 Order to pay amount because of commercial gain

- (1) This section applies to a person convicted of an offence against any of sections 222 to 225, 228, 229, 230, 232, 233, and 238 to 244.
- (2) The court may make an order under subsection (3) or (4), if it is satisfied that the offence was committed in the course of producing a commercial gain.

- (3) The court may make an order under this subsection whether or not the person is a body corporate. The order is that the person pay an amount up to 3 times the value of the commercial gain resulting from committing the offence.
- (4) The court may make an order under this subsection if the person is a body corporate and the value of the gain cannot be readily ascertained. The order is that the person pay an amount up to 10% of the combined turnover of the body corporate and every interconnected body corporate it has over the period of the offending.
- (5) The court must assess the value of a gain that is readily ascertainable.
- (6) An amount that the court orders to be paid under this section is recoverable in the same manner as a fine.
- (7) In this section, **interconnected** and **turnover** have the same meanings as in the Commerce Act 1986.

270 Order to pay expenses

- (1) This section applies to a person convicted of an offence against this Act.
- (2) A court may order the person to pay to the chief executive or to a territorial authority, as the case may be, all or any of the expenses incurred in taking, holding, detaining, storing, or testing food or a food-related accessory for the purposes of the prosecution.
- (3) An amount that the court orders to be paid under this section is recoverable in the same manner as a fine.

271 Order to forfeit and dispose of food or food-related accessory

- (1) This section applies to a person convicted of an offence against this Act.
- (2) Before making an order under this section, the court must give the following persons an opportunity to be heard:
 - (a) the person convicted; and
 - (b) any other person who the court considers has an interest in the food or food-related accessory in relation to which the offence was committed.
- (3) The court may order that—
 - (a) the following are forfeited to the Crown or to the territorial authority that brought the prosecution:
 - (i) all or some of the food or food-related accessories in relation to which the offence was committed that are in the possession of the person convicted;
 - (ii) all or some of the food or food-related accessories in relation to which the offence was committed that were in the possession of the person convicted before being seized under this Act and are still in the custody of the court or the prosecuting body; and

- (b) the food or food-related accessories must be disposed of as the chief executive or the territorial authority directs.
- (4) The court may order the person convicted to pay all or any of the expenses incurred in disposing of food or food-related accessories under subsection (3)(b).
- (5) An amount that the court orders to be paid under this section is recoverable in the same manner as a fine.
- (6) A convicted person who is subject to an order under this section must, without delay, make the forfeited property available to the Crown for collection.

272 Order to withdraw material

- (1) This section applies to a person who—
 - (a) imports, produces, processes and handles, or sells food or food-related accessories; and
 - (b) is convicted of an offence against this Act in relation to advertisements, labels, or packages.
- (2) The court may order the person to withdraw from use all advertisements, labels, or packages of the same kind until the chief executive is satisfied that the problem that resulted in the conviction has been remedied or until further order of the court.
- (3) The chief executive must give the person concerned notice of his or her reasons for concluding that the problem has not been remedied and of the right of review under section 355.
- (4) The person must withdraw the advertisements, labels, or packages.

273 Order to restrict or prohibit trading in food

- (1) This section applies when—
 - (a) a person is convicted of an offence against this Act; and
 - (b) the person has previously been convicted of an offence under the current or a former food safety regime or has previously been convicted outside New Zealand of an offence comparable to an offence under the current or a former food safety regime.
- (2) This section also applies when—
 - (a) a person is convicted of an offence against this Act; and
 - (b) the court considers that the person's trade in food should be restricted or prohibited because—
 - (i) the offence of which the person has been convicted is serious; or
 - (ii) the person has breached a previous order under this section.
- (3) The court may make—

- (a) a restriction order, which specifies the ways in which the person is restricted in trading in food; or
 - (b) a prohibition order, which prohibits the person from trading in food.
- (4) The following provisions apply if the person wants a restriction order or prohibition order cancelled:
- (a) the person may apply to the court to cancel it:
 - (b) the application must be served on the relevant registration authority:
 - (c) an employee or agent of the relevant registration authority may appear and be heard to help the court to determine whether to grant the application.
- (5) The court may—
- (a) cancel the order from the date stated in the order; or
 - (b) change the order from the date stated in the order; or
 - (c) change a prohibition order to a restriction order; or
 - (d) refuse the application, in which case the court may specify the earliest date upon which the person may make a further application for cancellation.
- (6) The court must take into account—
- (a) the nature of the offence of which the person was convicted; and
 - (b) the steps taken (if any) to remedy the problem that resulted in the order; and
 - (c) the person's conduct since the order was made; and
 - (d) the person's character; and
 - (e) any other circumstances of the case.
- (7) If the court changes the order or refuses the application, the person may apply for cancellation again—
- (a) once the date that the court specified under subsection (5)(d) has passed; or
 - (b) once there has been a material change in the person's circumstances.

274 Sentencing criteria

- (1) This section applies when a Judge is determining how to sentence or otherwise deal with a person convicted of an offence against this Act.
- (2) The Judge must apply the Sentencing Act 2002.
- (3) In addition, the Judge must have regard to the orders available under sections 269 to 273.

- (4) In determining how to sentence or otherwise deal with the person, the Judge must take the following matters into account to the extent that they are relevant:
 - (a) how likely it was that a person would be harmed by the conduct constituting the offence:
 - (b) how many people were likely to be harmed by the conduct constituting the offence:
 - (c) how serious the harm was that was likely to be done by the conduct constituting the offence:
 - (d) whether there were potential or actual implications for trade, including international trade.
- (5) Subsection (4) does not limit the Sentencing Act 2002. Nor does it prevent the Judge from taking into account any other relevant factors.
- (6) In subsection (4), **harm** means illness or injury, or both.

275 Fines or amounts to be paid to prosecuting territorial authority

- (1) This section applies—
 - (a) when a court imposes or is deemed to have imposed a fine as a result of non-payment of an infringement fee to a territorial authority:
 - (b) when a court imposes a fine on a person for an offence against this Act prosecuted by a territorial authority:
 - (c) when a court orders the payment of an amount under section 269 for an offence prosecuted by a territorial authority.
- (2) The court must order the payment of the fine or amount to the territorial authority.
- (3) Ten percent of the fine or amount must be credited to a Crown Bank Account nominated by the Minister of Finance for the purposes of this section.
- (4) If any money awarded by a court in respect of loss or damage is recovered as a fine, and that fine is ordered to be paid to a territorial authority under subsection (2), no deduction is to be made under subsection (3) in respect of that money.
- (5) The court's order under subsection (2) is sufficient authority for the Registrar receiving the fine or amount to—
 - (a) pay 10% of it to the Crown; and
 - (b) pay the balance to the territorial authority entitled to it.
- (6) Section 73 of the Public Finance Act 1989 does not apply to a fine or an amount that a court orders to be paid to a territorial authority under this section.

Subpart 6—Powers and enforcement

Appointments by chief executive

276 Appoint food safety officers

- (1) The chief executive may appoint a person as a food safety officer for the purposes of this Act, whether or not the person is employed in the State sector.
- (2) The officer's appointment document may authorise the officer to perform all the functions and duties, and exercise all the powers, that this Act confers on food safety officers.
- (3) Alternatively, the officer's appointment document may specify the particular functions and duties that the officer may perform and the particular powers that the officer may exercise.
- (4) The chief executive may impose written conditions on the appointment of a food safety officer.
- (5) Food safety officers must not delegate any of their functions, duties, or powers.
- (6) A person appointed as a food safety officer who is not already a State sector employee does not become a State sector employee for the purposes of the Public Service Act 2020 or the Government Superannuation Fund Act 1956 only because of the appointment.
- (7) If a food safety officer who is not employed in the State sector or by a territorial authority receives information in the course of performing his or her functions or duties under this Act, the Official Information Act 1982 applies in relation to—
 - (a) the organisation that employs the food safety officer as if it were an organisation listed in Schedule 1 of that Act; and
 - (b) the information as if it were held by the organisation.

Section 276(6): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

277 Suspend or cancel appointments of food safety officers

- (1) The chief executive may decide to suspend a person's appointment as a food safety officer.
- (2) The chief executive must give the person a written notice that—
 - (a) states that the person's appointment is suspended; and
 - (b) states one of the following:
 - (i) what the period of the suspension is; or
 - (ii) that the suspension is for an indefinite period; and
 - (c) states the reason for the suspension; and

- (d) states that the person may apply for a review of the decision under section 355.
- (3) The chief executive may decide to cancel a person's appointment as a food safety officer.
- (4) The chief executive must give the person a written notice that—
 - (a) states that the person's appointment is cancelled; and
 - (b) states when the cancellation takes effect; and
 - (c) states the reason for the cancellation; and
 - (d) states that the person has the right to seek a review of the decision under section 355.
- (5) When the chief executive gives a notice under subsection (2) or (4), he or she must also give a copy of it to the person's employer, if the person has an employer.

Directions by chief executive

278 Give general directions on functions, duties, or powers

- (1) The chief executive may give a direction to all or any of the following persons, either individually or as a class:
 - (a) an approved person:
 - (b) a food safety officer:
 - (c) a recognised agency:
 - (d) a recognised person:
 - (e) a territorial authority.
- (2) The direction must be about the performance of the person's functions or duties, or the exercise of the person's powers, under this Act and may, without limitation, include instructions or requirements relating to the performance of specific tasks.
- (3) A person to whom a direction is given under this section must ensure that it is complied with.
- (4) However, an action taken by a person to whom a direction is given under this section is not invalid by reason only of a failure of that person to comply with the direction.

279 Give directions on seized imported food or food-related accessory

- (1) The chief executive may give a person a direction to—
 - (a) dispose of imported food or an imported food-related accessory seized and detained under section 306 or recalled under section 284; and
 - (b) carry out the disposal in the manner the chief executive specifies.

- (2) All costs reasonably incurred in the seizure and detention—
 - (a) must be paid by the importer on demand by the chief executive; and
 - (b) if not paid by the importer in accordance with the chief executive's demand, are recoverable from the importer in a court of competent jurisdiction as a debt due to the Crown.
- (3) To avoid doubt, all costs reasonably incurred in the disposal must be met by the importer at the importer's expense.

280 Persons to whom directions may be given under sections 281 to 286

- (1) This section describes the persons to whom the chief executive or a territorial authority, as the case may be, may give directions under any of sections 281 to 286.
- (2) A direction may be given to all or any of the following persons, either individually or as a class:
 - (a) a person who operates under a risk-based measure:
 - (b) an exporter of food or food-related accessories:
 - (c) an importer of food or food-related accessories:
 - (d) a person in control of, or reasonably appearing to be in control of, food, a food-related accessory, or anything that may become food.

281 Give general directions to operators and other persons required to comply with Act

- (1) The chief executive may give a direction described in subsection (2) to the persons described in section 280.
- (2) The direction must be about the taking of preventative or corrective action in respect of food or food-related accessories that the chief executive reasonably believes is necessary to ensure compliance with this Act.

282 Give directions to complete and supply declarations

- (1) The chief executive may give a direction described in subsection (2) to the persons described in section 280.
- (2) The direction must be about requiring the person to complete and supply a declaration if—
 - (a) there is to be a change of ownership of any food or anything that may become food (**food in question**); or
 - (b) the food in question is to be moved to a new property or a new place.
- (3) The chief executive may require the declaration to contain all or any of the following information:
 - (a) matters relating to the history of the food in question, including, if appropriate,—

- (i) identification or details of any owner or previous owner of the food in question, or any person who presented or supplied it to the person required to make the declaration:
 - (ii) identification or details of the area or place where the food in question was kept or was taken, harvested, or procured, and any surrounding area or place at which it was stored:
 - (b) matters relating to treatments or applications applied by way of veterinary medicines or agricultural compounds (as those terms are defined in section 2 of the Agricultural Compounds and Veterinary Medicines Act 1997) during production of the food in question:
 - (c) information relating to the feeding of an animal, if the food in question contains an animal product:
 - (d) information relating to the possible exposure of the food in question to hazards:
 - (e) information relating to any movement or related controls imposed in respect of the food in question:
 - (f) the status of the food in question in relation to any testing performed:
 - (g) the place the food in question is being moved from, the place it is being moved to, and any previous place it has been moved from:
 - (h) matters relating to the transport or movement of the food in question:
 - (i) the existing owner and new owner of the food in question:
 - (j) any other matter necessary or relevant to establishing the safety and suitability of the food in question for human consumption.
- (4) The chief executive may require the declaration—
- (a) to accompany the food in question, or be provided to the recipient or new owner of the food in question by post, fax, email, or other appropriate means:
 - (b) to be kept by all or any of the supplier, recipient, or new owner of the food in question for a period of up to 4 years.
- (5) In considering whether to give a direction under this section, the chief executive must have regard to the following matters:
- (a) the need to protect the health of consumers of food:
 - (b) the desirability of maintaining consistency between New Zealand food standards and any relevant standards, requirements, or recommended practices that apply or are accepted internationally.
- (6) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to any information or document required to be produced under this section.

283 Give directions to impose movement or related controls

- (1) The chief executive may give a direction described in subsection (2) to the persons described in section 280 if he or she reasonably suspects—
 - (a) that food or any thing that may become food does not comply with an applicable requirement of this Act; or
 - (b) the existence of a hazard or a source of contamination that may affect food or any thing that may become food.
- (2) The direction must impose movement or related controls to determine, minimise, manage, or control the risk to human life or public health created by the suspected non-compliance or suspected existence of the hazard or the source of contamination.
- (3) The controls may be imposed on all or any of the following:
 - (a) activities:
 - (b) areas:
 - (c) food-related accessories:
 - (d) conveyances:
 - (e) craft:
 - (f) food:
 - (g) any thing that may become food:
 - (h) food businesses:
 - (i) vehicles:
 - (j) anything else that the chief executive suspects relates to the suspected non-compliance or he or she suspects is the suspected hazard or the source of suspected contamination.
- (4) The controls on those things described in subsection (3) may do all or any of the following in relation to food or any thing that may become food:
 - (a) restrict its movement, sale, production, or processing and handling:
 - (b) apply conditions to its movement, sale, production, or processing and handling:
 - (c) prohibit its movement, sale, production, or processing and handling:
 - (d) require the taking of specific actions such as sampling and testing to determine the risk (if any) to human life or public health:
 - (e) require the taking of specific actions to minimise, manage, or control the risk to human life or public health:
 - (f) do anything else that is necessary to achieve the purpose described in subsection (2).
- (5) The directions must specify the suspected non-compliance, hazard, or source of contamination.

- (6) The directions may specify the suspected non-compliance, hazard, or source of contamination by any means, including by reference to—
 - (a) a thing described in subsection (3); or
 - (b) a place (where, for example, there may be contamination from the land or the environment); or
 - (c) a particular person or food business or a specified class of food business (where, for example, the contamination may have been caused by a human act or omission).
- (7) The directions may—
 - (a) direct the keeping of information about the matters that are the subject of the directions; and
 - (b) direct the provision of reports about matters that are the subject of the directions; and
 - (c) require the person to whom the directions are given to notify the chief executive when—
 - (i) the non-compliance, hazard, or source of contamination has been identified; or
 - (ii) the non-compliance, hazard, or source of contamination has been minimised or removed; or
 - (iii) no non-compliance, hazard, or source of contamination has been identified.
- (8) The chief executive may approve a system under section 291 for giving directions under this section automatically when a specific occurrence indicates that controls are needed to minimise the risk created by the suspected non-compliance or the suspected existence of a specific hazard or a specific source of contamination.
- (9) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to any information or document required to be produced under this section.

284 Give directions to recall food or food-related accessory

- (1) The chief executive may give the directions described in subsection (3) to the persons described in section 280 for the purpose of examining, rectifying, controlling, or disposing of food or a food-related accessory.
- (2) In determining whether to give the directions, the chief executive may take into account any relevant information or warnings about food or a food-related accessory that he or she has received from an international organisation or authority.
- (3) The directions are—

- (a) to recall food or a food-related accessory that is not safe or suitable or whose safety or suitability is in doubt:
 - (b) to recall a food-related accessory that has, or for which there is doubt about whether it has, contaminated food or caused food to be no longer safe or suitable:
 - (c) to recall a food-related accessory if there is doubt about whether it may contaminate food:
 - (d) to recall food or a food-related accessory that is mislabelled or incorrectly identified:
 - (e) to take food or a food-related accessory recalled under any of paragraphs (a) to (d) to—
 - (i) a place specified in the directions; or
 - (ii) a place agreed to between the chief executive and the person to whom the directions are given.
- (4) The directions may also specify any directions that may be given under section 285, as appropriate.
- (5) If a person to whom a direction is given under this section fails or refuses to comply with the direction, the chief executive may—
- (a) take any reasonable steps necessary to ensure control of the food or food-related accessory (including entry by food safety officers to a place under a warrant); and
 - (b) recover the costs and expenses reasonably incurred in assuming control of the food or food-related accessory as a debt due from that person.
- (6) This section does not affect the chief executive's power to publish a statement under section 289.

285 Give directions to manage food or food-related accessory

- (1) The chief executive may give the directions described in subsection (2) to the persons described in section 280 if the chief executive—
- (a) suspends operations under a registered food control plan under section 62; or
 - (b) extends the period of a suspension under section 63, 91, or 123; or
 - (c) accepts a voluntary suspension of a registered food control plan under section 64; or
 - (d) cancels the registration of a food control plan under section 67; or
 - (e) removes a food business from the coverage of a registered food control plan under section 70; or
 - (f) accepts a surrender of registration of a registered food control plan under section 71; or

- (g) suspends operations of a registered food business that is subject to a national programme under section 90; or
 - (h) accepts a voluntary suspension of the operations of a registered food business that is subject to a national programme under section 92; or
 - (i) cancels the registration of a food business that is subject to a national programme under section 95; or
 - (j) accepts a surrender of registration of a food business that is subject to a national programme under section 98; or
 - (k) suspends a registered importer's operations under section 122; or
 - (l) accepts a voluntary suspension under section 124; or
 - (m) cancels the registration of an importer under section 127; or
 - (n) accepts a surrender of an importer's registration under section 130; or
 - (o) reasonably believes that food or a food-related accessory that is already the subject of a direction under section 283 is not safe or suitable and further controls are required; or
 - (p) recalls food or a food-related accessory under section 284.
- (2) The directions must be about doing any of the following to the food or food-related accessory:
- (a) classifying it:
 - (b) condemning it:
 - (c) destroying it:
 - (d) disposing of it:
 - (e) identifying it:
 - (f) processing and handling it:
 - (g) reclassifying it:
 - (h) relabelling it:
 - (i) re-exporting it:
 - (j) reprocessing it:
 - (k) regrading it:
 - (l) rectifying it:
 - (m) sampling it:
 - (n) storing it:
 - (o) transporting it:
 - (p) testing it:
 - (q) verifying it.
- (3) *See also* sections 65, 69, 93, 97, 125, 129, and 284.

286 Give directions to publish statement

- (1) The chief executive may give a direction described in subsection (2) to the persons described in section 280.
- (2) The direction must be about publishing a statement for the purpose of protecting the public.
- (3) The chief executive may specify that the statement must include all or any of the following:
 - (a) the nature of the problem;
 - (b) the remedy that the person will provide;
 - (c) the way in which the person will prevent the problem arising in future.
- (4) The chief executive may specify the actual words to be used in the statement or any part of it.
- (5) The chief executive may specify all or any of the following:
 - (a) who must publish the statement;
 - (b) where the statement must be published;
 - (c) the date on which the statement must be published.
- (6) Statements published under this section are protected by absolute privilege.

287 Supplementary provisions about directions under sections 281 to 286

- (1) This section applies to a direction given by the chief executive under any of sections 281 to 286.
- (2) The direction is binding on—
 - (a) the person to whom it is addressed; and
 - (b) if applicable, the personal representatives, successors, and assignees of the person to whom it is addressed to the same extent as it applies to that person.
- (3) The direction must be appropriate and reasonable.
- (4) The direction must state whether the person to whom it is given must—
 - (a) advise the chief executive of the details of the manner in which the person proposes to comply with the direction; and
 - (b) keep information about the matters that are the subject of the direction; and
 - (c) regularly notify the chief executive about the steps being taken towards compliance with the direction; and
 - (d) give written notice to the chief executive when the person has complied with the direction.
- (5) The direction must state that—
 - (a) it is an offence against this Act to fail to comply with the direction; and

- (b) if the person to whom the direction is given fails to comply with it, the chief executive may carry out the direction; and
 - (c) if the chief executive carries out the direction, the chief executive may recover the costs reasonably incurred in carrying out the direction from the person to whom the direction was given.
- (6) The direction must—
- (a) be in writing; or
 - (b) be confirmed in writing as soon as practicable after being given orally.
- (7) The direction continues in force until the earlier of the following occurs:
- (a) the expiry date (if any) stated in the direction is reached; or
 - (b) the chief executive revokes the direction.
- (8) The direction may—
- (a) be amended or revoked at any time; and
 - (b) be extended or renewed, if the chief executive is satisfied that the circumstances warrant it.
- (9) If a person to whom the direction is given fails or refuses to comply with it, the chief executive may—
- (a) carry out the direction; and
 - (b) recover the costs and expenses reasonably incurred in carrying out the direction as a debt due from the person to whom the direction was given.

288 Service of directions under sections 281 to 286

- (1) This section also applies to a direction given by the chief executive under any of sections 281 to 286.
- (2) A direction addressed to a person is sufficiently served if it is—
- (a) delivered personally to the person by a food safety officer; or
 - (b) delivered to the person at the person's usual or last-known place of residence or business; or
 - (c) sent by fax or email to the person's last known fax number or email address; or
 - (d) posted in a letter addressed to the person at the person's usual or last known place of residence or business.
- (3) A direction addressed to a class of persons is sufficiently served if it is—
- (a) served on each of the persons in the class in accordance with subsection (2); or
 - (b) published both—
 - (i) in a daily newspaper or trade journal or in any other news media that, in the opinion of the chief executive, will be most likely to

- bring the direction to the attention of the persons who belong to the class; and
- (ii) on the Ministry's Internet site.
- (4) A direction addressed to a department of State or local authority is sufficiently served if it is served on the chief executive (however described) of the organisation in accordance with subsection (2).
- (5) A direction served in accordance with subsection (2) takes effect when it is served.
- (6) A direction served in accordance with subsection (3)(a) takes effect when it is served on all the persons in the class in question.
- (7) A direction served in accordance with subsection (3)(b) takes effect at the beginning of the day after the date on which subsection (3)(b) has been complied with.

Statements by chief executive

289 Publish privileged statements

- (1) The chief executive may publish a statement for the purpose of protecting human life or public health or informing the public.
- (2) The statement may be about—
- (a) the safety or suitability of food or a food-related accessory;
 - (b) anything contained or implied in advertisements about food or a food-related accessory—
 - (i) generally; or
 - (ii) in a particular advertisement; or
 - (iii) in a class of advertisement; or
 - (iv) in classes of advertisements:
 - (c) the performance or non-performance of any function or duty imposed on any person by this Act or any regulations made under this Act.
- (3) The statement is protected by qualified privilege.
- (4) *[Repealed]*
- (5) This section does not limit—
- (a) any other enactment or rule of law; or
 - (b) the functions of the chief executive or of any other person or body.

Section 289(4): repealed, on 24 October 2019, by section 61 of the Statutes Amendment Act 2019 (2019 No 56).

290 Give statement about compliance with New Zealand requirements

- (1) This section applies to a written statement that—

- (a) is about food produced or processed and handled in New Zealand; and
 - (b) is about a particular consignment of the food or a particular class of consignment of the food; and
 - (c) is to the effect that the food in the consignment or class—
 - (i) has been produced or processed and handled as required by the applicable requirements of this Act, to the extent to which they are relevant to the intended use of the food; or
 - (ii) is safe or suitable, so far as is relevant to the intended use of the food; or
 - (iii) has been subject to specified treatment.
- (2) The chief executive may give a statement to a person if—
- (a) the chief executive is satisfied that it is correct; and
 - (b) the person asks for it; and
 - (c) the person pays any fee prescribed for the giving of statements.
- (3) The chief executive may determine the form and content of the statement.
- (4) The chief executive may withdraw the statement at any time if satisfied that—
- (a) it was incorrectly or inappropriately given; or
 - (b) events or circumstances occurring since it was given mean that—
 - (i) it no longer applies; or
 - (ii) it is misleading.
- (5) The statement is not a guarantee that the food—
- (a) necessarily meets the commercial requirements of the consumer; or
 - (b) necessarily meets the specific requirements of overseas markets; or
 - (c) is safe and suitable on arrival in the overseas market.
- (6) The Crown, the chief executive, and the employees of the Ministry are not liable in any civil proceedings for loss arising because the relevant authority of an overseas market does not admit food about which the chief executive has given a statement to the market.

Approvals by chief executive

291 Approvals by chief executive

- (1) This section applies if a requirement of this Act requires any of the following to be used:
- (a) an approved document, material, or facility;
 - (b) an approved person or approved class of persons.
- (2) The chief executive may approve—
- (a) a document, material, or facility; or

- (b) a person or a class of persons.
- (3) Examples of the kinds of documents, materials, or facilities that the chief executive may approve are—
 - (a) compounds:
 - (b) devices:
 - (c) documents:
 - (d) equipment:
 - (e) identification systems:
 - (f) laboratories:
 - (g) methodologies:
 - (h) places:
 - (i) sampling techniques:
 - (j) security devices:
 - (k) systems:
 - (l) techniques.
- (4) Before approving a document, material, or facility, the chief executive—
 - (a) must be satisfied that the document, material, or facility is appropriate, safe, and suitable for a purpose for which a requirement of this Act may require it to be used; and
 - (b) must take into account the criteria prescribed in regulations made under section 386, if there are any such regulations.
- (5) Before approving a person or class of persons, the chief executive—
 - (a) must be satisfied that the person or class of persons has the competencies, training, qualifications, and experience that are suitable for a purpose for which a requirement of this Act may require the person or class of person to be used; and
 - (b) must take into account the criteria prescribed in regulations made under section 386, if there are any such regulations.
- (6) The chief executive may give an approval under this section subject to conditions.
- (7) In the case of an approved laboratory, a condition may include reporting requirements relating to certain test results (including specified contaminants in food).
- (8) An approval must end within 3 years from the date of approval.
- (9) The chief executive gives approval by issuing a notice under section 405.
- (10) The notice must state—
 - (a) any conditions subject to which the approval is given; and

- (b) the date on which the approval ends.
- (11) Before an approval ends, the chief executive may issue a new notice under section 405 approving the document, material, or facility or the persons or class of person for a period of up to 3 years.
- (12) The chief executive may suspend or withdraw an approval by issuing a notice under section 405.
- (13) For the purposes of subsection (12), Parts 3 and 4 of Schedule 4 apply to the suspension or withdrawal of approval to the extent that they are relevant and with all necessary modifications.

Information collection by chief executive

292 Chief executive may require information from operator to determine safety and suitability of food

- (1) This section applies if the chief executive reasonably suspects that an operator of a food business has any information described in subsection (2) that the chief executive considers is necessary for the purpose of determining the safety and suitability of food to protect human life or public health.
- (2) The information referred to in subsection (1) is information about—
 - (a) food or anything that may become food, or anything that has become food; or
 - (b) a food-related accessory used in producing or processing and handling food for sale; or
 - (c) any place used for the production, processing and handling, or sale of food.
- (3) The chief executive may—
 - (a) require the operator of the food business to produce the information to the chief executive or a food safety officer; and
 - (b) copy the information or require a food safety officer to copy the information.
- (4) A copy made under subsection (3), certified by the chief executive or the food safety officer as a true and correct copy, is presumed to be a true and correct copy, until the contrary is proved.
- (5) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to requirements made, and the copying of information, under this section.

Section 292 heading: replaced, on 2 March 2018, by section 27 of the Food Safety Law Reform Act 2018 (2018 No 3).

292A Chief executive may require information to determine safety of food

- (1) This section applies if the chief executive—

- (a) identifies that the consumption of a food may pose a serious risk of illness or injury to consumers; and
 - (b) considers that urgent action may be needed to protect consumers from that risk.
- (2) The chief executive may require a person who is not an operator of a food business to provide the information described in subsection (3) if—
 - (a) the chief executive reasonably considers the information is necessary and relevant to determine—
 - (i) the safety status of food; or
 - (ii) the extent of the risk referred to in subsection (1)(a); or
 - (iii) the action needed to protect consumers from that risk; and
 - (b) the chief executive reasonably believes that the person has the information.
- (3) The information is information about—
 - (a) food or anything that may become food or anything that has become food;
 - (b) a food-related accessory used in producing or processing and handling food for sale;
 - (c) any place used for the production, processing and handling, or sale of food;
 - (d) anything that is or is likely to be a hazard.
- (4) A requirement to provide information under this section must be in writing.
- (5) The chief executive—
 - (a) may require the information to be provided to the chief executive or a food safety officer; and
 - (b) may require the information to be provided within a time specified by the chief executive; and
 - (c) may copy the information or require a food safety officer to copy the information.
- (6) A copy that is made under subsection (5) and certified by the chief executive or the food safety officer as a true and correct copy is presumed to be a true and correct copy until the contrary is proved.
- (7) No person is excused from compliance with a requirement to provide information under this section by reason only that compliance with that requirement would constitute breach of any contract or agreement.
- (8) No evidence of any information that has directly or indirectly been obtained as a result of a person's compliance with a requirement to provide information

under this section may be used against the person in any criminal proceeding, except in a criminal proceeding that concerns the falsity of the information.

Compare: 2009 No 35 s 9(2)

Section 292A: inserted, on 2 March 2018, by section 28 of the Food Safety Law Reform Act 2018 (2018 No 3).

293 Require production of information if reasonable belief that requirement of this Act has been breached

- (1) This section applies if the chief executive reasonably believes that, in breach of a requirement of this Act, a person is in possession of—
 - (a) any food for sale; or
 - (b) any substance, appliance, or food-related accessory used in producing or processing and handling food for sale; or
 - (c) any advertisements or labels about food for sale.
- (2) The chief executive may—
 - (a) require the person to produce any information about the importation, purchase, reception, manufacture, processing and handling, preparation, packing, storage, transport, delivery, or sale of the food, substance, appliance, or food-related accessory to the chief executive or a food safety officer; and
 - (b) copy the information or require a food safety officer to copy the information.
- (3) A copy made under subsection (2), certified by the chief executive or the food safety officer as a true and correct copy, is presumed to be a true and correct copy until the contrary is proved.
- (4) For the purposes of this section, any thing that has been seized or detained, whether under this Act or any other enactment, must be treated as being in the possession of the person who had it in his or her possession when it was seized or ordered to be detained.
- (5) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to requirements made, and the copying of information, under this section.

Rights of access of verifiers, verification agencies, recognised persons, and recognised agencies

Heading: replaced, on 2 March 2018, by section 29 of the Food Safety Law Reform Act 2018 (2018 No 3).

294 Rights of access and related powers and duties of verifiers and verification agencies

- (1) The operator of a food business that is operating under a risk-based measure must provide a verifier or verification agency with the following:

- (a) reasonable access to the places covered by the risk-based measure that is being verified; and
 - (b) reasonable access to the risk-based measure; and
 - (c) reasonable access to information about the risk-based measure; and
 - (d) reasonable access to documents that are required to be kept under the risk-based measure; and
 - (e) reasonable access to food and to food-related accessories that are used in connection with the risk-based measure or that ought to be used in connection with the risk-based measure.
- (2) The following duties apply:
- (a) a verifier or verification agency must give the operator reasonable notice of the verifier's or verification agency's intention to carry out the verification; and
 - (b) the verifier or each person authorised by the verification agency to carry out the verification must identify himself or herself on entry to the place and when asked at any time by any person at the place.
- (3) A verifier or verification agency is not required to comply with subsection (2)(a) if giving notice would defeat the purpose of the particular visit.
- (4) A verifier or verification agency may do 1 or both of the following if necessary for the purpose of the verification:
- (a) open food-related accessories, such as containers and packages, used in connection with the risk-based measure and verify their contents;
 - (b) identify or mark food and food-related accessories.
- (5) A verifier or verification agency may ask an operator or another person for assistance in carrying out a verification.
- (6) A person providing assistance under subsection (5) is protected from civil and criminal liability for an act that the person does or omits to do—
- (a) under the supervision of, and as instructed by, the verifier or verification agency; and
 - (b) in good faith.
- (7) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to any information or document required to be produced under this section.

Section 294 heading: replaced, on 2 March 2018, by section 30(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 294(1): amended, on 2 March 2018, by section 30(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 294(2): replaced, on 2 March 2018, by section 30(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 294(3): amended, on 2 March 2018, by section 30(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 294(4): amended, on 2 March 2018, by section 30(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 294(5): amended, on 2 March 2018, by section 30(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 294(6)(a): amended, on 2 March 2018, by section 30(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

295 Rights of access and related powers and duties of recognised persons and recognised agencies

- (1) The operator of a food business must provide a recognised person or recognised agency (other than a verifier or verification agency) with the following, so as to enable the person or agency to perform functions or duties or exercise powers:
 - (a) reasonable access to places used by the operator for the business; and
 - (b) reasonable access to information relating to the business; and
 - (c) reasonable access to documents relating to the business; and
 - (d) reasonable access to food and to food-related accessories.
- (2) The following duties apply:
 - (a) a recognised person or recognised agency must give reasonable notice of the person's or agency's intention to perform the functions or duties or exercise the powers; and
 - (b) the recognised person or each person authorised by the recognised agency for the purposes of paragraph (a) must identify himself or herself on entry to the place and when asked at any time by any person at the place.
- (3) A recognised person or recognised agency is not required to comply with subsection (2)(a) if giving notice would defeat the purpose of the particular visit.
- (4) A recognised person or recognised agency may do 1 or both of the following if necessary for the purpose of performing the functions or duties or exercising the powers:
 - (a) open food-related accessories, such as containers and packages:
 - (b) identify or mark food and food-related accessories.
- (5) A recognised person or recognised agency may ask an operator or another person for assistance in performing the functions or duties or exercising the powers.
- (6) A person providing assistance under subsection (5) is protected from civil and criminal liability for an act that the person does or omits to do—

- (a) under the supervision of, and as instructed by, the recognised person or recognised agency; and
 - (b) in good faith.
- (7) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to any information or document required to be produced under this section.

Section 295 heading: replaced, on 2 March 2018, by section 31(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 295(1): amended, on 2 March 2018, by section 31(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 295(2): replaced, on 2 March 2018, by section 31(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 295(3): amended, on 2 March 2018, by section 31(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 295(4): amended, on 2 March 2018, by section 31(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 295(5): amended, on 2 March 2018, by section 31(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 295(6)(a): amended, on 2 March 2018, by section 31(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Powers and duties of food safety officers

296 Powers in sections 292 and 293 exercisable by food safety officers

A food safety officer may exercise the powers of the chief executive under sections 292 and 293 and has the same immunity and other protections that the chief executive has in exercising those powers.

297 Power to ask for assistance

- (1) A food safety officer who considers it necessary to do so may ask a person for assistance in performing the officer's functions or duties, or exercising the officer's powers, under a requirement of this Act (other than the power of entry under section 310).
- (2) If the person agrees to assist, he or she—
 - (a) must act under the supervision of, and as instructed by, the officer; and
 - (b) may accompany the officer into any place that the officer enters.
- (3) The person is protected from civil and criminal liability for an act that the person does or omits to do—
 - (a) under the supervision of, and as instructed by, the officer; and
 - (b) in good faith.

298 Purposes of powers in sections 296, 299 to 308, and 310 to 312

A food safety officer may exercise a power in any of sections 296, 299 to 308, and 310 to 312 only for 1 or more of the following purposes:

- (a) to determine whether the applicable requirements of this Act have been, or are being, complied with;
- (b) to ensure that the applicable requirements of this Act have been, or are being, or will be complied with;
- (c) to investigate any thing that might have, or might potentially have, contaminated food or a food-related accessory;
- (d) to determine whether food is safe and suitable;
- (e) to determine whether food or a food-related accessory poses a risk to human life or public health.

299 Powers to facilitate entry, search, and seizure

- (1) A food safety officer must take all reasonable steps to ensure that any equipment the officer has taken into a place is—
 - (a) free from contamination; and
 - (b) in good working order.
- (2) Section 110(e) of the Search and Surveillance Act 2012 applies.

300 Information powers and evidence gathering

- (1) A food safety officer may get a copy of a document relating to the applicable requirements of this Act by—
 - (a) copying the document at the place where it is; or
 - (b) removing the document to another place for as long as is necessary to copy it; or
 - (c) directing the person in charge of it to send the document or a copy of it to the officer by a reasonable means that the officer specifies and within a reasonable time that the officer specifies.
- (2) An officer may take photographs, video recordings, or other visual images.
- (3) An officer may take audio sound recordings.
- (4) An officer may make electronic records.
- (5) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done by an officer under this section.

301 Powers of examination, identification, and rectification, and associated detention powers

- (1) A food safety officer may examine every thing, process, or operation.
- (2) If an officer reasonably believes that any container, package, or other thing contains food or a food-related accessory, the officer may—

- (a) open the container, package, or other thing; or
 - (b) direct the owner, person in charge, or importer of the container, package, or other thing, or the owner or occupier of the place where it is, to open it.
- (3) An officer may identify food or a food-related accessory and require the person in charge to hold it, until a further lawful direction of the officer,—
- (a) at the place where the food or food-related accessory is; or
 - (b) at any other reasonable place that the officer specifies.
- (4) An officer may use, or require the use of, a reasonable means to identify or mark food or a food-related accessory.
- (5) An officer may do the following to food or a food-related accessory:
- (a) secure it by—
 - (i) marking it; or
 - (ii) using some other means; and
 - (b) hold it at a place; and
 - (c) direct its owner not to trade in it or use it until—
 - (i) the results of testing are available; or
 - (ii) necessary remedial action has been completed.
- (6) An officer may require that food, imported food, food that is being held before export, or a food-related accessory be rectified if the officer reasonably believes that it—
- (a) is not safe and suitable; and
 - (b) does not comply with the applicable requirements of this Act.

302 Power to issue improvement notice

- (1) A food safety officer may issue an improvement notice to any person if the officer reasonably believes that the person is failing, or has failed, to comply with 1 or more applicable requirements of this Act.
- (2) An improvement notice must state—
- (a) the applicable requirement of this Act that the food safety officer reasonably believes the person is failing, or has failed, to comply with; and
 - (b) the reasons for the food safety officer's reasonable belief; and
 - (c) the nature and extent of the failure to comply with the requirement; and
 - (d) the date by which the person must comply with the requirement; and
 - (e) the person's right, under section 303, to seek a review of the decision to issue the improvement notice.
- (3) A food safety officer may, by written notice, withdraw an improvement notice at any time, but may reissue it if subsection (1) applies.

- (4) An improvement notice must be issued in accordance with section 378.
- (5) A person to whom an improvement notice is issued must comply with the notice, subject to any extension of the date by which the person must comply with the applicable requirement of this Act that the food safety officer may grant on the person's request.

303 Review of improvement notice

- (1) A person to whom an improvement notice is issued under section 302 may apply to have it reviewed.
- (2) For the purposes of subsection (1), sections 355(2) to (4), 356(1) and (3), 358, and 359 apply to an improvement notice, subject to the following modifications:
 - (a) the improvement notice must be treated as if it were a decision described in section 354(4); and
 - (b) any references in those sections to the notice of the decision must be read as if they were references to the improvement notice; and
 - (c) any references in those sections to the relevant territorial authority must be read as if they were references to the food safety officer who issued the improvement notice (the **issuing officer**); and
 - (d) any references in those sections to the chief executive must be read as if they were references to—
 - (i) the territorial authority that employs, or has engaged, the issuing officer, if that issuing officer is employed or engaged by a territorial authority; or
 - (ii) the chief executive, if the issuing officer is employed or engaged by the chief executive; and
 - (e) any references to the Ministry must be read as if they were references to—
 - (i) the territorial authority that employs, or has engaged, the issuing officer, if that issuing officer is employed or engaged by a territorial authority; or
 - (ii) the Ministry, if the issuing officer is employed or engaged by the chief executive.
- (3) The chief executive may initiate a review of a food safety officer's decision to issue an improvement notice on his or her initiative and without an application for review being made under subsection (1).
- (4) For the purposes of subsection (3), sections 358 and 359 apply to the improvement notice, subject to the following modifications:
 - (a) the improvement notice must be treated as if it were a decision described in section 354(4); and

- (b) any references in those sections to the chief executive must be read as if they were references to—
 - (i) the territorial authority that employs, or has engaged, the issuing officer, if that issuing officer is employed or engaged by a territorial authority; or
 - (ii) the chief executive, if the issuing officer is employed or engaged by the chief executive; and
 - (c) any references to the Ministry must be read as if they were references to—
 - (i) the territorial authority that employs, or has engaged, the issuing officer, if that issuing officer is employed or engaged by a territorial authority; or
 - (ii) the Ministry, if the issuing officer is employed or engaged by the chief executive.
- (5) Nothing in section 358(4) (as applied by subsection (2) or (4)) limits or affects the privilege against self-incrimination.

304 Powers to take, purchase, and sample

- (1) A food safety officer may buy or take advertisements or labels that the officer reasonably believes are intended for use in connection with the sale of food or a food-related accessory.
- (2) An officer may buy food.
- (3) An officer may take a sample of food.
- (4) An officer who wants to exercise the power in subsection (3) by taking a sample of food that is in an unopened package may direct the owner, person in charge, or importer of the food or food-related accessory, or the owner or occupier of the place where the food is, to open the package.
- (5) An officer may buy a food-related accessory.
- (6) An officer may take an example of a food-related accessory.
- (7) An officer may take a swab of a food-related accessory.
- (8) An officer may take a sample of any thing that is or has been or may be in contact with or in the vicinity of food or a food-related accessory.
- (9) An officer may direct the owner, person in charge, or importer of food or a food-related accessory, or the owner or occupier of the place where the food or food-related accessory is, to take a sample of the food or an example of the food-related accessory.
- (10) An officer who exercises the powers in any of subsections (2), (3), and (5) to (9) must tell the owner, person in charge, or importer of the food or food-related accessory, or the owner or occupier of the place where the food or food-related accessory is, whether or not the officer intends to exercise

the power in section 312. However, having told the owner, person in charge, importer, owner of the place, or occupier of the place that the officer intends to exercise the power in section 312, the officer is not required to exercise the power.

305 Power to interrupt operations and give certain directions

- (1) A food safety officer may, by a direction to the person in charge or in control of any food or any advertisement, label, process, operation, or food-related accessory, interrupt, restrict, or prohibit the use of the food, advertisement, label, process, operation, or food-related accessory.
- (2) An officer may direct the person in charge or in control of food or any advertisement, label, process, operation, or food-related accessory to take any reasonable action that the officer specifies.

306 Powers to seize, condemn, and require disposal

- (1) A food safety officer may seize, detain, and dispose of food or a food-related accessory if the officer reasonably believes that the food or food-related accessory does not comply with the applicable requirements of this Act.
- (2) An officer may seize and detain food or a food-related accessory if the officer reasonably believes that the food or food-related accessory constitutes a risk to human life or public health.
- (3) An officer may seize and detain food or a food-related accessory if the officer reasonably believes, after making the inquiries that are reasonable in the circumstances, that the food or food-related accessory—
 - (a) has been abandoned; or
 - (b) has no apparent or readily identifiable owner.
- (4) An officer may seize and detain advertisements or labels that breach or fail to comply with a requirement of this Act.
- (5) An officer may condemn or dispose of food or a food-related accessory that the officer reasonably believes is not safe or not suitable for human consumption.
- (6) An officer may condemn and require the disposal of food that the officer reasonably believes is not safe or not suitable for human consumption.
- (7) An officer may seize and dispose of food that the officer reasonably believes is not safe or not suitable for human consumption.
- (8) An officer may reasonably believe that an entire consignment or batch of food is not safe or not suitable for human consumption for the purpose of exercising a power in any of subsections (5) to (7) if the officer—
 - (a) samples part of the consignment or batch; and
 - (b) forms the opinion that the sample is unsafe for human consumption; and
 - (c) forms the opinion that the consignment or batch—

- (i) has probably been managed in the same way as the sample; or
 - (ii) has been subject to the same conditions or treatment as the sample.
- (9) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118, 119, 125(4), 131(5)(f), and 133) applies.

307 Power to restrict use of or close place

A food safety officer may restrict the use of or close, a place for non-compliance with the applicable requirements of this Act that the officer reasonably believes would result in food not being safe or suitable.

308 Other powers

- (1) A food safety officer may ask about a document relating to the applicable requirements of this Act.
- (2) An officer may require a person in possession of food for sale, or for delivery, to state—
 - (a) the person's full name and full address; and
 - (b) the person's telephone numbers; and
 - (c) the person's date of birth; and
 - (d) the person's occupation; and
 - (e) the full name and full address of the person from whom the food was obtained, if that person is known; and
 - (f) whether the person is employed or self-employed, and (if an employee) the name of the person's employer.
- (3) An officer may exclude a particular person from all or part of a place.
- (4) Subsection (5) applies if a food safety officer believes on reasonable grounds that a person is committing or has committed an offence against this Act.
- (5) If this subsection applies, a food safety officer may at any reasonable time—
 - (a) question the person believed to be committing or to have committed an offence or any other person; and
 - (b) require the person being questioned to provide an answer, including any explanation or information concerning any food or food-related accessory or any place, record, document, or thing relating to trade in any food.
- (6) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to any information or document required to be produced under this section.

309 Means of exercising powers in sections 299 to 308

- (1) This section applies to the powers in sections 299 to 308.

- (2) A food safety officer may exercise any of the powers if the officer enters a place, as described in section 310.
- (3) An officer may exercise any of the powers if the officer has not exercised a power to enter a place but is at the place.
- (4) An officer may exercise any of the powers by a telecommunication means if doing so is reasonable in the circumstances.
- (5) An officer who intends to exercise a power under subsection (4) must—
 - (a) use the means only at a reasonable time; and
 - (b) make a reasonable effort to speak to the person in charge of the place where food or a food-related accessory is; and
 - (c) make a reasonable effort to ensure that the person to whom the officer is speaking understands that the officer is a food safety officer before the officer exercises the power.
- (6) An officer may exercise any of the powers by an electronic means if doing so is reasonable in the circumstances.
- (7) An officer who intends to exercise a power under subsection (6) must—
 - (a) make a reasonable effort to communicate with the person in charge of the place where food or a food-related accessory is; and
 - (b) make a reasonable effort to ensure that the person with whom the officer is communicating understands that the officer is a food safety officer before the officer exercises the power.
- (8) Section 131 of the Search and Surveillance Act 2012 applies.
- (9) An officer is not required to comply with section 131(1) of the Search and Surveillance Act 2012 if the place is an authorised place that is owned or occupied by the Crown.

310 Powers to enter

- (1) An officer's power to enter without a search warrant is described in section 311.
- (2) An officer's power to enter with a search warrant is described in sections 322 to 327.

311 Power to enter without search warrant

- (1) A food safety officer may enter a place described in subsection (2) without a search warrant.
- (2) The places are—
 - (a) a place where a food business operates;
 - (b) a place where a person intends to operate a food business;
 - (c) the specific place in a dwellinghouse or marae where a food business operates;

- (d) the places necessary to get to the specific place in the dwellinghouse or marae where a food business operates:
 - (e) a place, except a dwellinghouse or marae, where the officer reasonably believes documents relating to trading in food will be found:
 - (f) a place, except a dwellinghouse or marae, adjoining or near to a food business where the officer reasonably believes activities are being carried out that adversely affect the food business:
 - (g) a place, except a dwellinghouse or marae, adjoining or near to a food business whose conditions the officer reasonably believes are adversely affecting the food that the food business is trading in:
 - (h) an international port:
 - (i) an authorised place:
 - (j) any other place, except a dwellinghouse or marae, where the officer reasonably believes that—
 - (i) imported food is held; or
 - (ii) food is being traded in; or
 - (iii) a food-related accessory is being traded in.
- (3) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118 and 119) applies to anything done by an officer under this section.
- (4) Any exercise of the power of entry at a marae or a building associated with a marae must take account of the kawa of the marae so far as practicable in the circumstances.

312 Power to test samples of food or examples of food-related accessories

- (1) This section applies to a food safety officer who acquires a sample of food or an example of a food-related accessory—
- (a) under section 304; or
 - (b) from a member of the public who has complained about the food or food-related accessory.
- (2) The officer may—
- (a) test the sample or example; or
 - (b) arrange for the testing of the sample or example; or
 - (c) require the owner, person in charge, or importer of the food or food-related accessory, or the owner or occupier of the place, to—
 - (i) arrange for the testing of the sample or example; and
 - (ii) provide the results to the officer.

- (3) The owner, person in charge, or importer of the food or food-related accessory, or the owner or occupier of the place from which the sample or example was acquired,—
 - (a) must pay the costs reasonably incurred in taking the sample or example and testing it; and
 - (b) is not entitled to compensation for losses resulting from the taking or testing of a sample or example if the taking or testing was reasonable and was done in a reasonable manner.

313 Duties relating to imported consignments

- (1) If food or a food-related accessory seized and detained under section 306 is still under the control of Customs or has not been given a biosecurity clearance by the Ministry, the food safety officer must give written notice to Customs or the Ministry.
- (2) Customs or the Ministry must ensure that the food or food-related accessory is not released from the control of Customs, or destroyed by Customs or the Ministry, until the food safety officer has given his or her written consent.

314 Detaining food or food-related accessory seized

- (1) This section applies to food or a food-related accessory that a food safety officer seizes and detains under section 306.
- (2) The officer may decide that the food or food-related accessory must be detained at the place where the officer seized it.
- (3) Alternatively, the officer may decide that the food or food-related accessory must be removed to another place and detained there.
- (4) Food or a food-related accessory to which subsection (3) applies is removed and detained at the cost of the person who imported it or who owned it at the time it was seized.
- (5) However, if the officer does not know who the importer or owner is, the food or food-related accessory is removed and detained at the cost of the person who possessed it at the time it was seized.
- (6) The chief executive may waive the payment of all or any of the cost referred to in subsection (4) or (5) if he or she is satisfied that, in all the circumstances, it would be unreasonable or inappropriate to require the person to pay all or any of the cost.
- (7) Despite subsection (6), if the officer is employed or engaged by a territorial authority, the authority or a person authorised by it may exercise the power in that subsection.

315 Exporting or returning imported food or food-related accessory that has been detained

- (1) If the chief executive does not give directions under section 279 about imported food or an imported food-related accessory that a food safety officer seized and detained under section 306, the officer must offer the importer, subject to any conditions that the chief executive may impose (if any), the options of—
 - (a) exporting it; or
 - (b) returning it to its place of origin.
- (2) In determining whether to impose conditions for the purposes of subsection (1), the chief executive may take into account the following matters:
 - (a) the requirements of the place of origin or the destination markets of the imported food or imported food-related accessory;
 - (b) the reason for the seizure of the imported food or imported food-related accessory;
 - (c) New Zealand's international obligations.
- (3) All costs reasonably incurred in the seizure, detention, and disposal—
 - (a) must be paid by the importer before the disposal; and
 - (b) are recoverable from the importer as a debt due to the Crown.

316 Releasing food or food-related accessory that has been detained

- (1) A food safety officer must release food or a food-related accessory that the officer seized and detained under section 306 when satisfied that—
 - (a) the costs of removal and detention under section 314 have been paid and the other applicable requirements of this Act have been complied with; and
 - (b) the food or food-related accessory is safe and suitable; and
 - (c) the food or food-related accessory is not required as evidence in proceedings for an offence against this Act.
- (2) The officer must release the food or food-related accessory to the person who possessed it at the time it was seized.

317 Application to District Court for return of seized food or food-related accessory

- (1) This section applies when a person claims an interest in food or a food-related accessory that has been seized and detained.
- (2) The person may apply to the District Court for an order described in section 318.
- (3) The application must—
 - (a) be made as an originating application; and

- (b) be made within 5 working days of the seizure and detention; and
- (c) be served on the respondent on or before the date on which it is filed in the court; and
- (d) be filed in the office of the court nearest to the place where the food or food-related accessory was seized and detained; and
- (e) be dealt with as an originating application; and
- (f) be dealt with under the rules of procedure under the District Court Act 2016, as modified by paragraphs (a) to (e).

Section 317(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 317(3)(f): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

318 District Court may order return of seized food or food-related accessory

- (1) This section applies when a person applies to the District Court under section 317.
- (2) The court may order that—
 - (a) the seizure of the food or food-related accessory be disallowed as to all the food or food-related accessory or a part of it and that the food or food-related accessory, or part of it, be returned or made available to the person within the time specified in the order; or
 - (b) the detention of the food or food-related accessory be ended as to all the food or food-related accessory or a part of it and that the food or food-related accessory, or part of it, be returned or made available to the person within the time specified in the order.
- (3) Alternatively, the court may refuse the application.
- (4) The court must not make an order under subsection (2) if the court considers that—
 - (a) the use to which the food or food-related accessory, or the part of it, is intended to be put is likely to involve the commission of an offence; or
 - (b) the continued detention of the food or food-related accessory, or the part of it, is expedient for the purposes of an investigation or proceedings pending under this Act; or
 - (c) that the food or food-related accessory may be liable to forfeiture.
- (5) The court may impose conditions on an order it makes under subsection (2).
- (6) An order under subsection (2) is final and binding on all parties.

Section 318(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

319 Food or food-related accessory unable to be released

- (1) This section applies when—

- (a) a food safety officer has seized and detained food or a food-related accessory under section 306; and
 - (b) the officer cannot release the food or food-related accessory under section 316; and
 - (c) either—
 - (i) no one has applied for disallowance of the seizure and detention; or
 - (ii) all proceedings about disallowance have been determined or the time for bringing them has ended.
- (2) If the food safety officer had a contract of service or a contract for services with the Ministry at the time of the seizure and detention, the food or food-related accessory becomes the property of the Ministry.
- (3) If the officer had a contract of service or a contract for services with a territorial authority at the time of the seizure and detention, the food or food-related accessory becomes the property of the territorial authority.
- (4) The food or food-related accessory is disposed of at the cost of its importer or owner at the time it was seized.
- (5) All costs reasonably incurred in the seizure, detention, and disposal—
- (a) must be paid by the importer or owner before the disposal; and
 - (b) are recoverable from the importer or owner as a debt due to the Crown.
- (6) If the officer does not know who the importer or owner is, the food or food-related accessory is disposed of at the cost of the person who possessed it at the time it was seized.
- (7) The chief executive may waive the payment of all or any of the costs referred to in subsection (5) if he or she is satisfied that, in all the circumstances, it would be unreasonable or inappropriate to require the person to pay all or any of the costs.
- (8) Despite subsections (5) to (7), if the officer is employed or engaged by a territorial authority,—
- (a) the costs referred to in subsections (5) and (6) are recoverable by the authority; and
 - (b) the authority or a person authorised by it may exercise the power in subsection (7).

320 Reasonable belief by food safety officer

If this Act requires a food safety officer to reasonably believe something before exercising a power, it is sufficient if a more highly ranked food safety officer or the chief executive reasonably believes it and directs the food safety officer to exercise the power.

321 Matters may be continued by different food safety officer

- (1) An action initiated or taken under this Act by a food safety officer may be continued by another food safety officer.
- (2) Without limiting subsection (1), if an officer has given any notice, authorisation, or consent under this Act (whether or not subject to conditions), any food safety officer may—
 - (a) take further steps on or in relation to that notice, authorisation, or consent; or
 - (b) revoke or withdraw it; or
 - (c) vary it; or
 - (d) revoke or vary any condition on or subject to which it was given.

Section 321 heading: amended, on 2 March 2018, by section 32(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 321(1): amended, on 2 March 2018, by section 32(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Search warrants

322 Application for search warrant

- (1) The following provisions of the Search and Surveillance Act 2012 apply in relation to applications for a search warrant:
 - (a) section 98 (application for search warrant):
 - (b) section 99 (application must be verified):
 - (c) section 100 (mode of application for search warrant).
- (2) A constable or a food safety officer may apply to an issuing officer for a search warrant.

Section 322(2): replaced, on 2 March 2018, by section 33 of the Food Safety Law Reform Act 2018 (2018 No 3).

323 Issue of search warrant

- (1) This section applies if an issuing officer reasonably believes that there is, at a place, any thing—
 - (a) in relation to which an offence against this Act has been or is being committed; or
 - (b) that has been, is being, or is intended to be used by a person for the commission of an offence against this Act; or
 - (c) that is evidence of the commission of an offence against this Act.
- (2) The issuing officer may issue a search warrant for a place.
- (3) Sections 102 to 104 and 107 and subpart 5 of Part 4 of the Search and Surveillance Act 2012 apply.

324 Who can execute search warrant

Whoever the warrant is directed to, it may be executed by—

- (a) any constable; or
- (b) any food safety officer.

325 Use of copy of search warrant

Section 105 of the Search and Surveillance Act 2012 applies.

326 Powers under search warrant

- (1) This section applies to a constable or food safety officer who is authorised by a search warrant to exercise powers at a place.
- (2) Any exercise of the powers at a marae or a building associated with a marae must take account of the kawa of the marae so far as practicable in the circumstances.
- (3) The constable or officer may search for, inspect, and seize food or a food-related accessory that the constable or officer reasonably suspects has been the subject of a direction to recall food or a food-related accessory given by the chief executive under section 284 that has not been complied with.
- (4) The constable or officer may exercise—
 - (a) all the powers of a food safety officer under any of sections 299 to 308 and 312; or
 - (b) the powers of a food safety officer specified in the warrant.
- (5) Section 110 of the Search and Surveillance Act 2012 applies.

327 Carrying out search powers

- (1) Sections 106, 111 to 114, 115(1)(b) and (3), 116 to 130, 131(1) to (5), and 132 to 135 of the Search and Surveillance Act 2012 apply.
- (2) However, sections 118 and 119 of that Act apply only to search warrants issued to constables.

328 Disposal of property seized under search warrant

- (1) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 4, and 8) applies.
- (2) If a person applies to the court under subpart 6 of Part 4 of the Search and Surveillance Act 2012, the court must take into account whether or not the property is safe or suitable.

329 Retention of documents

Section 101 of the Search and Surveillance Act 2012 applies to a copy (whether in electronic form or otherwise) of every written application for a

search warrant or (in the case of an oral application) the record of the application made by the issuing officer.

Compliance orders

330 Meaning of compliance order

- (1) In sections 331 to 342, **compliance order**—
 - (a) means an order made by the District Court under this section about anything that, in the court’s opinion, breaches or is likely to breach a requirement of this Act; and
 - (b) to avoid doubt, includes an order that has been confirmed or changed under section 337.
- (2) The order may prohibit a person from starting anything that the person—
 - (a) intends to do; or
 - (b) intends to have done by another person.
- (3) The order may require a person to stop anything that the person—
 - (a) is doing; or
 - (b) is having done by another person.
- (4) The order may require a person to do something to avoid, remedy, or mitigate any actual or likely adverse effect of anything that the person—
 - (a) is doing; or
 - (b) intends to do; or
 - (c) is having done by another person; or
 - (d) intends to have done by another person.
- (5) The order may require a person to meet the actual and reasonable costs and expenses that the Crown or a territorial authority has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect of the person’s failure to comply with a compliance order made against the person earlier.
- (6) For the purposes of subsection (5), actual and reasonable costs and expenses include—
 - (a) the costs of investigation, supervision, and monitoring; and
 - (b) the costs of actions required to avoid, remedy, or mitigate the adverse effect.

Section 330(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

331 Application for compliance order

- (1) The following may apply to the District Court for a compliance order:
 - (a) the chief executive; or

- (b) a territorial authority.
- (2) An application under this section—
 - (a) must be made by originating application; and
 - (b) is subject to the District Court Rules 2014, as modified by—
 - (i) sections 333 to 336; and
 - (ii) rules made under section 342.

Section 331(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 331(2)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

332 Notification of application

- (1) The chief executive or, as the case may be, the territorial authority concerned must serve notice of the application on every person whom it directly affects.
- (2) The notice must be served within—
 - (a) 5 working days after the date on which the application is filed in the court; or
 - (b) a longer time that the court allows.
- (3) Nothing in this section applies to an interim compliance order made under section 335.

333 Right to be heard on application

- (1) The court must hear—
 - (a) the applicant; and
 - (b) every person against whom the order is sought who wishes to be heard.
- (2) Nothing in this section applies to an interim compliance order made under section 335.

334 Decision on application

- (1) The court may—
 - (a) make a compliance order; or
 - (b) refuse to make a compliance order.
- (2) The court may make a compliance order on any terms that it considers appropriate, including the provision of security or the entry into a bond for performance.
- (3) The court may order that a compliance order applies to the personal representatives, successors, and assignees of the person to whom the order is addressed to the same extent as it applies to the person.
- (4) A compliance order takes effect when the later of the following occurs:
 - (a) the order is served; or

- (b) a date stated in the order is reached.

335 Interim compliance orders

- (1) The District Court may make an interim compliance order without—
 - (a) requiring service under section 332; or
 - (b) holding a hearing.
- (2) The court must consider—
 - (a) whether human life or public health is likely to be endangered through the sale of the food or food-related accessory concerned if the order is not made; and
 - (b) whether the integrity of a statement made under section 290 is likely to be prejudiced if the order is not made; and
 - (c) whether the court should hear the applicant or any person against whom the order is sought; and
 - (d) any other matters that the court considers appropriate.
- (3) The court must direct the applicant or another person to serve a copy of the interim compliance order on the person or persons against whom the order is made.
- (4) The interim compliance order—
 - (a) takes effect when the later of the following occurs:
 - (i) the order is served; or
 - (ii) a date stated in the order is reached; and
 - (b) remains in force until the earlier of the following occurs:
 - (i) the application for a compliance order is determined; or
 - (ii) the interim order is cancelled under section 337.

Section 335(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

336 Form and content of interim compliance order or compliance order

An interim compliance order or a compliance order must state—

- (a) the name or names of the person or persons against whom it is made; and
- (b) the reasons for the order; and
- (c) the action required to be taken, stopped, or prohibited; and
- (d) the period within which the action must be taken or stopped (which must be a reasonable period within which to take the action or to stop the action); and
- (e) the consequences of not complying with the order or lodging an appeal against the order; and

- (f) the right to apply under section 337 for the order to be changed or cancelled, and the right to appeal against the order under section 339; and
- (g) the name and office address of the applicant.

337 Change or cancellation of interim compliance order or compliance order

- (1) A person against whom an interim compliance order has been made without the person having been heard may apply to the District Court to change or cancel the order.
- (2) The court—
 - (a) must hear from the person and the applicant for the order; and
 - (b) may confirm, change, or cancel the interim compliance order.
- (3) A person directly affected by a compliance order may apply to the District Court to change or cancel the order.
- (4) The applicant under subsection (3) must serve notice of the application—
 - (a) within 5 working days after making the application; and
 - (b) on the applicant for the original compliance order (that is, either the chief executive or, as the case may be, the territorial authority concerned); and
 - (c) on any other person who was directly affected by the original compliance order.
- (5) The court must hear—
 - (a) the applicant under subsection (3); and
 - (b) the applicant for the original compliance order; and
 - (c) any other person who—
 - (i) was directly affected by the original compliance order; and
 - (ii) wishes to be heard.
- (6) The court may—
 - (a) change or cancel the compliance order; or
 - (b) refuse to change or cancel the compliance order.
- (7) The court hearing an application under this section has the same powers under section 334 as the court that heard the original compliance order had under that section.

Section 337(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 337(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

338 Compliance with interim compliance order or compliance order

- (1) A person against whom an interim compliance order or a compliance order is made and served must—
 - (a) comply with the order; and
 - (b) pay all the costs and expenses of complying with the order, unless the order states otherwise.
- (2) An amount payable under an order is recoverable in the same manner as a fine.
- (3) If the person fails to comply with the order, the chief executive or, as the case may be, the territorial authority concerned, may, with the consent of the court, comply with the order on the person's behalf.
- (4) For the purposes of subsection (3), the chief executive or relevant territorial authority may—
 - (a) exercise, or direct the exercise of, any of the powers of a food safety officer; and
 - (b) recover the costs and expenses reasonably incurred in complying with the order as a debt due from the person against whom the order was made.

339 Appeals to High Court

- (1) This section applies to a decision of the District Court under section 334, 335, or 337.
- (2) The following persons may appeal to the High Court against the decision:
 - (a) a party to the application on which the decision was made; or
 - (b) any other person directly affected by the decision.
- (3) The High Court Rules 2016 and sections 126 to 130 of the District Court Act 2016 apply to an appeal under subsection (2)—
 - (a) as if it were an appeal under section 124 of the District Court Act 2016; and
 - (b) with all necessary modifications.

Section 339(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 339(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 339(3): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 339(3)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

340 Appeals to Court of Appeal or Supreme Court

- (1) A party to an appeal under section 339 may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court on a question of law arising in that appeal, with the leave of the court appealed to.
- (2) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.
- (3) Subsection (1) is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

Section 340(3): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

341 Effect of appeal

- (1) The operation of an order that is the subject of an appeal under section 339 or 340 is not suspended by the appeal unless the court appealed to makes an order to that effect under subsection (4).
- (2) The order that is the subject of the appeal may be enforced in the same manner in all respects as if no appeal were pending.
- (3) Subsections (1) and (2) apply unless the court making the order appealed from directs otherwise.
- (4) The court appealed to may, on application, make an order suspending the order that is the subject of the appeal, pending its determination of the appeal.

342 Rules of court

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make rules—
 - (a) regulating the practice and procedure of the District Court in proceedings under this Act that relate to orders under sections 334 to 337:
 - (b) providing for matters contemplated by, or necessary for giving full effect to, the provisions of this Act that relate to orders under sections 334 to 337.
- (2) The power in subsection (1) is additional to all other powers conferred on the Governor-General by the District Court Act 2016.
- (3) Rules under subsection (1)(b) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (4) As to rules referred to in subsection (1)(a), *see* section 228 of the District Court Act 2016, which provides that court rules are secondary legislation.

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 342(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 342(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 342(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 342(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 5

Miscellaneous provisions

Subpart 1—Exemptions

Exemption from application of this Act generally

343 Exemption by Order in Council from application of this Act generally

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations exempting the following from the application of all or any requirements of this Act:
 - (a) any food or any 1 or more classes or descriptions of food:
 - (b) any 1 or more classes or descriptions of persons who trade in food:
 - (c) any 1 or more classes or descriptions of operations or places in relation to any trade in food:
 - (d) any combination of the things referred to in paragraphs (a) to (c).
- (2) An exemption under this section may be subject to any conditions specified in the regulations.
- (3) An exemption under this section may have retrospective effect.
- (4) This section is not limited by section 33.
- (5) Regulations under this section—
 - (a) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
 - (b) may have effect in accordance with subsection (3) even if not yet published.

Compare: 1999 No 93 s 9(1), (5)

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 343(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

344 When Minister may recommend exemption under section 343

Before recommending the making of regulations under section 343, the Minister must—

- (a) be satisfied that, taking into account the matter to be exempted, 1 or more of the following applies:
 - (i) the risk to public health of providing the exemption is negligible; or
 - (ii) there are other sufficient safeguards under this Act or any other enactment, or by other means, to minimise any risk to public health in providing the exemption; or
 - (iii) there are requirements in another enactment or there are other means that deal with the matter to be exempted besides the applicable requirement of this Act; and
- (b) take into account the following matters:
 - (i) the need to protect public health;
 - (ii) the desirability of avoiding unnecessary restrictions on trade;
 - (iii) the desirability of maintaining consistency between the standards in regulations made under section 383 and any relevant standards, requirements, or recommended practices that apply or are accepted internationally;
 - (iv) the need to give effect to New Zealand's obligations under a relevant international agreement, convention, protocol, or treaty;
 - (v) the identifiable costs of the exemption, who bears those costs, and the positive and negative effects on New Zealand consumers and food businesses;
 - (vi) the most effective way of achieving the safety and suitability of food;
 - (vii) any other matters that the Minister considers relevant; and
- (c) be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.

Compare: 1999 No 93 s 9(2), (4)

Exemptions for certain exports

345 Exemption by Order in Council for certain exports

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations exempting food that is to be exported from the requirements of all or any of the following:
 - (a) adopted joint food standards or domestic food standards, in the case of food intended for export to a destination other than Australia:
 - (b) regulations made under section 383:
 - (c) notices made under section 405.
- (2) An exemption under subsection (1) may apply to—
 - (a) exports to any destination; or
 - (b) exports to specified destinations; or
 - (c) exports to any destination other than specified destinations.
- (3) An exemption under subsection (1) may be subject to any conditions specified in the regulations.
- (4) Without limiting anything in this section, food to be exported that may be exempted by Order in Council under subsection (1) includes—
 - (a) food that does not meet New Zealand’s labelling requirements:
 - (b) food that does not meet New Zealand’s compositional requirements because of what it contains or does not contain:
 - (c) food that does not meet New Zealand’s food labelling and compositional requirements.
- (5) To avoid doubt, nothing in this section has the effect of exempting food that is to be exported from any requirements specified in a notice issued under section 60 of the Animal Products Act 1999.
- (6) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 345(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

346 When Minister may recommend exemption under section 345

Before recommending the making of regulations under section 345, the Minister must be satisfied that—

- (a) the exemption is necessary or desirable to facilitate access to an overseas market or to overseas markets; and
- (b) he or she has taken into account the requirements of the overseas market or overseas markets to which the food is to be exported; and
- (c) in the case of regulations that would grant an exemption for food intended for export to Australia, the appropriate Australian authority has been consulted; and
- (d) if appropriate, the risks in relation to the safety and suitability of the food are managed by an applicable risk management programme or regulated control scheme under the Animal Products Act 1999 or any other applicable risk-based measure; and
- (e) there has been appropriate consultation on the regulations in accordance with section 379.

347 Exemption by chief executive

- (1) The chief executive may, by notice under section 405, exempt food that is to be exported from the requirements of all or any of the following:
 - (a) adopted joint food standards or domestic food standards, in the case of food intended for export to a destination other than Australia:
 - (b) regulations made under section 383:
 - (c) notices made under section 405.
- (2) Before issuing the notice, the chief executive must—
 - (a) be satisfied that the exemption is necessary or desirable to facilitate access to an overseas market or to overseas markets; and
 - (b) be satisfied that, if appropriate, the risks in relation to the safety and suitability of food are managed by an applicable risk management programme or regulated control scheme under the Animal Products Act 1999 or any other applicable risk-based measure; and
 - (c) take into account the requirements of the overseas market or overseas markets to which the food is to be exported.
- (3) An exemption under subsection (1)—
 - (a) must be specific to a particular market or markets and to a particular food; and
 - (b) may be subject to any conditions that the chief executive may specify in the notice.
- (4) A notice issued under section 405 in reliance on this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless the notice applies only to 1 or more named persons.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)

Publication	The maker must: <ul style="list-style-type: none">• publish it on the maker's website• publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none">• state in the notice where it is available• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A) The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 73, 74(1)(a), Sch 1 cl 14 LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 347(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

348 Relationship between sections 345 and 347 and Animal Products Act 1999

- (1) Sections 345 and 347 may be used to exempt food that is also an animal material or animal product under the Animal Products Act 1999.
- (2) Nothing in section 345 or 347 limits or affects the application of any notice made under section 60B, or any regulations made under section 60B or 166, of the Animal Products Act 1999.

Other exemptions

349 Exemption for certain persons covered by Animal Products Act 1999

- (1) This section applies to a person who—
 - (a) is required to have, or has, a registered risk management programme under the Animal Products Act 1999; or
 - (b) is covered by a regulated control scheme under that Act for the production and processing of an animal material or animal product; or
 - (c) is exempt under section 9 or 14 of that Act from the requirement to have a risk management programme for an animal material or animal product unless the exemption is provided on the ground that the person is operating, or is required to operate, under a risk-based measure; or
 - (d) is exempt under section 13(3) of that Act from the requirement to operate under a risk management programme.
- (2) A person to whom this section applies is exempt from the requirement to operate under an applicable risk-based measure for the activities to which the risk management programme, regulated control scheme, or exemption relates.

350 Exemption for certain persons covered by Wine Act 2003

- (1) Subsection (2) applies to a person who—
 - (a) is required to have, or has, a registered wine standards management plan under the Wine Act 2003 for the production and processing of a wine that is also food; or
 - (b) is exempt under section 6 or 11 of that Act or under regulations made under that Act from the requirement to have a wine standards management plan unless the exemption is provided on the ground that the person is operating, or is required to operate, under a risk-based measure.
- (2) A person to whom this subsection applies is exempt from the requirement to operate under the applicable risk-based measure for the activities to which the wine standards management plan or exemption relates.
- (3) Subsection (4) applies to a person who is in 1 or more classes of the following categories of persons:
 - (a) transporters of commodities or wine:
 - (b) producers of commodities:
 - (c) persons manufacturing wine products.
- (4) A person to whom this subsection applies is exempt from the requirement to operate under the applicable risk-based measure for the person's activities relating to the commodities, wine, or wine products.
- (5) In subsections (3) and (4), **commodity**, **wine**, and **wine product** have the meanings given to them in section 4 of the Wine Act 2003.

Subpart 2—Immunity, delegation, and review provisions*Protection from civil and criminal liability***351 Protection from civil and criminal liability**

- (1) This section applies to the following persons:
 - (a) the chief executive:
 - (b) an employee or agent of the Ministry:
 - (c) a member, an employee, or an agent of a territorial authority:
 - (d) an employee or agent of a recognised agency:
 - (e) a recognised person employed or engaged by a recognised agency:
 - (f) an employee or agent of a recognised person:
 - (g) a food safety officer:
 - (h) a person appointed to carry out a review under section 355.
- (2) The person is protected from civil and criminal liability, however it may arise, for any act that the person does or omits to do—

- (a) under a requirement of this Act; or
 - (b) in the performance or purported performance of the person's functions or duties, or the exercise or purported exercise of the person's powers, under a requirement of this Act—
 - (i) in good faith; and
 - (ii) with reasonable cause; or
 - (c) in the performance or purported performance of the person's functions or duties, or the exercise or purported exercise of the person's powers, under this Act—
 - (i) in good faith; and
 - (ii) with reasonable cause.
- (3) *See also* section 6 of the Crown Proceedings Act 1950.
- (4) A territorial authority has no immunity under subsection (2) for the actions or omissions of any member, employee, or agent of the territorial authority.

352 Immunity of food donors

- (1) A donor is protected from civil and criminal liability that results from the consumption of food donated by the donor if—
- (a) the food was safe and suitable when it left the possession or control of the donor; and
 - (b) as applicable, the donor provided the recipient with the information reasonably necessary to maintain the safety and suitability of the food.
- (2) In this section, **donor** means a person who donates food—
- (a) in good faith for a charitable, benevolent, or philanthropic purpose; and
 - (b) with the intention that the consumer of the food would not have to pay for it.

Delegation

353 Chief executive may delegate

- (1) The chief executive may delegate under clauses 2 and 3 of Schedule 6 of the Public Service Act 2020 all or any of his or her functions, duties, and powers under this Act.
- (2) Subsection (1) does not apply to the chief executive's power in section 410.

Section 353(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 353(2): amended, on 2 March 2018, by section 34 of the Food Safety Law Reform Act 2018 (2018 No 3).

*Review of decisions***354 Application of sections 355 to 360**

- (1) Sections 355(1), 356(1) and (2), 357, and 359 apply to decisions that—
 - (a) are described in subsection (2); and
 - (b) are made by—
 - (i) the chief executive; or
 - (ii) a person acting under the delegated authority of the chief executive.
- (2) The decisions are a decision to—
 - (1) refuse, under section 27, to include a person’s winemaking operations under the person’s registered food control plan or under a national programme; or
 - (2) refuse, under section 57, to register an amended food control plan; or
 - (3) refuse, under section 57, to register a food control plan; or
 - (4) impose or vary, under section 60, conditions on the registration of a food control plan, unless the variation is made on the application of the operator of the food control plan in accordance with the terms of that application; or
 - (5) refuse, in accordance with Part 2 of Schedule 4, to renew the registration of a food control plan; or
 - (6) suspend, under section 62, all or any operations under a registered food control plan; or
 - (7) extend, under section 63, the period of suspension of operations under a registered food control plan; or
 - (8) cancel, under section 67, the registration of a food control plan; or
 - (9) remove, under section 70, a food business from the coverage of a registered food control plan; or
 - (10) refuse, in accordance with section 87, to register a food business that is subject to a national programme; or
 - (11) refuse, in accordance with Part 2 of Schedule 4, to renew the registration of a food business that is subject to a national programme; or
 - (12) impose or vary, under section 89, conditions on the registration of a food business that is subject to a national programme, unless the variation is made on the application of the operator of the food business in accordance with the terms of that application; or
 - (13) suspend, under section 90, all or any operations of a registered food business that is subject to a national programme; or

- (14) extend, under section 91, the period of suspension of operations of a registered food business that is subject to a national programme; or
 - (15) cancel, under section 95, the registration of a food business that is subject to a national programme; or
 - (16) refuse, under section 117, to register a person as an importer; or
 - (17) refuse, in accordance with Part 2 of Schedule 4, to renew the registration of an importer; or
 - (18) suspend, under section 122, all or any specified part of a registered importer's operations; or
 - (19) extend, under section 123, the period of suspension of a registered importer's operations; or
 - (20) cancel, under section 127, the registration of an importer; or
 - (21) refuse, under section 145, an application to recognise an agency under section 135, a person under section 139, or a class under section 141; or
 - (22) exclude, under section 146, any members, or categories of members, from the recognition of a class under section 141(5); or
 - (23) vary, under section 147, conditions of recognition, unless the variation is made on the application of the recognised agency, the recognised person, or a member of the recognised class in accordance with the terms of that application; or
 - (24) suspend, under section 158, all or part of the recognition of an agency, a person, or a class; or
 - (25) extend, under section 159, the period of suspension of the recognition of an agency, a person, or a class; or
 - (26) withdraw, under section 162 or 163, all or part of the recognition of an agency, a person, or a class; or
 - (27) conclude that a problem referred to in section 272(2) has not been remedied; or
 - (28) suspend or cancel, under section 277, a person's appointment as a food safety officer; or
 - (29) suspend or withdraw an approval under section 291.
- (3) Sections 355(2) to (4), 356(1) and (3), 358, 359, and 360 apply to decisions that—
- (a) are described in subsection (4); and
 - (b) are made by a registration authority that is a relevant territorial authority.
- (4) The decisions are a decision to—
- (a) refuse, under section 57, to register an amended food control plan; or
 - (b) refuse, under section 57, to register a food control plan; or

- (c) impose or vary, under section 60, conditions on the registration of a food control plan, unless the variation is made on the application of the operator of the food control plan in accordance with the terms of that application; or
- (d) refuse, in accordance with Part 2 of Schedule 4, to renew the registration of a food control plan; or
- (e) suspend, under section 62, all or any operations under a registered food control plan; or
- (f) extend, under section 63, the period of suspension of operations under a registered food control plan; or
- (g) cancel, under section 67, the registration of a food control plan; or
- (h) remove, under section 70, a food business from the coverage of a registered food control plan; or
- (i) refuse, in accordance with section 87, to register a food business that is subject to a national programme; or
- (j) refuse, in accordance with Part 2 of Schedule 4, to renew the registration of a food business that is subject to a national programme; or
- (k) impose or vary, under section 89, conditions on the registration of a food business that is subject to a national programme, unless the variation is made on the application of the operator of the food business in accordance with the terms of that application; or
- (l) suspend, under section 90, all or any operations of a registered food business that is subject to a national programme; or
- (m) extend, under section 91, the period of suspension of operations of a registered food business that is subject to a national programme; or
- (n) cancel, under section 95, the registration of a food business that is subject to a national programme.

355 Application for review

- (1) A person dissatisfied with a decision described in section 354(2) may apply to have it reviewed.
- (2) A person dissatisfied with a decision described in section 354(4) may apply to have it reviewed if—
 - (a) the person has first requested the relevant territorial authority, under subsection (3), to reconsider the decision of which a review is sought; and
 - (b) either 1 of the following applies:
 - (i) the relevant territorial authority has failed to complete the reconsideration of the decision within the time specified in subsection (4); or

- (ii) the relevant territorial authority has completed the reconsideration of the decision within that time, but the applicant continues to be dissatisfied with the decision after the reconsideration.
- (3) A request for the reconsideration of a decision described in section 354(4) must be made to the relevant territorial authority within—
 - (a) 20 working days after the date on which notice of the decision was given to the person; or
 - (b) any longer period that the relevant territorial authority allows on the request of the person.
- (4) On receiving a request referred to in subsection (3), the relevant territorial authority has 20 working days to reconsider the decision.

356 Requirements for application for review

- (1) An application for a review must—
 - (a) be written; and
 - (b) state the grounds on which it is made.
- (2) For an application for a review in respect of a decision described in section 354(2), the application must be provided to the chief executive within 20 working days after the applicant is notified of the decision.
- (3) For an application for a review in respect of a decision described in section 354(4), the application must—
 - (a) state whether the applicant has requested the relevant territorial authority under section 355(3) to reconsider the decision and the outcome of that request; and
 - (b) be provided to the chief executive within 60 working days after the applicant is notified of the original decision, or any longer period allowed by the chief executive; and
 - (c) be copied to the relevant territorial authority that made the decision of which a review is sought.

357 Procedure for review of decision by chief executive or chief executive's delegate

- (1) The reviewer of a decision described in section 354(2) must be,—
 - (a) for a decision made by the chief executive, a person appointed by the Minister for the purpose under subsection (2);
 - (b) for a decision made by a person acting under the delegated authority of the chief executive,—
 - (i) a person who was not involved in making the decision and who is designated by the chief executive; or
 - (ii) the chief executive.

- (2) The Minister may appoint the person referred to in subsection (1)(a) on any terms and conditions that the Minister considers appropriate (including conditions as to the payment of fees).
- (3) The reviewer must review the decision within—
 - (a) 40 working days of the appointment referred to in subsection (1)(a), if that paragraph applies; or
 - (b) 40 working days of the designation referred to in subsection (1)(b)(i), if that subparagraph applies; or
 - (c) 40 working days of the date on which the chief executive receives the application, if subsection (1)(b)(ii) applies; or
 - (d) a shorter period specified in writing by the reviewer to the applicant.
- (4) The reviewer may give the applicant a notice in writing requiring the applicant to supply information additional to that contained in the application within a time specified by the reviewer.
- (5) The time limits specified in subsection (3) do not include—
 - (a) the time the applicant takes to supply information under subsection (4); or
 - (b) the time allowed for the applicant to supply the information, if the applicant does not supply it.
- (6) The reviewer must—
 - (a) give the applicant and the chief executive (or the person who made the decision under delegated authority) a notice in writing of the time within which submissions on the review may be made; and
 - (b) consider any submissions by the applicant and the chief executive (or his or her delegate).
- (7) The review is by way of a rehearing.
- (8) The reviewer may confirm, modify, or reverse all or some of the decision.
- (9) The reviewer must, as soon as practicable, give the applicant a notice in writing of—
 - (a) the decision on the review; and
 - (b) the reasons for the decision on the review.

358 Procedure for review of decision by relevant territorial authority

- (1) The reviewer of a decision described in section 354(4) must be—
 - (a) the chief executive; or
 - (b) an employee of the Ministry who was not involved in the decision being made and who is designated by the chief executive.
- (2) The reviewer must review the decision within—

- (a) 40 working days of the date on which the chief executive receives the application; or
 - (b) a shorter period specified in writing by the chief executive to the applicant.
- (3) In specifying the period referred to in subsection (2)(b), the chief executive must take into account the effect of the original decision on the applicant's food business.
- (4) The reviewer may give the applicant a notice in writing requiring the applicant to supply information additional to that contained in the application within a time specified by the reviewer.
- (5) The time limits specified in subsection (2) do not include—
 - (a) the time the applicant takes to supply information under subsection (4); or
 - (b) the time allowed for the applicant to supply the information, if the applicant does not supply it.
- (6) The reviewer must—
 - (a) give the applicant and the relevant territorial authority a notice in writing of the time within which submissions on the review may be made; and
 - (b) consider any submissions by the applicant and the relevant territorial authority.
- (7) The review is by way of a rehearing.
- (8) The reviewer may confirm, modify, or reverse all or some of the decision.
- (9) The reviewer must, as soon as practicable, give the applicant a notice in writing of—
 - (a) the decision on the review; and
 - (b) the reasons for the decision on the review.
- (10) Despite anything in this section, the reviewer may refuse to process the application if the reviewer is not satisfied that—
 - (a) the applicant had first requested the relevant territorial authority, under section 355(3), to reconsider the decision of which a review is sought; and
 - (b) either 1 of the following applies:
 - (i) the relevant territorial authority had failed to complete the reconsideration of the decision within the time specified in section 355(4); or
 - (ii) the relevant territorial authority had completed the reconsideration of the decision within that time, but the applicant continued to be dissatisfied with the decision after the reconsideration.

359 Effect of review

- (1) The original decision described in section 354(2) or (4) is valid until the reviewer modifies or reverses it.
- (2) If the reviewer modifies or reverses some of the original decision, the parts that are not modified or reversed remain valid.

360 Reviewer may require payment of costs in review of decision by relevant territorial authority

- (1) The reviewer of a decision described in section 354(4) may, by written direction to the applicant or the relevant territorial authority, require that party to meet all or any of the other party's reasonable costs and expenses in the review of the decision if—
 - (a) the decision on the review is fully or partly against that party; and
 - (b) the reviewer considers that those costs and expenses have been incurred unnecessarily by—
 - (i) bad faith on the part of that party; or
 - (ii) allegations or objections by that party that are without substantial merit.
- (2) A party in whose favour a direction under subsection (1) is given may enforce that direction by filing it in the prescribed form (if any) in the District Court.
- (3) A direction that is filed under subsection (2) is enforceable in the same manner as a final judgment of the District Court in its civil jurisdiction.
- (4) If the reviewer does not give a direction under subsection (1), the parties to the review must bear their own costs and expenses.

Section 360(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

361 Chief executive must enter outcome of review decisions in public register

The chief executive must enter the outcome of each review of a decision described in section 354(2) or (4) in the relevant public register.

*Appeals against review decisions***362 Appeal to District Court against review decision**

- (1) A person may appeal to the District Court against—
 - (a) the outcome of a review of a decision described in section 354(2) or (4);
 - (b) a requirement to pay costs and expenses under section 360.
- (2) An appeal under subsection (1) must be brought no later than 28 days after the date on which the appellant was notified under this Act of the review decision.
- (3) In considering an appeal,—

- (a) the District Court may hear all evidence tendered and representations made by, or on behalf of, any party to the appeal that the Court considers relevant to the appeal, whether or not that evidence would be otherwise admissible in the Court; and
- (b) the Court may—
 - (i) confirm, reverse, or modify the decision appealed against, and make the orders and give the directions that may be necessary to give effect to the Court’s decision; or
 - (ii) refer the matter back to the reviewer or, as the case may be, the chief executive with a direction to reconsider the whole or any part of the matter.

Section 362(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 362(3)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

363 Procedure for appeal

- (1) An appeal under section 362 must, subject to that section, be made and determined in accordance with the District Court Act 2016 and the District Court Rules 2014.
- (2) The decision of the District Court on an appeal under section 362 is final unless section 364 or 365 applies.

Section 363(1): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Further appeals

364 Appeal to High Court on question of law

- (1) A party to an appeal under section 362 who is dissatisfied with the decision of the District Court on the ground that it is wrong in law may appeal to the High Court on that question of law.
- (2) The High Court Rules 2016 and sections 126 to 130 of the District Court Act 2016, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under section 124 of that Act.

Section 364(2): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

365 Further appeals to Court of Appeal or Supreme Court

- (1) With the leave of the court appealed to, a party to an appeal under section 364 may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court in the appeal.
- (2) On an appeal under this section, the Court of Appeal or the Supreme Court has the same power to adjudicate on the proceedings as the High Court had.

- (3) Subsection (1) is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

Section 365(3): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

366 Review decision to continue in force pending appeal

- (1) A review decision continues in force until an appeal under section 362, 364, or 365 in relation to that decision is determined, and no person is excused from complying with a requirement of this Act on the grounds that the appeal is pending.
- (2) Subsection (1) applies unless the court appealed to orders otherwise.

Subpart 3—Information and consultation requirements

Collecting, keeping, and disclosing information

367 Collecting and keeping information

- (1) This section applies to a person who, in the course of operating a food business, trades in food or a food-related accessory.
- (2) The person must—
- (a) collect the information that regulations under section 390 or notices under section 405 require the person to collect; and
 - (b) keep the information for the period or periods that regulations under section 390 prescribe or notices under section 405 provide for; and
 - (c) keep the information in a secure place; and
 - (d) report on the information as required by regulations under section 390.

368 Disclosing information inside New Zealand: application of section 369

- (1) Section 369 applies to—
- (a) the information described in subsection (2); and
 - (b) the agencies described in subsection (3); and
 - (c) the persons described in subsection (4); and
 - (d) the staff members of the agencies or persons; and
 - (e) constables.
- (2) The information is—
- (a) personal information as defined in the Privacy Act 2020; and
 - (b) information about a food business that includes, to avoid doubt, confidential information or commercially sensitive information, or both.

- (3) The agencies are those that perform functions under, or administer, any of the following Acts:
- (a) this Act; or
 - (b) the Health Act 1956; or
 - (c) the Testing Laboratory Registration Act 1972; or
 - (d) the Medicines Act 1981; or
 - (e) the Fair Trading Act 1986; or
 - (f) the New Zealand Horticulture Export Authority Act 1987; or
 - (g) the Education and Training Act 2020; or
 - (h) the Commodity Levies Act 1990; or
 - (i) the Resource Management Act 1991; or
 - (j) the Biosecurity Act 1993; or
 - (k) the Consumer Guarantees Act 1993; or
 - (l) the Customs and Excise Act 2018; or
 - (m) the Fisheries Act 1996; or
 - (n) the Hazardous Substances and New Organisms Act 1996; or
 - (o) the Agricultural Compounds and Veterinary Medicines Act 1997; or
 - (p) the Animal Products Act 1999; or
 - (q) the Animal Welfare Act 1999; or
 - (r) the Dairy Industry Restructuring Act 2001; or
 - (s) the Local Government Act 2002; or
 - (t) the Wine Act 2003; or
 - (u) the Immigration Act 2009; or
 - (v) the National Animal Identification and Tracing Act 2012; or
 - (w) the Sale and Supply of Alcohol Act 2012; or
 - (x) the Psychoactive Substances Act 2013; or
 - (xa) the Organic Products and Production Act 2023; or
 - (y) any other Act enacted in substitution for any of the Acts specified in paragraphs (a) to (x); or
 - (z) any other Act that is declared by the Governor-General, by Order in Council made under section 394, to be an Act for the purposes of this subsection.
- (4) The persons are—
- (a) a person who is an operator of a food business:
 - (b) a recognised agency:

- (c) a recognised person:
- (d) a territorial authority that administers the applicable requirements of this Act:
- (e) a person who is not described in paragraphs (a) to (d) and who administers the applicable requirements of this Act:
- (f) a public health unit that performs functions or duties, or exercises powers, under this Act:
- (g) the Medical Officer of Health, as defined in the Health Act 1956:
- (h) a management agency that administers pest management plans under the Biosecurity Act 1993:
- (i) a person who is an operator of an animal product business, as defined in the Animal Products Act 1999:
- (j) a person who is an operator of a wine business, as defined in the Wine Act 2003:
- (k) any other person who is declared by the Governor-General, by Order in Council made under section 394, to be a person for the purposes of this subsection.

Section 368(2)(a): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 368(3)(g): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 368(3)(i): replaced, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 368(3)(l): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 368(3)(xa): inserted, on 6 April 2023, by section 162(2) of the Organic Products and Production Act 2023 (2023 No 14).

369 Disclosing information inside New Zealand: rules

- (1) An agency or a person or a staff member to whom this section applies may disclose information to which this section applies if the agency or person or staff member reasonably believes that—
 - (a) subsections (2) to (4) are satisfied; and
 - (b) subsection (5) or (6) is satisfied, if it applies.
- (2) The disclosure must be of information supplied or obtained under or for the purposes of an enactment referred to in section 368(3).
- (3) The disclosure must be necessary or desirable to promote any of the following:
 - (a) the health or well-being of—
 - (i) producers of food; or
 - (ii) processors of food; or

- (iii) consumers of food; or
 - (b) the safety or suitability of food, including imported food; or
 - (c) the integrity and reputation of New Zealand exports of food; or
 - (d) compliance with the applicable requirements of this Act; or
 - (e) the purpose of this Act.
- (4) The disclosure must be to an agency or a person or a staff member to whom this section applies.
- (5) If the disclosure is to a person referred to in section 368(4), or to a member of the person's staff, it must be necessary or desirable for the proper performance of the person's or member's functions or duties, or the exercise of his or her powers, under this Act.
- (6) The agency or person or staff member who discloses the information must make and keep a record of—
 - (a) the information that was disclosed; and
 - (b) the agency or person or staff member to whom it was disclosed; and
 - (c) any conditions subject to which it was disclosed.

370 Disclosing information outside New Zealand: rules

- (1) The chief executive may disclose information to an overseas person under this section.
- (2) The information that may be disclosed is—
 - (a) personal information, as defined in the Privacy Act 2020, that is supplied or obtained under or for the purposes of this Act; and
 - (b) information about a food business that includes, to avoid doubt, confidential information or commercially sensitive information, or both.
- (3) The disclosure may be made only if—
 - (a) section 371 is satisfied; or
 - (b) section 373 is satisfied.

Section 370(2)(a): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

371 Disclosing information outside New Zealand: under agreement

- (1) The chief executive may disclose information under section 370 under an agreement that is made between the chief executive and the overseas person.
- (2) Before making an agreement, the chief executive—
 - (a) must consult the Privacy Commissioner; and
 - (b) must be satisfied that the agreement is necessary—
 - (i) to help investigate, prevent, identify, or respond to non-compliance with the law in New Zealand or in the overseas country; or

- (ii) to respond to a difficulty arising in the course of trade between New Zealand and the overseas country.
- (3) The agreement—
 - (a) must be in writing; and
 - (b) must state the criteria for the disclosure of information under it to the overseas person; and
 - (c) must state the use that the overseas person may make of the information disclosed; and
 - (d) must state whether or not the overseas person may disclose the information disclosed to any other person; and
 - (e) if the overseas person may disclose any of the information disclosed to any other person, must state—
 - (i) the persons to whom the overseas person may disclose it; and
 - (ii) the extent to which the overseas person may disclose it; and
 - (iii) the conditions subject to which the overseas person may disclose it; and
 - (f) may state—
 - (i) the form in which the information may be disclosed; and
 - (ii) the method by which the information may be disclosed.

372 Variation and review of agreement

- (1) The chief executive may vary an agreement made under section 371.
- (2) The chief executive may vary the agreement from time to time.
- (3) The chief executive must consult the Privacy Commissioner before varying the agreement.
- (4) The Privacy Commissioner may require the chief executive to review an agreement and the arrangements for disclosure under it.
- (5) The Privacy Commissioner may make the requirement at intervals of at least 12 months.
- (6) The chief executive must—
 - (a) conduct the review; and
 - (b) as soon as practicable after doing so, report the result to the Privacy Commissioner.

373 Disclosing information outside New Zealand: urgent action required

- (1) The chief executive may disclose information under section 370 if—
 - (a) a situation arises requiring urgent action; and
 - (b) the requirements of this section are satisfied.

- (2) The first requirement is that the functions, duties, or powers of the overseas person include—
 - (a) helping to investigate, prevent, identify, or respond to non-compliance with the law in New Zealand or in the overseas country; or
 - (b) responding to difficulties arising in the course of trade between New Zealand and the overseas country.
- (3) The second requirement is that the information is disclosed subject to conditions that—
 - (a) state the use that the overseas person may make of the information disclosed; and
 - (b) state whether or not the overseas person may disclose the information disclosed to any other person; and
 - (c) if the overseas person may disclose any of the information disclosed to any other person, state—
 - (i) the persons to whom the overseas person may disclose it; and
 - (ii) the extent to which the overseas person may disclose it; and
 - (iii) the conditions subject to which the overseas person may disclose it.
- (4) The third requirement is that the chief executive makes and keeps a record of—
 - (a) the information that was disclosed; and
 - (b) the person to whom it was disclosed; and
 - (c) any conditions subject to which it was disclosed.

Automated electronic systems

374 Arrangement for system

- (1) The chief executive may arrange for the use of an automated electronic system to do the actions described in subsection (2) that this Act or another enactment allows or requires the persons described in subsection (3) to do for the purposes of this Act.
- (2) The actions are—
 - (a) exercising a power:
 - (b) carrying out a function:
 - (c) carrying out a duty:
 - (d) making a decision, including making a decision by—
 - (i) analysing information that a person described in subsection (3) holds or has access to about a person, goods, or craft; and
 - (ii) applying criteria predetermined by the chief executive to the analysis:

- (e) doing an action for the purpose of exercising a power, carrying out a function or duty, or making a decision:
 - (f) communicating the exercising of a power, carrying out of a function or duty, or making of a decision.
- (3) The persons are—
- (a) the chief executive:
 - (b) food safety officers:
 - (c) assistants of food safety officers.
- (4) The chief executive may make an arrangement only if satisfied that—
- (a) the system has the capacity to do the action with reasonable reliability; and
 - (b) a process is available under which a person affected by an action done by the system can have the action reviewed by a person described in subsection (3) without undue delay.
- (5) A system used in accordance with an arrangement may include components outside New Zealand.
- (6) The chief executive must consult the Privacy Commissioner about including in an arrangement actions that involve the collection or use of personal information.

375 Effect of use of system

- (1) This section applies to an action done by an automated electronic system.
- (2) An action allowed or required by this Act done by the system—
- (a) is treated as an action done properly by the appropriate person referred to in section 374(3); and
 - (b) is not invalid by virtue only of the fact that it is done by the system.
- (3) If an action allowed or required by another enactment done by the system is done in accordance with any applicable provisions in the enactment on the use of an automated electronic system, the action—
- (a) is treated as an action done properly by the appropriate person referred to in section 374(3); and
 - (b) is not invalid by virtue only of the fact that it is done by the system.
- (4) If the system operates in such a way as to render the action done or partly done by the system clearly wrong, the action may be done by the appropriate person referred to in section 374(3).

Notifying persons of information

376 Notification to Minister, chief executive, territorial authority, or food safety officer

- (1) Subsection (2) applies when this Act requires information to be notified to—
 - (a) the Minister; or
 - (b) the chief executive; or
 - (c) a registration authority that is the chief executive.
- (2) The information may be notified personally, by post, or by an electronic means to the office of—
 - (a) an appropriate person with a contract of service or a contract for services with the Ministry; or
 - (b) a food safety officer with a contract of service or a contract for services with the Ministry.
- (3) Subsection (4) applies when this Act requires information to be notified to—
 - (a) a territorial authority; or
 - (b) a registration authority that is a territorial authority.
- (4) The information may be notified personally, by post, or by an electronic means to the office of—
 - (a) an appropriate person with a contract of service or a contract for services with the territorial authority; or
 - (b) a food safety officer with a contract of service or a contract for services with the territorial authority.
- (5) Subsection (6) applies when this Act requires information to be notified to a food safety officer.
- (6) The information may be notified to the food safety officer personally, by post, or by an electronic means.

377 Notification to other persons who assist in administration of Act

- (1) This section applies to the following offices:
 - (a) the chief executive; and
 - (b) a territorial authority; and
 - (c) a recognised agency.
- (2) This section applies when an office wishes to notify information to a person who—
 - (a) is not the Minister, the chief executive, a registration authority that is the chief executive, a territorial authority, a registration authority that is a territorial authority, or a food safety officer; and

- (b) has functions, duties, or powers that assist in the administration of this Act.
- (3) However, section 168 overrides this section if the person is a member of a recognised class.
- (4) The office may notify the information—
 - (a) to the person directly; or
 - (b) to the person’s employer.
- (5) If the office notifies the information to the person directly, it must also notify the information to the person’s employer—
 - (a) within 10 working days after it has notified the person; or
 - (b) within a period that is shorter or longer than 10 working days and that the office and the employer have agreed on or the office has told the employer about.
- (6) If the office notifies the information to the person’s employer,—
 - (a) the office must ensure that the information clearly identifies the person, or class of person, for whom the information is intended; and
 - (b) the employer must tell the person, or all the persons in the class, about the content of the information as soon as is reasonably practicable having regard to the content; and
 - (c) the person is treated as having received the information on the earliest of the following:
 - (i) the date that is 5 working days after the date on which the information was notified to the employer;
 - (ii) the date (if any) proved by the office as being the date on which the information was received by the person;
 - (iii) the date (if any) that the person or the employer acknowledges as being the date on which the information was received by the person.
- (7) For the purposes of this section, an employer includes—
 - (a) a director, partner, secretary, or other officer or official of a company or other body of which a person is an employee; and
 - (b) a company or other body with whom a person has a contract for services to perform the person’s functions or duties, or to exercise the person’s powers, under this Act.

378 Notification to other persons

- (1) This section applies when—
 - (a) this Act requires a person to be notified of information; and

- (b) the person is not the Minister, the chief executive, a registration authority that is the chief executive, a territorial authority, a registration authority that is a territorial authority, or a food safety officer; and
 - (c) the person is not an official with functions, duties, or powers that assist in the administration of this Act.
- (2) The person must be notified of the information by a notice in writing.
- (3) The address at which the notice must be given is—
 - (a) the person’s physical or electronic address notified under this Act, in the case of an operator of a registered food control plan, an operator subject to a national programme, a registered importer, or a person that makes an application under section 113; or
 - (b) the person’s last known physical or electronic business or residential address, in any other case.
- (4) A notice given to a person by post or by an electronic means is treated as having been received by the person not later than 5 working days after the date on which it was posted or sent, unless the person proves that—
 - (a) the person did not receive it; and
 - (b) the non-receipt was not the person’s fault.
- (5) Subsection (4) does not apply if,—
 - (a) in the case of a notice given by post, the notice was returned unopened to the sender;
 - (b) in the case of a notice given by electronic means, the electronic system for processing the electronic communication has sent to the sender an automatic message to the effect that the notice has not been received by the recipient.
- (6) If a lawyer or other agent of a person represents that he or she is authorised to accept a notice on behalf of the person, the person is treated as having been notified if—
 - (a) the notice is delivered to the lawyer or other agent; and
 - (b) the lawyer or agent signs a statement that he or she accepts the notice on the person’s behalf.
- (7) In this section, **official** means any person in the service of Her Majesty in right of New Zealand (whether that service is honorary or not, and whether it is within or outside New Zealand), or any member or employee of any local authority or public body.

Consultation

379 Consultation: Minister’s powers

- (1) This section applies to—

- (1) the Minister's power under section 22 (power to amend Schedules 1 to 3 by Order in Council) to recommend the making of regulations:
- (2) the Minister's power under section 32 (regulations about exemption not applying) to recommend the making of regulations:
- (3) the Minister's power under section 43 (regulations about food control plans) to recommend the making of regulations:
- (4) the Minister's power under section 76 (regulations about national programmes) to recommend the making of regulations:
- (5) the Minister's power under section 103 (regulations about monitoring programmes) to recommend the making of regulations:
- (6) the Minister's power under section 175 (Minister may issue national outcomes for territorial authorities) to issue, amend, or revoke national outcomes:
- (7) the Minister's power under section 202 (three-yearly review of cost recovery) to review cost recovery:
- (8) the Minister's power under section 204 (regulations may impose fees and charges) to recommend the making of regulations:
- (9) the Minister's power under section 206 (regulations may prescribe methodology or framework for fee fixing) to recommend the making of regulations:
- (10) the Minister's power under section 207 (regulations may impose levies) to recommend the making of regulations:
- (11) the Minister's power under section 208 (regulations may provide for exemptions, waivers, and refunds) to recommend the making of regulations:
- (12) the Minister's power under section 344 (when Minister may recommend exemption under section 343) to recommend the making of regulations:
- (13) the Minister's power under section 346 (when Minister may recommend exemption under section 345) to recommend the making of regulations:
- (14) the Minister's power under section 383 (regulations about standards in relation to food) to recommend the making of regulations:
- (15) the Minister's power under section 384 (regulations about risk-based measures and related matters) to recommend the making of regulations:
- (16) the Minister's power under section 385 (regulations about grading schemes) to recommend the making of regulations:
- (17) the Minister's power under section 386 (regulations about approved documents, materials, or facilities, or persons or classes of persons) to recommend the making of regulations:
- (18) the Minister's power under section 387 (regulations about imported food) to recommend the making of regulations:

- (19) the Minister's power under section 388 (regulations about verification functions in relation to importers) to recommend the making of regulations:
 - (20) the Minister's power under section 389 (regulations about recognised agencies, persons, and classes of persons) to recommend the making of regulations:
 - (21) the Minister's power under section 390 (regulations about information) to recommend the making of regulations:
 - (22) the Minister's power under section 391 (regulations about offences) to recommend the making of regulations:
 - (23) the Minister's power under section 392 (regulations about administrative matters) to recommend the making of regulations:
 - (24) the Minister's power under section 393(1)(a) (regulations about definitions) to recommend the making of regulations declaring anything to be or not to be food:
 - (25) the Minister's power under section 393(1)(b) (regulations about definitions) to recommend the making of regulations declaring a business to be or not to be a food business:
 - (26) the Minister's power under section 394 (regulations for purposes of section 368) to recommend the making of regulations:
 - (27) the Minister's power under section 395 (regulations about other matters) to recommend the making of regulations:
 - (28) the Minister's power under section 404(1) (Minister may issue domestic food standards) to issue domestic food standards:
 - (29) the Minister's responsibility under section 441 (consultation about proposed regulations) to consult before recommending the making of regulations under subpart 7 of Part 5.
- (2) The chief executive must consult about a proposal to exercise the power.
 - (3) The chief executive must adopt a consultation procedure that includes, to the extent practicable in the circumstances,—
 - (a) giving adequate and appropriate notice of the proposal to exercise the power; and
 - (b) ensuring that notice is given to the persons or organisations that the chief executive considers representative of the interests of persons likely to be substantially affected by the exercise of the power; and
 - (c) giving interested persons a reasonable opportunity to make submissions; and
 - (d) considering the submissions adequately and appropriately.
 - (4) The chief executive must advise the Minister of the results of the consultation.

- (5) Before exercising the power, the Minister must—
 - (a) satisfy himself or herself that the chief executive has consulted as required by subsection (3); and
 - (b) take the results of the consultation into account.
- (6) This section does not apply if the Minister considers it necessary or desirable in the public interest that the power be exercised urgently.
- (7) Any regulations made on the recommendation of the Minister under the circumstances described in subsection (6) expire on the day that is 12 months after the date on which those regulations come into force.
- (8) A failure to comply with this section does not affect the validity of the document resulting from the Minister's exercise of the power.
- (9) This section does not apply to the Minister's power to issue an emergency notice under section 410.

380 Consultation: chief executive's powers

- (1) This section applies to the chief executive's power to issue notices under section 405.
- (2) The chief executive must consult about a proposal to exercise the power.
- (3) The chief executive must adopt a consultation procedure that includes, to the extent practicable in the circumstances,—
 - (a) giving adequate and appropriate notice of the proposal to exercise the power; and
 - (b) ensuring that notice is given to the persons or organisations that the chief executive considers representative of the interests of persons likely to be substantially affected by the exercise of the power; and
 - (c) giving interested persons a reasonable opportunity to make submissions; and
 - (d) considering the submissions adequately and appropriately.
- (4) Before exercising the power, the chief executive must—
 - (a) consult as required by subsection (3); and
 - (b) take the results of the consultation into account.
- (5) This section does not apply if the chief executive considers it necessary or desirable in the public interest that the power be exercised urgently.
- (6) A failure to comply with this section does not affect the validity of specifications or requirements set out in the notice.
- (7) This section does not apply to the chief executive's power to issue emergency notices under section 410.

Subpart 4—Regulations

Regulations about core provisions

381 Regulations: what they can apply to and what they can do

- (1) This section applies to the powers to make regulations under this Act.
- (2) The regulations may apply to all or any of the following:
 - (a) actions:
 - (b) areas:
 - (c) food-related accessories:
 - (d) foods:
 - (e) food businesses:
 - (f) operations:
 - (g) persons:
 - (h) places:
 - (i) procedures:
 - (j) anything in any of paragraphs (a) to (i) that is—
 - (i) identified in the regulations; or
 - (ii) in a class identified in the regulations.
- (3) The regulations may do the following in a particular case or class of case:
 - (a) impose conditions:
 - (b) impose prohibitions:
 - (c) impose requirements:
 - (d) impose restrictions.
- (4) The regulations may authorise the Minister or the chief executive to do the following in a particular case or class of case:
 - (a) impose conditions:
 - (b) issue directions:
 - (c) issue instructions:
 - (d) issue orders:
 - (e) impose prohibitions:
 - (f) impose requirements:
 - (g) impose restrictions:
 - (h) issue specifications.
- (5) The regulations may authorise a food safety officer to do the following in a particular case or class of case:

- (a) impose conditions:
 - (b) issue directions:
 - (c) issue instructions:
 - (d) impose prohibitions:
 - (e) impose requirements:
 - (f) impose restrictions.
- (6) The regulations may exempt all or any of the following from all or any of the regulations in a particular case or class of case:
- (a) actions:
 - (b) areas:
 - (c) food-related accessories:
 - (d) foods:
 - (e) food businesses:
 - (f) operations:
 - (g) persons:
 - (h) places:
 - (i) procedures.
- (7) The regulations may authorise the Minister, the chief executive, or a territorial authority to exempt all or any of the following from all or any of the regulations in a particular case or class of case:
- (a) actions:
 - (b) areas:
 - (c) food-related accessories:
 - (d) foods:
 - (e) food businesses:
 - (f) operations:
 - (g) persons:
 - (h) places:
 - (i) procedures.
- (8) The regulations may authorise the Minister, the chief executive, a food safety officer, or a territorial authority to decide a matter.
- (9) The regulations may confer a discretion on the Minister, the chief executive, a food safety officer, or a territorial authority.
- (10) If regulations made in reliance on this section authorise the Minister, the chief executive, or a food safety officer to exercise 1 or more of the powers described in subsection (4), (5), or (7),—

- (a) an instrument by which any of those powers is exercised is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to a particular case; and
 - (b) the regulations must contain a statement to that effect.
- (10) *[Repealed]*

Legislation Act 2019 requirements for secondary legislation referred to in subsection (10)(a)

Publication	See the relevant publication, presentation, and disallowance table in the regulations under which it is made	LA19 ss 73, 74, Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives, unless a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 381(10): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 381(10): repealed, on 2 March 2018, by section 35 of the Food Safety Law Reform Act 2018 (2018 No 3).

382 Regulations: how they apply to stock in trade

In the 12 months after the commencement date of regulations under this Act, a person may sell food to which the regulations apply if—

- (a) there is no provision in or under any enactment other than the regulations that would prevent its sale; and
- (b) the person proves that—
 - (i) at the commencement date the food was part of the existing stock in trade in New Zealand of a person carrying on business in New Zealand; or
 - (ii) the food was purchased before the commencement date for importation into New Zealand; and
- (c) since the commencement date no one has done or omitted to do an act that causes the food not to comply with the regulations.

383 Regulations and notices about standards in relation to food

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting standards in relation to food that specify the criteria that the composition of food, and the sampling and testing of food to determine its composition, must meet to ensure that food is safe and suitable.
- (2) The reference in subsection (1) to the composition of food means the microbiological content, microbiological quality, purity, quality, quantity, strength, or weight, among other things, of—

- (a) the food itself; and
 - (b) anything contained in food, added to food, or intended to be contained in or added to food.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting standards in relation to food that specify the criteria that all or any of the following must meet to ensure that food is safe and suitable:
- (a) the sampling and testing of food to determine its safety or suitability:
 - (b) the production of food:
 - (c) the processing and handling of food:
 - (d) the selling of food:
 - (e) the importation of food:
 - (f) the identification and labelling of food:
 - (g) the promotion and advertising of food:
 - (h) information about food:
 - (i) the genetic modification of food:
 - (j) the chemical status of food:
 - (k) the maximum amounts of contaminants or residues that may be present in food:
 - (l) the maximum or minimum amounts of additives or other substances that must or may be present in food:
 - (m) substances in food:
 - (n) the control or elimination of hazards from food:
 - (o) any other matter that affects the safety or suitability of food.
- (4) Regulations referred to in subsection (3)(k) may (without limitation)—
- (a) specify how residue levels are to be determined for specified foods:
 - (b) prohibit the sale of any food containing residues of a substance that exceed limits specified by a notice under subsection (8):
 - (c) provide for exemptions from specified requirements of the regulations where the residues present in the food concerned are within allowable limits specified in a notice under subsection (8) and the food complies with any other requirements specified in the notice.
- (5) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting food standards that food-related accessories must meet to ensure that food is safe and suitable.
- (6) Before recommending the making of regulations under this section, the Minister must take into account—
- (a) the need to protect public health; and

- (b) the desirability of avoiding unnecessary restrictions on trade; and
 - (c) the desirability of maintaining consistency between the standards in regulations made under this section and any relevant standards, requirements, or recommended practices that apply or are accepted internationally; and
 - (d) the need to give effect to New Zealand's obligations under a relevant international agreement, convention, protocol, or treaty; and
 - (e) the identifiable costs of the standards, who bears those costs, and the positive and negative effects on New Zealand consumers and food businesses; and
 - (f) the most effective way of achieving the safety and suitability of food; and
 - (g) any other matters that the Minister considers relevant.
- (7) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (8) The chief executive may, by notice under section 405,—
- (a) specify the maximum amount of contaminants or residues that may be present in food;
 - (b) set requirements in relation to the matters specified in paragraph (a);
 - (c) provide for the matters referred to in subsection (4)(b) and (c);
 - (d) supplement regulations made under this section.
- (9) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) regulations under this section;
 - (b) a notice issued under section 405 in reliance on subsection (8).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (9)(a)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (9)(b)

Publication	The maker must: <ul style="list-style-type: none">• publish it on the maker's website• publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none">• state in the notice where it is available	LA19 ss 73, 74(1)(a), Sch 1 cl 14
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• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides

The maker must also comply with section 408(1A)

The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019

LA19 ss 74(2), 75

Presentation The Minister must present it to the House of Representatives LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116

This note is not part of the Act.

Section 383 heading: amended, on 2 March 2018, by section 36(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 383(4)(b): amended, on 2 March 2018, by section 36(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 383(4)(c): amended, on 2 March 2018, by section 36(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 383(8): inserted, on 2 March 2018, by section 36(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 383(9): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

384 Regulations and notices about risk-based measures and related matters

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations relating to all or any of the following:
 - (a) wine standards management plans or risk management programmes intended to operate as food control plans:
 - (b) the territorial authorities' role in registering food control plans:
 - (c) the chief executive's role in registering food control plans.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) The chief executive may, by notice under section 405, supplement regulations made under this section.
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
 - (a) regulations under this section:
 - (b) a notice issued under section 405 in reliance on subsection (3).

- (d) who may do the assessment of a food business under the grading scheme:
- (e) which information arising from an assessment under the grading scheme may be held on a register:
- (f) how the result of a food business's assessment under the grading scheme is to be published at the business:
- (g) the review of a food business's assessment under the grading scheme, including the procedure to be followed in conducting the review:
- (h) the relationship between—
- (i) the grading scheme and verification; and
 - (ii) the grading scheme and any other means of measuring or requiring compliance with the requirements of this Act:
- (i) any other matters necessary to give full effect to the grading scheme.
- (3) To avoid doubt, section 446 applies if—
- (a) regulations are made setting up a grading scheme for food businesses; and
 - (b) a bylaw is made by a territorial authority that purports to set up a grading scheme for food businesses that is inconsistent with those regulations.
- (4) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (5) The chief executive may, by notice under section 405, supplement regulations made under this section.
- (6) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) regulations under this section:
 - (b) a notice issued under section 405 in reliance on subsection (5).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (6)(a)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (6)(b)

Publication	The maker must:	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	• publish it on the maker's website	
	• publish or notify it in the <i>Gazette</i>	
	If it is notified, the maker must:	
	• state in the notice where it is available	

• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides

The maker must also comply with section 408(1A)

The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019 LA19 ss 74(2), 75

Presentation It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019 LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116

This note is not part of the Act.

Section 385 heading: amended, on 2 March 2018, by section 38(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 385(5): inserted, on 2 March 2018, by section 38(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 385(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

386 Regulations about approved documents, materials, or facilities, or persons or classes of persons

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting out criteria that the chief executive must take into account before approving a document, material, or facility, or a person or class of persons under section 291.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that require an approved document, material, or facility, or an approved person or an approved class of persons to be used.
- (3) Before the Minister recommends that the Governor-General makes regulations under subsection (2), the Minister must take the following matters into account:
 - (a) whether it is necessary to require the use of an approved document, material, or facility, or an approved person or an approved class of persons to manage a risk to the safety or suitability of food:
 - (b) whether it is desirable to require the use of an approved document, material, or facility, or an approved person or an approved class of persons to maintain consistency in approaches, methodology, and technology:
 - (c) whether it is desirable to require the use of an approved document, material, or facility, or an approved person or an approved class of persons to make cost and efficiency gains:
 - (d) any other matters that the Minister considers relevant to the question of whether an approved document, material, or facility, or an approved person or an approved class of persons must be used.

- (4) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 386(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

387 Regulations and notices about imported food

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting out all or any of the following for imported food:
- (a) general requirements that apply to imported food:
 - (b) different requirements for different categories of food, based on criteria, descriptions, food groups, import pathways, origins, risks, or types:
 - (c) requirements that specify which different categories of food require clearance under section 109, and requirements that specify other matters related to the clearance of that food:
 - (d) restrictions or prohibitions on, or requirements for, dealing with food that is not cleared:
 - (e) requirements relating to the safety and suitability of food and to good operating practice:
 - (ea) controls, restrictions, requirements, and prohibitions in relation to a food sector, including how a food sector must manage or deal with risks that arise from trading in food:
 - (f) how the requirements may or must be met:
 - (g) when the requirements must be met:
 - (h) who is responsible for ensuring that the requirements are met:
 - (i) other matters related to requirements:
 - (j) sampling and testing requirements that must be complied with:
 - (k) record-keeping requirements that must be complied with.
- (2) To avoid doubt, regulations under this section may apply different requirements to different foods within a category of food.

- (3) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (4) The chief executive may, by notice under section 405,—
- (a) set requirements relating to the form or manner of applications for registration as an importer; and
 - (b) specify—
 - (i) which imported food category a particular food fits into for the purposes of regulations made under this section; and
 - (ii) conditions and criteria that attach to a particular food fitting within or continuing to fit within a particular category; and
 - (iii) conditions and criteria that determine the basis for movement between particular categories; and
 - (iv) requirements for providing samples and information about imported food and monitoring imported food that will assist in determining the risk of an imported food or determining an imported food’s categorisation; and
 - (c) supplement regulations made under this section.
- (5) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) regulations under this section:
 - (b) a notice issued under section 405 in reliance on subsection (4), unless the notice applies only to 1 or more named persons.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)(a)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)(b)

Publication	The maker must: <ul style="list-style-type: none">• publish it on the maker’s website• publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none">• state in the notice where it is available• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result	LA19 ss 74(2), 75

	the maker may also have to comply with s 75 of the Legislation Act 2019	
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 387 heading: amended, on 2 March 2018, by section 39(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 387(1)(e): replaced, on 2 March 2018, by section 39(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 387(1)(ea): inserted, on 2 March 2018, by section 39(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 387(4): inserted, on 2 March 2018, by section 39(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 387(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

388 Regulations about verification functions in relation to importers

[Repealed]

Section 388: repealed, on 2 March 2018, by section 40 of the Food Safety Law Reform Act 2018 (2018 No 3).

389 Regulations and notices about recognised agencies, persons, and classes of persons

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (a) prescribing requirements and procedures for the recognition and renewal of recognition of agencies, persons, and classes of persons under subpart 1 of Part 4:
 - (ab) prescribing requirements that agencies, persons, and classes of persons under subpart 1 of Part 4 must comply with in order to maintain recognition:
 - (b) prescribing competencies, qualifications, experience, or other requirements that must be met—
 - (i) in order for a person to be recognised as a recognised agency or a recognised person under subpart 1 of Part 4:
 - (ii) in order for a class of persons to be recognised as a recognised class under subpart 1 of Part 4:
 - (iii) by a recognised agency, recognised person, or recognised class:
 - (c) prescribing performance standards or other requirements that must be met by a recognised agency when it is managing or carrying out, or a recognised person or recognised class when it is carrying out, its specified functions and activities:

- (d) prescribing any particulars that must be contained in the relevant public register.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) The chief executive may, by notice under section 405, supplement regulations made under this section.
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) regulations under this section:
- (b) a notice issued under section 405 in reliance on subsection (3).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(a)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(b)

Publication	The maker must: <ul style="list-style-type: none">• publish it on the maker's website• publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none">• state in the notice where it is available• make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 389 heading: amended, on 2 March 2018, by section 41(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 389(1)(ab): inserted, on 2 March 2018, by section 41(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 389(3): inserted, on 2 March 2018, by section 41(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 389(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

390 Regulations and notices about information

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting requirements for all or any of the following for a person or a class of persons:
 - (a) the information that the person or class of persons must collect about food or a food-related accessory:
 - (b) the periods for which the person or class of persons must keep the information:
 - (c) how, when, and to whom the person or class of persons must report on the information.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting requirements for all or any of the following:
 - (a) the keeping of public registers under this Act:
 - (b) how the public registers are to be maintained:
 - (c) the details to be included in the public registers.
- (3) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (4) The chief executive may, by notice under section 405,—
 - (a) set requirements for all or any of the matters described in subsection (1)(a) to (c):
 - (b) set requirements for all or any of the matters described in subsection (2)(a) to (c):
 - (c) supplement regulations made under this section.
- (5) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
 - (a) regulations under this section:
 - (b) a notice issued under section 405 in reliance on subsection (4).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)(a)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)(b)

Publication	The maker must: <ul style="list-style-type: none"> • publish it on the maker's website 	LA19 ss 73, 74(1)(a), Sch 1 cl 14
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- publish or notify it in the *Gazette*
- If it is notified, the maker must:
- state in the notice where it is available
 - make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides
- The maker must also comply with section 408(1A)

Presentation The Minister must present it to the House of Representatives LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116

This note is not part of the Act.

Section 390 heading: amended, on 2 March 2018, by section 42(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 390(4): inserted, on 2 March 2018, by section 42(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 390(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

391 Regulations about offences

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) stating which offences in this Act are infringement offences:
 - (b) prescribing infringement offences for the breach or failure to comply with any specified requirements or conditions referred to in section 243 or 244:
 - (c) prescribing infringement notices, infringement reminder notices, and infringement forms of any other kind:
 - (d) prescribing the amount, up to \$1,000, of an infringement fee that is payable for an infringement offence, including different fees for a first offence, a second offence, and subsequent offences.
- (2) Subsection (1)(b) does not limit the generality of subsection (1)(a).
- (3) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication PCO must publish it on the legislation website and notify it in the *Gazette* LA19 s 69(1)(c)

Presentation The Minister must present it to the House of Representatives LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116

This note is not part of the Act.

Section 391(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

392 Regulations about administrative matters

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing forms, procedures, and certificates for the purpose of any applicable requirements of this Act.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 392(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

*Regulations about other matters***393 Regulations about definitions**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
 - (a) declaring anything to be or not to be food for the purposes of this Act;
 - (b) declaring a business to be or not to be a food business for the purposes of this Act.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 393(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

394 Regulations for purposes of section 368

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
 - (a) declaring any Act to be an Act for the purposes of section 368(3):
 - (b) declaring any person to be a person for the purposes of section 368(4).
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 394(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

395 Regulations and notices about other matters

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for any matters that are—
 - (a) not covered by sections 383 to 394; and
 - (b) contemplated by this Act, necessary for its administration, or necessary to give it full effect.
- (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379.
- (3) The chief executive may, by notice under section 405, supplement regulations made under this section.
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
 - (a) regulations under this section:
 - (b) a notice issued under section 405 in reliance on subsection (3).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(a)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)(b)

Publication	The maker must: <ul style="list-style-type: none"> • publish it on the maker’s website • publish or notify it in the <i>Gazette</i> If it is notified, the maker must: <ul style="list-style-type: none"> • state in the notice where it is available • make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The maker must also comply with section 408(1A)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 395 heading: amended, on 2 March 2018, by section 43(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 395(3): inserted, on 2 March 2018, by section 43(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 395(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 5—Food standards

Adopted joint food standards

396 Purpose of sections 397 to 401

The purpose of sections 397 to 401 is to give effect to New Zealand’s obligations under the Australia–New Zealand Joint Food Standards Agreement by giving lawful effect to joint food standards.

397 Minister may adopt joint food standards

- (1) The Minister may adopt a joint food standard (**adopted joint food standard**) for food manufactured or prepared for sale or sold in New Zealand, or imported into, or exported from, New Zealand, if subsections (2) and (3) are complied with.
- (2) In adopting a joint food standard under subsection (1), the Minister must take into account the following matters:
 - (a) the need to protect public health:

- (b) the desirability of avoiding unnecessary restrictions on trade:
 - (c) the desirability of maintaining consistency between the adopted joint food standards and those standards that apply internationally:
 - (d) the need to give effect to New Zealand's obligations under any relevant international treaty, agreement, convention, or protocol:
 - (e) any other matters that the Minister considers relevant.
- (3) The Minister must not adopt a joint food standard under subsection (1) unless he or she is satisfied that adequate consultation on the joint food standard has taken place under the Food Standards Australia New Zealand Act 1991 (Australia).
- (4) The effect of adopting a joint food standard is that a person who manufactures or prepares food for sale in New Zealand, or sells food in New Zealand, or imports food into, or exports food from, New Zealand must comply with the requirements of the adopted food standard in relation to that food.
- (5) An adopted joint food standard—
- (a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
 - (b) must include—
 - (i) a statement to the effect that the Minister has adopted the joint food standard; and
 - (ii) the date on which the adopted joint food standard commences.
- (6) The Legislation Act 2019 applies as if—
- (a) the Minister were the maker of the adopted joint food standard; and
 - (b) the adopted joint food standard were made by the Minister adopting it.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must: <ul style="list-style-type: none"> • notify it in the <i>Gazette</i> with a statement of where it is available for inspection and purchase • make it available for inspection free and for purchase at a reasonable price at the head office of the Ministry and other places the maker decides <p>The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019</p>	LA19 ss 73, 74(1)(a), Sch 1 cl 14 LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 397(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 397(1): amended, on 2 March 2018, by section 44(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 397(4): inserted, on 2 March 2018, by section 44(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 397(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 397(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

398 Issue, notification, and availability of adopted joint food standards

[Repealed]

Section 398: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

399 Adoption of joint food standard is not incorporation by reference

Sections 396 to 400 constitute a code that sets out all the requirements that must be followed before a joint food standard can be adopted under section 397, and the act of adoption of a joint food standard is not an incorporation by reference for the purposes of sections 63 to 66 and Schedule 2 of the Legislation Act 2019.

Section 399: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

400 Amendment and revocation of adopted joint food standards

- (1) The Minister may amend or revoke an adopted joint food standard in order to—
- (a) give effect to an amendment or a revocation of a joint food standard; or
 - (b) correct an error or omission in that standard.

- (2) An amendment to an adopted food standard under subsection (1)(a) or (b) must, subject to this section, be adopted in the same way as a joint food standard is adopted.
- (3) Section 397 applies, subject to any necessary modifications, in respect of—
- (a) the adoption of an amendment to an adopted food standard except that section 397(2) and (3) does not apply if the amendment corrects an error or omission in that standard:
- (b) the revocation of an adopted food standard.
- (4) An amendment to, or revocation of, an adopted food standard is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must: <ul style="list-style-type: none">• notify it in the <i>Gazette</i> with a statement of where it is available for inspection and purchase• make it available for inspection free and for purchase at a reasonable price at the head office of the Ministry and other places the maker decides The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 73, 74(1)(a), Sch 1 cl 14 LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 400(2): replaced, on 2 March 2018, by section 45 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 400(3): inserted, on 2 March 2018, by section 45 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 400(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

401 Minister must not delegate power to adopt joint food standards

Despite clause 5 of Schedule 6 of the Public Service Act 2020, the Minister must not delegate to any other person the power under section 397 to adopt joint food standards.

Section 401: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

402 Proof of adopted joint food standards

[Repealed]

Section 402: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

*Domestic food standards***403 Purpose of section 404**

The purpose of section 404 is to allow, in certain limited and exceptional circumstances, for food standards to be issued separately from those set out in the Australia New Zealand Food Standards Code and to be given the force of law in New Zealand only.

404 Minister may issue domestic food standards

- (1) The Minister may, by notice, issue food standards (**domestic food standards**) for food manufactured or prepared for sale or sold in New Zealand, or imported into, or exported from, New Zealand, if—
 - (a) standards have been or are being developed under the Australia–New Zealand Joint Food Standards Agreement for inclusion in the Australia New Zealand Food Standards Code, but New Zealand has chosen, under an annex of the Agreement, to opt out of the standards; and
 - (b) subsection (2) is complied with.
- (2) In issuing domestic food standards under subsection (1), the Minister must take into account the following matters:
 - (a) the need to protect public health:
 - (b) the desirability of avoiding unnecessary restrictions on trade:
 - (c) the desirability of maintaining consistency between domestic food standards and those standards that apply internationally:
 - (d) the need to give effect to New Zealand’s obligations under any relevant international treaty, agreement, convention, or protocol:
 - (e) any other matters that the Minister considers relevant.
- (3) The Minister must not issue a domestic food standard under subsection (1) unless he or she is satisfied that there has been appropriate consultation on the domestic food standard in accordance with section 379.
- (4) Sections 397 to 401 apply, subject to any necessary modifications, in respect of a domestic food standard issued under subsection (1).
- (5) A domestic food standard is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must: <ul style="list-style-type: none">• notify it in the <i>Gazette</i> with a statement of where it is available for inspection and purchase• make it available for inspection free and for purchase at a reasonable price at the head office of the Ministry and other places the maker decides The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 73, 74(1)(a), Sch 1 cl 14 LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 404(1): amended, on 2 March 2018, by section 46 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 404(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 6—Notices

Notices

405 Notices

- (1) The chief executive may issue notices that—
 - (a) set requirements or specify matters that are permitted by this Act; or
 - (b) are permitted by a provision of this Act to supplement regulations made under this Act.
- (2) The chief executive must not issue a notice under subsection (1)(b) unless satisfied that the notice—
 - (a) sets out matters of detail to elaborate on matters provided for in the regulations; or
 - (b) sets out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or
 - (c) sets out how requirements imposed by the regulations may or must be met; or
 - (d) otherwise supplements matters of general principle set out in the regulations.
- (3) If a notice issued under this section is inconsistent with the regulations, the regulations prevail to the extent of the inconsistency.
- (4) A notice under this section is not secondary legislation unless it is stated to be secondary legislation by another provision of this Act.

Section 405: replaced, on 2 March 2018, by section 47 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 405(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

406 Notices relating to specifications or requirements for specific matters

[Repealed]

Section 406: repealed, on 2 March 2018, by section 48 of the Food Safety Law Reform Act 2018 (2018 No 3).

407 Notices: consultation

The chief executive must consult under section 380 before issuing a notice under section 405.

408 Notices: publication

- (1) A notice under section 405 must be published in accordance with this section.

Notices that are secondary legislation

- (1A) In addition to complying with the Legislation Act 2019, the chief executive may try to bring a notice that is secondary legislation to the attention of persons likely to be affected by the notice by publishing it or notifying its making in—

- (a) a newspaper; or
- (b) a trade journal; or
- (c) any other medium, including an electronic one.

Notices that are not secondary legislation

- (2) If a notice is not secondary legislation,—
- (a) subsections (3) and (8) apply if the notice applies only to 1 or more named persons; and
 - (b) subsections (5) to (8) apply in any other case.

Notices that are not secondary legislation and apply only to 1 or more named persons

- (3) The chief executive must—
- (a) apply the relevant one of sections 376 to 378 to tell the person or persons that the notice has been made; and
 - (b) do 1 of the following:
 - (i) give the person or persons a copy of the notice; or
 - (ii) tell them where they may read a copy free of charge, which may include reading a copy on an Internet site; or
 - (iii) tell them where they may buy a copy.

- (4) *[Repealed]*

Other notices that are not secondary legislation

- (5) The chief executive must—
- (a) publish the notice on an Internet site maintained by or on behalf of the Ministry as soon as practicable after it is issued; and
 - (b) either—
 - (i) publish the notice in the *Gazette*; or
 - (ii) notify the making of the notice in the *Gazette*.
- (6) If only notifying the making of the notice in the *Gazette*, the chief executive must—
- (a) make copies of the notice available for reading free of charge or buying at the head office of the Ministry and at any other places that the chief executive decides; and
 - (b) specify in the *Gazette* notice where the copies may be read or bought.
- (7) In addition to complying with subsection (5), the chief executive may try to bring the notice to the attention of persons likely to be affected by the notice by publishing it or notifying its making in a medium specified in subsection (1A)(a) to (c).
- (8) The chief executive must set a reasonable price for a notice sold under this section.

Section 408(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 408(1A) heading: inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 408(1A): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 408(2) heading: inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 408(2): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 408(3) heading: inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 408(4): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 408(5) heading: inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 408(7): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

409 Application of Legislation Act 2012 to certain notices

[Repealed]

Section 409: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

410 Power to issue emergency notice

- (1) The Minister or chief executive may issue an emergency notice if he or she considers that—
- (a) an emergency or an urgent situation has arisen; and
 - (b) the emergency or the urgent situation creates a risk of death, or serious harm, to any person; and
 - (c) the emergency notice is necessary to alleviate or minimise the risk; and
 - (d) it is not practicable in the circumstances of the particular case for the chief executive to issue a notice under section 405.
- (2) The notice may be amended at any time in the same manner as it was made.
- (3) The person who proposes to issue an emergency notice, whether the Minister or the chief executive, must, before issuing it, consult about the content of the proposed notice anyone the person considers appropriate in a government department, Crown entity, territorial authority, representative group in the food industry, or representative groups in another industry or anyone else the person considers appropriate.
- (4) Neither the Minister nor the chief executive may delegate the power in this section.
- (5) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) an emergency notice under subsection (1):
 - (b) an amendment to a notice under subsection (2).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)

Publication	The maker must: <ul style="list-style-type: none"> • publish or notify it in the <i>Gazette</i> • comply with subsection (4) If it is notified in the <i>Gazette</i> , the maker must: <ul style="list-style-type: none"> • state in the notice where it is available • make it available for inspection and purchase at the head office of the Ministry and at any other places that the chief executive decides The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 410(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

411 Notification and duration of emergency notice

- (1) This section applies when the Minister or chief executive issues an emergency notice under section 410.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) In addition to complying with the Legislation Act 2019, the Minister or chief executive must, to the extent that it is practicable, bring the notice to the attention of all persons likely to be affected by it.
- (5) The notice takes effect on—
 - (a) a day that—
 - (i) is later than the day it is published under the Legislation Act 2019; and
 - (ii) is specified in the notice; or
 - (b) a day that is earlier than the day it is notified or published in the *Gazette*, if every person affected has been supplied with a copy of the notice by the earlier day; or
 - (c) the day it is notified or published in the *Gazette*, if paragraph (a) or (b) does not apply.
- (6) The notice ceases to have effect at the end of 6 months after the date of its publication under the Legislation Act 2019, unless—
 - (a) the Minister or chief executive revokes it earlier; or
 - (b) the Minister or chief executive extends it by notice for 1 further period of up to 6 months.
- (7) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
 - (a) a revocation under subsection (6)(a); and
 - (b) a notice under subsection (6)(b).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (7)

Publication	The maker must notify it in the <i>Gazette</i>	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 411(2): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 411(3): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 411(4): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 411(5): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 411(6): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 411(6)(b): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 411(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

412 Emergency notice prevails

- (1) If there is an inconsistency between an emergency notice under section 410 and regulations under this Act, the emergency notice prevails.
- (2) If there is an inconsistency between an emergency notice under section 410 and a notice under section 405, the emergency notice prevails.

Subpart 7—Transitional provisions*Preliminary***413 Overview of transitional provisions**

- (1) This section describes the general scheme and effect of the transitional provisions contained in this subpart. It is by way of explanation only and does not limit or affect the other provisions of this Act.
- (2) The Food Act 1981 is repealed by section 420. *See* that section and section 2 for the staggered commencement of the repeal of different provisions of that Act.
- (3) However, despite the repeal of the Food Act 1981,—

- (a) the Food Hygiene Regulations 1974 and the Food (Safety) Regulations 2002 continue in force until the end of this Act's introductory period unless revoked earlier by regulations made under this Act; and
 - (b) the Dietary Supplements Regulations 1985 continue in force until section 398 of the Therapeutic Products Act 2023 commences unless revoked earlier by regulations made under this Act.
- (4) Each food sector will have an authorised period to make the transition from the requirements of the Food Act 1981 and the Food Hygiene Regulations 1974 to the new requirements of this Act. That period will start on the relevant appointed date and end on a date that the Governor-General, by Order in Council, may specify by regulations made under this Act. The effect of allowing an authorised transition period for each food sector is intended to provide food businesses across the entire food industry with a staggered and orderly transition to the new requirements of this Act.
- (5) A food business that is subject to the Food Hygiene Regulations 1974 immediately before the relevant appointed date may do any of the following during the authorised transition period for the food sector that the food business is in:
 - (a) comply with the Food Hygiene Regulations 1974; or
 - (b) choose to operate under the applicable risk-based measure for its food sector; or
 - (c) choose to operate under a food control plan, if a food control plan is not the applicable risk-based measure for its food sector; or
 - (d) choose not to operate under a food control plan or a national programme if the food business is wholly within 1 or more of the food sectors specified in Schedule 3.
- (6) A food safety programme under the Food Act 1981 that is current immediately before the relevant appointed date is deemed to be a food control plan under this Act. A food business to which the deemed food control plan relates or applies may operate under it until the end of the authorised transition period for the food sector that the food business is in. At the end of the authorised transition period, the food business must operate under the applicable risk-based measure for its food sector unless the food business is wholly within 1 or more of the food sectors specified in Schedule 3. Alternatively, it may choose to operate under a food control plan, if a food control plan is not the applicable risk-based measure for its food sector.
- (7) A food business that is not in existence immediately before the relevant appointed date and that only starts to operate on or after that date must operate under the applicable risk-based measure (if any) for its food sector. Alternatively, it may choose to operate under a food control plan, if a food control plan is not the applicable risk-based measure for its food sector.
- (8) On the close of 3 years after the relevant appointed date for subsection (4), this Act's introductory period ends, unless extended to a date up to 2 years later by

regulations made under this Act. By the end of this Act's introductory period, every food business must be operating under the applicable risk-based measure (if any), unless an exemption under this Act applies to the food business.

Section 413(3): replaced, on 2 March 2018, by section 50 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 413(3)(b): amended, on 27 July 2023, by section 401 of the Therapeutic Products Act 2023 (2023 No 37).

414 Interpretation

(1) In this subpart, unless the context otherwise requires,—

applicable risk-based measure, in relation to a food business, means the risk-based measure under which the food business must operate under this Act

deemed food control plan means a registered food safety programme that section 430 or 431 deems to be a registered food control plan

occupier has the meaning given to it by regulation 2(1) of the Food Hygiene Regulations 1974

premises has the meaning given to it by regulation 2(1) of the Food Hygiene Regulations 1974

provisions of the former food regime means the provisions of all or any of the following:

- (a) the Dietary Supplements Regulations 1985;
- (b) the Food Act 1981;
- (c) the Food Hygiene Regulations 1974;
- (d) the Food (Safety) Regulations 2002

registered food safety programme, in relation to a food business, means a food safety programme—

- (a) that was considered to be appropriate, within the meaning of section 8G of the Food Act 1981, for the purposes of section 8F or 8O of that Act; and
 - (b) in respect of which an exemption was granted to the food business and that exemption was registered under section 8ZS of the Food Act 1981.
- (2) Sections 23 and 25 apply, as appropriate, for the purpose of determining the applicable risk-based measure under subsection (1).

415 Meaning of Act's introductory period

In this subpart, **Act's introductory period** means the period that—

- (a) starts on the relevant appointed date; and
- (b) ends on—
 - (i) the close of 3 years after the relevant appointed date for paragraph (a); or

- (ii) a later date specified in regulations made under section 417.

416 Meaning of authorised transition period

- (1) In this subpart, **authorised transition period**, in relation to a food sector, means a period that starts and ends as described in subsections (2) and (3) within which food businesses in the food sector are authorised by this Act to continue to operate under the provisions of the former food regime if they choose to do so, but by the end of which period they must be operating under their applicable risk-based measures.
- (2) An authorised transition period starts on the relevant appointed date.
- (3) An authorised transition period ends on the date specified for the food sector in regulations made under section 418(1)(a).
- (4) A date that regulations specify as the end date of an authorised transition period must be within the period that starts on the relevant appointed date and ends at the end of this Act's introductory period.

417 Regulations extending end date of Act's introductory period

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations extending this Act's introductory period by up to 2 years.
- (2) The Minister may make the recommendation only if he or she receives a recommendation to do so from the chief executive.
- (3) The Governor-General's power under this section may be exercised only once.

418 Regulations specifying or extending end date of authorised transition period

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
 - (a) specifying the end date of the authorised transition period for a food sector or a class of food sectors, which is the date by which the food businesses in that food sector or those food sectors must be operating under their applicable risk-based measures:
 - (b) extending the end date of the authorised transition period for a food sector or a class of food sectors to any date up to the end of this Act's introductory period:
 - (c) specifying the steps that the food businesses in the food sector or class of food sectors must take to ensure that they are subject to the applicable risk-based measure by the end date:
 - (d) specifying any other steps that may be necessary or desirable for the transition of food businesses to operating under applicable risk-based measures.

- (2) Every food business in a food sector must comply with regulations made under this section or stop operating as a food business.

Early commencement

419 Early commencement food safety officers

- (1) In this section, **specified function, duty, or power** means a function, duty, or power that a person appointed as a food safety officer under this Act may perform or exercise in the enforcement of obligations imposed under a power in a provision to which section 2(3)(a) applies.
- (2) This section applies to a person who, on the date on which this Act receives the Royal assent, is entitled to perform or exercise any function, duty, or power that is substantially similar to a specified function, duty, or power.
- (3) The person must be treated as a food safety officer for the purposes of performing or exercising the substantially similar functions, duties, and powers under this Act until the commencement of section 276.

Pre-commencement

420 Pre-commencement legislative requirements: Food Act 1981 and regulations

- (1) Sections 37 and 40 of the Food Act 1981 are repealed on the day after the date on which this Act receives the Royal assent (*see* section 2(3)(b)).
- (2) The other provisions of the Food Act 1981 are repealed on the date or dates appointed by Order in Council for the purpose of their repeal (*see* section 2(1)).
- (3) Despite subsection (2),—
- (a) the Food Hygiene Regulations 1974 and the Food (Safety) Regulations 2002 continue in force until the end of this Act's introductory period unless revoked earlier by regulations made under this Act; and
 - (b) the Dietary Supplements Regulations 1985 continue in force until section 398 of the Therapeutic Products Act 2023 commences unless revoked earlier by regulations made under this Act; and
 - (c) the regulations continued by paragraph (a) or (b) may be amended as if the Food Act 1981 had not been repealed.
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) the Dietary Supplements Regulations 1985:
 - (b) an amendment to those regulations under subsection (3)(c).

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4)

Publication PCO must publish it on the legislation website and notify it in the *Gazette* LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 420(2): 1 March 2016 appointed as the date for the purpose of commencing the repeals effected by that section, on 1 March 2016, by clause 7 of Schedule 1 of the Food Regulations 2015 (LI 2015/310).

Section 420(3): replaced, on 2 March 2018, by section 51 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 420(3)(b): amended, on 27 July 2023, by section 402 of the Therapeutic Products Act 2023 (2023 No 37).

Section 420(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

421 Pre-commencement standards

- (1) A food standard is treated as if it had been issued as an adopted joint food standard under this Act if it—
 - (a) is issued under section 11C of the Food Act 1981; and
 - (b) is not a prescribed food standard of the kind referred to in section 11P of the Food Act 1981; and
 - (c) incorporates aspects of the Australia New Zealand Food Standards Code; and
 - (d) is in force on the relevant appointed date.
- (2) A food standard is treated as if it had been issued as a domestic food standard under this Act if it—
 - (a) is issued under section 11C of the Food Act 1981; and
 - (b) is not a prescribed food standard of the kind referred to in section 11P of the Food Act 1981; and
 - (c) does not incorporate aspects of the Australia New Zealand Food Standards Code; and
 - (d) is in force on the relevant appointed date.
- (3) A food standard continues in force until the date specified in subsection (4) if it—
 - (a) is issued under section 11C of the Food Act 1981; and
 - (b) is a prescribed food standard of the kind referred to in section 11P of the Food Act 1981; and
 - (c) is in force on the relevant appointed date.
- (4) The date is the earlier of the following:
 - (a) the date on which the food standard is revoked by regulations made under this Act;
 - (b) the date on which this Act's introductory period ends.

- (5) A food standard that is issued under section 11M of the Food Act 1981 and is in force on the relevant appointed date is treated as if it had been issued as an emergency notice under this Act.
- (6) If a food standard to which subsection (2) applies cannot be amended under section 404 because the requirements of section 404(1)(a) are not satisfied, the Minister may, by notice, amend the standard if the Minister—
- is satisfied that the amendment could have been made under section 11C of the Food Act 1981 (had it been in force); and
 - is satisfied that the amendment does not have the effect of extending the application of the standard; and
 - has taken into account the matters described in section 404(2); and
 - is satisfied that there has been appropriate consultation on the amendment in accordance with section 379.
- (7) Sections 397 to 401 apply, subject to any necessary modifications, in respect of an amendment made under subsection (6).
- (8) An amendment under subsection (6) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must: <ul style="list-style-type: none"> notify it in the <i>Gazette</i> with a statement of where it is available for inspection and purchase make it available for inspection free and for purchase at a reasonable price at the head office of the Ministry and other places the maker decides. The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 73, 74(1)(a), Sch 1 cl 14 LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 421(6): inserted, on 2 March 2018, by section 52 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 421(7): inserted, on 2 March 2018, by section 52 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 421(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

422 Pre-commencement food

Food produced or processed and handled under the Food Act 1981 and in existence on the relevant appointed date is treated as equivalent to food at the comparable stage of production or processing and handling under this Act.

423 Pre-commencement consultation

Consultation carried out at any time before this Act receives the Royal assent or the relevant appointed date about a matter requiring consultation under this Act (including proposed regulations under this Act) is treated as consultation for the purposes of this Act.

424 Pre-commencement food safety officers

- (1) This section applies to a person who, immediately before the relevant appointed date, is entitled to perform or exercise any function, duty, or power that is substantially similar to a function, duty, or power that a person appointed as a food safety officer under this Act may perform or exercise.
- (2) The person is a food safety officer for the purposes of exercising or performing those substantially similar functions, duties, and powers under this Act until the later of the following dates:
 - (a) the end date of the appointment he or she held immediately before the relevant appointed date;
 - (b) the date that is 6 months after that relevant appointed date.

425 Pre-commencement offences

A food safety officer may exercise the powers in this Act in relation to an offence committed against any provisions of the former food regime.

Transition to new requirements

426 New legislative requirements

- (1) A food business that is not in existence immediately before the relevant appointed date, and that only starts to operate on or after that date, must operate under the applicable risk-based measure (if any) for its food sector and must comply with the applicable requirements of this Act unless it is otherwise exempt under a requirement of this Act. Alternatively, the food business may choose to operate under a food control plan, if a food control plan is not the applicable risk-based measure for the food sector that the food business is in.
- (2) A food business that is subject to the Food Hygiene Regulations 1974 immediately before the relevant appointed date may, during the authorised transition period for the food sector that the food business is in,—
 - (a) comply with the Food Hygiene Regulations 1974; or
 - (b) choose to operate under the applicable risk-based measure; or
 - (c) choose to operate under a food control plan, if a food control plan is not the applicable risk-based measure; or
 - (d) choose not to operate under a food control plan or a national programme if the food business is wholly within 1 or more of the food sectors specified in Schedule 3.

427 Notices during authorised transition period

- (1) The chief executive may issue a notice during the authorised transition period for each food sector requiring food businesses in the sector to notify the chief executive of information of a kind that the chief executive specifies in the notice.
- (2) The chief executive may issue a notice requiring a territorial authority to make a record of the food businesses in its district or the classes of food businesses in its district.
- (3) The chief executive may issue a notice requiring a territorial authority to keep information of a kind that the chief executive specifies about food businesses in its district or the classes of food businesses in its district.
- (4) The chief executive may issue a notice requiring a territorial authority to notify the chief executive of information of a kind that the chief executive specifies about food businesses in its district or the classes of food businesses in its district.
- (5) The chief executive may issue a notice specifying how inspections or verifications of food businesses in a territorial authority's district are to be carried out.
- (6) A notice issued under this section must state the time within which it must be complied with.
- (7) A food business or territorial authority to which a notice under this section applies must comply with it.
- (8) The chief executive must consult under section 380 before issuing a notice under this section.
- (9) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	It is not required to be published	LA19 s 73(2)
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 427(9): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

428 Statements about food produced or processed and handled under Food Act 1981

The chief executive may make a statement under this Act about food produced or processed and handled under the Food Act 1981 as if the food had been produced or processed and handled under this Act.

429 New food safety officers

A food safety officer appointed under this Act may perform the officer's functions and duties, and exercise the officer's powers, in relation to a food business operating immediately before the relevant appointed date while it continues to operate under the provisions of the former food regime.

Deemed food control plans

430 Pre-commencement registered food safety programme

- (1) This section applies to a food business that has a registered food safety programme that is in force on the relevant appointed date.
- (2) The registered food safety programme is deemed to be a registered food control plan until the date specified in section 433.
- (3) However, this section does not prevent the food business from choosing, during the authorised transition period for the food sector that the food business is in, to be covered by the applicable risk-based measure.
- (4) The food business must retain until the end of this Act's introductory period all the records that it was required to keep before the relevant appointed date by the Food Act 1981 or by its food safety programme.

431 Pre-commencement application for exemption under Food Act 1981

- (1) This section applies to an application under section 8B of the Food Act 1981 or an application to which section 8C(2) of that Act applies that, immediately before the relevant appointed date, is waiting for the chief executive to determine it.
- (2) The application must be dealt with under the Food Act 1981, except for sections 8J and 8N to 8U, despite the fact that section 420 repeals the Food Act 1981.
- (3) If the application results in an exemption under section 8F of the Food Act 1981 and the exemption is registered under section 8ZS of that Act, the food safety programme on which the exemption is based is deemed to be a registered food control plan.

432 Deemed food control plans under sections 430 and 431

- (1) The appropriate registration authority for a deemed food control plan is,—

- (a) if the business was exempted under section 8F of the Food Act 1981 from the provisions of the Food Hygiene Regulations 1974, the chief executive:
 - (b) in any other case, the relevant territorial authority.
- (2) The chief executive may issue a notice imposing conditions on a deemed food control plan. If the chief executive does so, section 60 applies to the conditions as if they had been imposed under section 60(1).
 - (3) Sections 44 to 47 and 62 to 72 apply to a deemed food control plan.

433 Duration of deemed food control plans under sections 430 and 431

- (1) A food control plan that is a deemed food control plan under sections 430 and 431 is effective until the earlier of the following dates:
 - (a) the date on which the authorised transition period for the food sector that the relevant food business is in ends:
 - (b) the date on which the food business concerned starts to operate under an applicable risk-based measure.
- (2) However, this section does not prevent the food business from choosing, during the authorised transition period for the food sector that the food business is in, to sooner operate under the applicable risk-based measure (if any).

Post-commencement status of food businesses not previously covered by food legislation

434 Food business now covered

- (1) This section applies to a food business that, immediately before the relevant appointed date, is not covered by the Food Hygiene Regulations 1974 or the Food Act 1981 but, on that date, is covered by this Act.
- (2) The food business must operate under the applicable risk-based measure (if any) by the end of the authorised transition period for the food sector that the food business is in.

Post-commencement status of persons

435 Approved auditors under Food Act 1981

- (1) This section applies to a person who, immediately before the relevant appointed date, has an approval under section 8ZV of the Food Act 1981.
- (2) The person is deemed to be a recognised person on and after the relevant appointed date until the expiry of the appointment (if any) or until a date specified by the chief executive in a notice, whichever is the earlier.
- (3) The chief executive may issue a subsequent notice extending the date specified in the notice under subsection (2).

- (4) A person to whom this section applies who wishes to be a recognised person must apply under section 139.
- (5) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to a specified individual.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	It is not required to be published	LA19 s 73(2)
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 435(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

436 Agencies managing approved auditors under Food Act 1981

- (1) This section applies to an agency that, immediately before the relevant appointed date, manages an approved auditor under the Food Act 1981.
- (2) The agency is deemed to be a recognised agency on and after the relevant appointed date until a date specified by the chief executive in a notice.
- (3) The chief executive may issue a subsequent notice extending the date.
- (4) The agency must apply under section 135 if it wishes to be a recognised agency, unless section 136 applies.
- (5) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to a specified agency.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	It is not required to be published	LA19 s 73(2)
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 436(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

437 Notices about approved auditors and agencies

- (1) The chief executive may issue a notice specifying conditions applying to approved auditors deemed to be recognised persons or conditions applying to agencies deemed to be recognised agencies.
- (2) The chief executive may issue a notice specifying the functions that a person deemed to be a recognised person must or must not carry out under this Act, the training that the person must do for the purposes of this Act, and the competency standards that the person must meet for the purposes of this Act.
- (3) The chief executive may issue a notice specifying the functions that an agency deemed to be a recognised agency must or must not carry out under this Act and the management standards that the agency must meet for the purposes of this Act.
- (4) A person to whom, or agency to which, a notice under this section applies must comply with it.
- (5) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to a specified individual or agency.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	It is not required to be published	LA19 s 73(2)
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 437(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

438 Importers listed for purposes of Food Act 1981

- (1) This section applies to a person who, immediately before the relevant appointed date, is listed as an importer under the Food (Importer Listing) Standard 2008 issued under section 11C of the Food Act 1981.
- (2) The person is deemed to be a registered importer on and after the relevant appointed date until a date specified by the chief executive in a notice.
- (3) The chief executive may issue a subsequent notice extending the date.
- (4) A person to whom this section applies who wishes to be registered as an importer must apply under section 113.
- (5) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to a specified importer.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	It is not required to be published The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 s 73(2) LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 438(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Transitional regulations

439 Regulations about transitional matters

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for transitional matters to facilitate the coming into force of this Act.
- (2) The regulations may be made at any time in this Act's introductory period.
- (3) The regulations may apply at any time in this Act's introductory period.
- (4) The regulations may provide for matters arising after this Act's introductory period, but only to the extent necessary to give effect to the transition of a matter arising in this Act's introductory period.
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 439(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

440 Regulations about cost recovery

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting charges for actions by the chief executive under this subpart.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting charges for other actions under this subpart.

- (3) The Minister must consider the principles in section 198 before recommending to the Governor-General the making of regulations under this section.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 440(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

441 Consultation about proposed regulations

- (1) Consultation must occur before the Minister recommends to the Governor-General that he or she make regulations under this subpart.
- (2) Section 379(2) to (8) apply to the consultation.

Notice requirements

442 Requirements for notices issued by chief executive

Sections 407 and 408 apply to the issuing of notices by the chief executive under this subpart.

Section 442: amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 8—Miscellaneous

Public registers

443 Further provisions for public registers are in Schedule 5

Further provisions relating to the public registers are in Schedule 5.

Consolidation of secondary legislation or published instruments

Heading: inserted, on 30 November 2022, by section 58 of the Statutes Amendment Act 2022 (2022 No 75).

443A Certain secondary legislation or published instruments may be consolidated

Secondary legislation made by same maker and with same publishing requirements

- (1) The Minister or the chief executive (the **maker**) may at any time apply this section to any secondary legislation that—

- (a) the maker has made, or may make, under a provision of this Act, or of regulations made under this Act, by satisfying the same requirements for publishing the secondary legislation; and
 - (b) is not drafted by the PCO (*see* section 67 of the Legislation Act 2019).
- Other instruments made by same maker with same publishing requirements*
- (2) The Minister or the chief executive (the **maker**) may at any time apply this section to any instruments that—
 - (a) the maker has made, or may make, under any provisions of this Act, or of regulations made under this Act, by satisfying the same requirements for publishing the instruments; and
 - (b) are not secondary legislation.
- Once this section is applied to specific instruments*
- (3) The powers of the maker to amend or replace the specific instruments (whether given by a specific empowering provision, section 48 of the Legislation Act 2019, or otherwise) authorise the maker to—
 - (a) revoke any specific instruments that have been made (a **revoked instrument**); and
 - (b) make an instrument under any of the specific empowering provisions (the **new instrument**) that—
 - (i) has the same effect that all or part of the revoked instrument or instruments had immediately before being revoked; and
 - (ii) otherwise has any further effect (if any) authorised by the specific empowering provisions (the **new or amended parts**).
- (4) For each part of the new instrument (the **replacement part**) that has the same effect as part of a revoked instrument (the **revoked part**),—
 - (a) the replacement part must be treated as being made under the specific empowering provision under which the revoked part was made; and
 - (b) any requirements for making the replacement part or for revoking the revoked part, other than the requirements for publication, must be treated as being satisfied to the extent that the requirements for making the revoked part were satisfied when it was made.
- (5) To avoid doubt,—
 - (a) the new or amended parts of the new instrument (if any) are made under the relevant specific empowering provisions; and
 - (b) any requirements of the relevant specific empowering provisions must be satisfied in making those parts.
- (6) A revoked instrument continues to have effect, as if it had not been revoked, in relation to any matter in a period to which the revoked instrument applied.
- (7) In this section,—

instrument has the meaning given in section 5 of the Legislation Act 2019

maker, in relation to an instrument, means the person empowered to make it, as defined by subsection (1) or (2)

specific empowering provisions means the provisions of this Act, or of regulations, that—

- (a) empower the making of the specific instruments; and
- (b) are referred to in the subsection under which the maker applies this section to the specific instruments

specific instruments means the 1 or more instruments to which the maker applies this section, whether the instruments—

- (a) have been made (and are to be revoked); or
- (b) are able to be made.

Section 443A: inserted, on 30 November 2022, by section 58 of the Statutes Amendment Act 2022 (2022 No 75).

Incorporation by reference

444 Material incorporated by reference

The following documents may incorporate material by reference under Schedule 6:

- (a) regulations; and
- (b) adopted joint food standards; and
- (c) notices issuing domestic food standards; and
- (d) any other notices (other than notices under section 397).

445 References to standard works

- (1) This section applies to the following documents under this Act:
 - (a) adopted joint food standards; and
 - (b) domestic food standards; and
 - (c) regulations; and
 - (d) notices.
- (2) A reference in a document to the current edition of a specified standard work of reference must be read as a reference to the latest edition of the work available at the time of reading, together with any changes made to it up to that time.
- (3) A reference in a document to a specific edition of a specified standard work of reference means that the specific edition must be used.
- (4) A standard work of reference is a work of reference that the chief executive considers is accepted internationally or by an industry as a standard one to refer to on its subject matter. An example is the *Codex Alimentarius*.

Section 445(4): amended, on 2 March 2018, by section 53 of the Food Safety Law Reform Act 2018 (2018 No 3).

Other enactments

446 Relationship with local authority bylaws

- (1) This section applies to the following documents:
 - (a) this Act;
 - (b) regulations under this Act;
 - (c) adopted joint food standards;
 - (d) domestic food standards;
 - (e) notices under this Act;
 - (f) directions given by the chief executive under this Act.
- (2) If a bylaw made by a local authority is inconsistent with a document,—
 - (a) the document prevails and the bylaw has no effect to the extent of the inconsistency; and
 - (b) the local authority must amend or revoke the bylaw to remove the inconsistency.
- (3) The local authority need not use the special consultative procedure set out in section 83 of the Local Government Act 2002 to amend or revoke the bylaw to remove the inconsistency, despite anything in that Act.
- (4) A local authority must not make a bylaw that is inconsistent with a document.

Consequential provisions

447 Consequential amendments and repeals and revocations

The enactments specified in Schedule 7 are consequentially amended or repealed or revoked as indicated in that schedule.

Schedule 1

Food sectors subject to food control plans

ss 3(7), 20 to 25, 28

Part 1

Overview

Details of the food sectors subject to food control plans are provided in Part 3 of this schedule. Sections 349 and 350 exempt certain persons covered by the Animal Products Act 1999 and the Wine Act 2003 from the requirement to operate under an applicable risk-based measure (such as a food control plan).

Examples are provided in Part 3 of this schedule for the purpose of clarifying the general description of food sectors. The examples do not comprise an exhaustive list of all food types or businesses in a sector to which this schedule applies.

The food control plans to which the food sectors in this schedule are subject may include all activities undertaken by the business that are listed in Schedule 2 or 3. If the food business chooses not to cover all the activities in their food control plan, then they must operate their business under a combination of risk-based measures as provided for in section 25(2)(b). For example, transport can be covered under a national programme level 1 as described under the heading **Transporters or distributors of food products** in Part 5 of Schedule 2.

The following provides a summary of food sectors that are subject to food control plans under this schedule:

- (a) food retail sector where food businesses prepare or manufacture and sell food:
- (b) food service sector (except for those categories of food service listed below as subject to other risk-based measures):
- (c) manufacturers of commercially sterilised food products:
- (d) manufacturers of dairy products:
- (e) manufacturers of food for vulnerable populations:
- (f) manufacturers of fresh ready-to-eat salads:
- (g) manufacturers of meals and prepared foods:
- (h) manufacturers of meat, poultry, or fish products:
- (i) manufacturers of non-shelf-stable sauces, spreads, dips, soups, broths, gravies, or dressings:
- (j) wholesale bakeries (except for those categories of bakery listed in this schedule as subject to other risk-based measures):
- (k) manufacturers of processed egg products:
- (l) manufacturers of vegetable proteins or other protein products.

Part 2

Interpretation

In this schedule, unless the context otherwise requires, **shelf-stable**, in relation to food, means that—

- (a) the food can be stored at room or ambient temperature before its packaging is opened; and
- (b) after its packaging is opened, the food may or may not require refrigeration.

Part 3

Food sectors subject to food control plans

Food retail sector where food businesses prepare or manufacture and sell food

General description

This food sector covers food businesses that prepare or manufacture food for direct retail sale to consumers (other than as part of the food service sector).

Examples

Examples include but are not limited to—

- bakeries that prepare or manufacture and sell slices, pies, cakes, or pastries:
- dairies that prepare or manufacture and sell muffins, sandwiches, or filled rolls:
- fishmongers that prepare and sell fish:
- retail butchers that prepare and sell raw meat or ready-to-eat smallgoods:
- supermarkets that have an on-site butchery, bakery, or delicatessen.

What this food sector does not include

This food sector does not include—

- bakeries that prepare or manufacture bread and bread products only (subject to national programme level 2):
- wholesale bakeries (subject to food control plans or national programme level 2):
- food businesses covered by food service sectors specified in any of Schedules 1 to 3:
- manufacturers of meat, poultry, or fish products (subject to food control plans):
- mobile or vehicle-based businesses that prepare or manufacture meals, snacks or beverages (included in the food service sector and subject to food control plans):
- other categories of retailers listed in Schedules 2 and 3:

- persons that are exempt from the requirement to have a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Food service sector

General description

This food sector covers food businesses that prepare or manufacture and serve meals, snacks, or beverages for consumers' immediate consumption—

- at the place (for example, a restaurant or a hospital):
- on home delivery:
- when taken away (that is, takeaways including fish and chips):
- at a venue other than where the food was prepared (including meals that are cooked, chilled, or served elsewhere for catering purposes):
- from mobile or vehicle-based businesses that prepare or manufacture meals, snacks, or beverages, including catering on airlines. A mobile or vehicle-based business in this context includes a business operating from any kiosk, movable stand, mobile shop, vehicle, or similar movable structure.

Distinguishing features of food businesses in this food sector are that they—

- prepare or manufacture and serve food that is ready to eat at the place or to be taken away to be eaten in the vicinity without necessarily requiring any further preparation or handling by consumers:
- have a service focus.

Examples

Examples include but are not limited to—

- bars, cafes, and restaurants:
- food businesses that prepare or prepare and deliver pizza or other takeaway meals:
- corporate or commercial catering, including on a marae:
- hospitals, hospices, and other residential care facilities such as rest homes:
- providers of catering services, including at defence, prison, and educational facilities.

What this food sector does not include

This food sector does not include—

- early childhood education service providers that undertake minimal food handling only (as specified in Schedule 3):
- food provided to children as part of home-based early childhood education services (as specified in Schedule 3):

- food service catering of a specified nature (as specified in Schedule 3):
- food service provided to preschool children (including children under 5 years of age) in a centre-based service setting (subject to national programme level 2):
- food service provided by clubs, organisations, and societies for members or their guests or both (as specified in Schedule 3):
- food service provided by accommodation providers only to guests (as specified in Schedule 3):
- food trading at annual events (as specified in Schedule 3):
- retailers of food that do not have a service focus and are listed elsewhere in this schedule and in Schedules 2 and 3.

Manufacturers of commercially sterilised food products

General description

This food sector covers food businesses that prepare or manufacture commercially sterilised canned, bottled, pouched, or aseptically packaged food products. It includes food sterilised in the pack, or sterilised and packaged aseptically.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- commercially sterilised soups and stocks:
- low-acid canned foods.

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture jams (included in the manufacturers of shelf-stable condiments sector and subject to national programme level 2):
- food businesses that prepare or manufacture non-shelf-stable sauces, spreads, dips, soups, broths, gravies, or dressings (subject to food control plans):
- persons that are exempt from the requirement to have a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Manufacturers of dairy products

General description

This food sector covers food businesses that prepare or manufacture products derived from dairy material or dairy product and that consist principally of dairy material or product (as described under the Animal Products Act 1999). This sector only includes

operators who are exempt from the requirement to operate under a risk management programme by clause 8A of the Animal Products (Exemptions and Inclusions) Order 2000. This includes production for the domestic market or Australia only.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- cottage cheese:
- cheese:
- yoghurt:
- cream:
- ice cream:
- milk (for example, pasteurised or ultra-heat-treated).

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture products such as dips, sauces, spreads, or dressings that do not consist principally of dairy material or product (subject to food control plans or national programme level 2):
- food businesses that prepare or manufacture formulated caffeinated beverages or alcoholic beverages (subject to national programme level 3):
- manufacturers of oils or fats for human consumption that do not consist principally of dairy material or product (subject to national programme level 3):
- persons that are exempt from the requirement to have a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003):
- retailers of soft-serve and scooped ice creams for immediate consumption (included in the food service and retail sector and subject to template food control plans or national programme level 3).

Manufacturers of food for vulnerable populations

General description

This food sector covers food businesses that prepare or manufacture food products specifically targeted, designed, or developed for consumption by vulnerable populations.

Vulnerable populations include—

- children under 5 years of age:
- people over 65 years of age:
- pregnant women:

- people with compromised immune systems.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- baby foods:
- food for infants, for example, puree, rusks, or baby cereals:
- infant formula products:
- chilled or frozen meals specifically targeted to vulnerable populations.

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture and serve meals, snacks or beverages for immediate consumption by vulnerable populations (included in the food service sector and subject to food control plans):
- food businesses that prepare or manufacture and serve meals, snacks, or beverages for consumption by children under 5 years of age in non-residential (day) care settings (subject to national programme level 2):
- persons that are exempt from the requirement to have a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Manufacturers of fresh ready-to-eat salads

General description

This food sector covers food businesses that prepare or manufacture fresh salads that can be eaten in the form in which they are sold. The salads are purchased in packaging and do not require further preparation, such as washing or rinsing, by the consumer before consumption.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- fruit salads:
- green salads:
- rice salads.

What this food sector does not include

This food sector does not include—

- food businesses that prepare and serve fresh salads for immediate consumption (included in the food service sector and subject to food control plans):

- food businesses that minimally process horticultural food (included in the producers of horticultural food or horticultural packing operations sector and subject to national programme level 1). Minimal processing includes (but is not limited to) processes such as rinsing, trimming, shelling, and post-harvest treatments (for example, packing, storing, and transport).

Manufacturers of meals and prepared foods (not covered elsewhere in this schedule)

General description

This food sector covers food businesses that prepare or manufacture chilled, frozen, and shelf-stable meals or prepared foods that may or may not require reheating before consumption. A prepared food is intended to cover a large array of frozen, chilled, and shelf-stable food products.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- frozen, chilled, or shelf-stable ready meals or TV dinners:
- frozen, chilled, or shelf-stable desserts:
- frozen or chilled fruit and vegetables (or their products) that have undergone more than sorting, washing, and minimal heating:
- fresh pasta.

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture—
 - frozen or chilled egg products (included in the manufacturers of processed egg products sector and subject to food control plans):
 - frozen or chilled vegetable protein products or products made from similar proteins (included in the manufacturers of vegetable proteins or other protein products sector and subject to food control plans):
 - frozen fruit or vegetables (subject to national programme level 2):
 - ice or iced confectionery and iced desserts (included in the manufacturers of water-based products sector and subject to national programme level 2):
 - ice cream and yoghurts (included in the manufacturers of dairy products sector and subject to food control plans):
 - non-shelf-stable sauces, spreads, dips, soups, broths, gravies, or dressings (subject to food control plans):

- wholesale bakeries (subject to food control plans or national programme level 2):
- persons that are exempt from the requirement to have a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Manufacturers of meat, poultry, or fish products

General description

This food sector covers food businesses that prepare or manufacture meat, poultry, or fish products at any stage beyond primary processing as defined by the Animal Products Act 1999. This includes processes such as (but not limited to) cutting, boning, smoking, drying, or fermentation after slaughter and dressing (mammals and birds) or harvesting (seafood). Products may be ready to eat or may require cooking before consumption.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- minced meat or poultry:
- formed products (for example, nuggets, or fish fingers):
- further processed meat products (for example, smallgoods, salami, or smoked products).

What this food sector does not include

This food sector does not include—

- persons that are exempt from the requirement to have a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003):
- retail butchers and fishmongers (included in the food retail sector and subject to food control plans).

Manufacturers of non-shelf-stable sauces, spreads, dips, soups, broths, gravies, or dressings

General description

This food sector covers food businesses that prepare or manufacture chilled or frozen sauces, spreads, dips, soups, broths, gravies, or dressings. Products may or may not require heating before consumption.

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture—

- dairy products (subject to food control plans):
- margarine and vegetable oils (included in the manufacturers of oils or fats for human consumption sector and subject to national programme level 3):
- shelf-stable condiments (subject to national programme level 2):
- persons that are exempt from the requirement to have a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Wholesale bakeries

General description

This food sector covers wholesale bakeries making more than just bread, biscuits, or other shelf-stable products.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- cakes:
- pastry:
- pies, savouries, or pastry-based bakery products.

What this food sector does not include

This food sector does not include—

- bakeries that prepare or manufacture bread or bread products only (subject to national programme level 2):
- food businesses that prepare or manufacture shelf-stable grain-based products (subject to national programme level 2):
- retail bakeries or on-site bakeries in supermarkets that prepare or manufacture a variety of baked products (included in the food retail sector and subject to food control plans).

Manufacturers of processed egg products

General description

This food sector covers food businesses that prepare or manufacture products made from the whole, or part, of the content of eggs. Other ingredients may be added to an egg product (for example, seasonings) provided that the egg product remains the main ingredient or component.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- dried egg products:
- pasteurised egg pulp products:
- further processed egg products (for example fried eggs, pickled eggs, or smoked eggs).

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture products that include an egg product as an ingredient, but where the egg product is not the main component or ingredient:
- commercially produced non-shelf-stable egg-based sauces such as mayonnaise and hollandaise (included in the manufacturers of non-shelf-stable sauces, spreads, dips, soups, broths, gravies, or dressings sector and subject to food control plans):
- commercially produced shelf-stable egg-based sauces such as mayonnaise and hollandaise (included in the manufacturers of shelf-stable condiments, including sauces, spreads, or preserves sector and subject to national programme level 2):
- persons exempt from the requirement to have a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Manufacturers of vegetable proteins or other protein products

General description

Covers food businesses that prepare or manufacture products from vegetable proteins or products made from similar proteins. It includes dried, cooked, fried, or fermented products, and curd (whether or not shelf-stable).

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- tofu:
- meat alternatives:
- miso:
- yeast extract:
- non-dairy yoghurt.

What this food sector does not include

This food sector does not include food businesses that prepare or manufacture—

- soy crisps (included in the manufacturers of crisps, popcorn, pretzels, or similar snack products sector and subject to national programme level 2):
- soy infant formula products (included in the manufacturers of food for vulnerable populations sector and subject to food control plans):
- soy sauces (included in the manufacturers of shelf-stable condiments sector and subject to national programme level 2):
- commercially sterilised beverages such as soy milk or oat milk (included in the manufacturers of commercially sterilised food products sector and subject to food control plans).

Schedule 2

Food sectors subject to national programmes

ss 3(8), 20 to 25, 28

Part 1

Overview

Details of the food sectors subject to national programmes are provided in Parts 3 to 5 of this schedule. Sections 349 and 350 exempt certain persons covered by the Animal Products Act 1999 and the Wine Act 2003 from the requirement to operate under an applicable risk-based measure (such as a national programme).

Examples are provided in Parts 3 to 5 of this schedule for the purpose of clarifying the general description of food sectors. The examples do not comprise an exhaustive list of all food types or businesses in a sector to which this schedule applies.

The national programmes to which the following food sectors are subject must include transport, display, and storage activities that are incidental to the activities undertaken by food businesses, unless these activities are included in a separate national programme level 1 as described under the Transporters or distributors of food products heading in this schedule.

The following table provides a summary of the food sectors that are subject to a national programme under this schedule:

National programme level	Food sector
National programme level 3	Brewers, distillers, manufacturers of vinegar, alcoholic beverages, or malt extract Manufacturers of non-alcoholic beverages Manufacturers of oils or fats for human consumption Manufacturers of food additives, processing aids, vitamins, minerals, or other nutrients intended to be added to food Processors of grain Retailers that handle food (but do not prepare or manufacture food) Processors of herbs or spices Manufacturers of dry mix products
National programme level 2	Bakeries that prepare or manufacture bread or bread products only Food service provided to pre-school children (including children under 5 years of age) in a centre-based service setting Manufacturers of confectionery Processors of nuts and seeds Manufacturers of crisps, popcorn, pretzels, or similar snack products Manufacturers of dried or dehydrated fruit or vegetables Manufacturers of shelf-stable condiments (including sauces, spreads, and preserves) Manufacturers of shelf-stable grain-based products

National programme level	Food sector
	Manufacturers of water-based products including ice, iced confectionery, and iced desserts
	Retailers of manufacturer-packaged chilled or frozen food (excluding ice cream, iced confectionery, and iced desserts)
	Manufacturers of frozen fruit or vegetables
National programme level 1	Extractors and packers of honey
	Producers of horticultural food and horticultural packing operations (packhouses)
	Manufacturers of sugar or related products
	Retailers of hot beverages and shelf-stable manufacturer-packaged foods only
	Retailers of manufacturer-packaged ice cream, iced confectionery, and iced desserts
	Transporters or distributors of food products

Part 2 Interpretation

In this schedule, unless the context otherwise requires, **shelf-stable**, in relation to food, means that—

- (a) the food can be stored at room or ambient temperature before its packaging is opened; and
- (b) after its packaging is opened, the food may or may not require refrigeration.

Part 3 Food sectors subject to national programme level 3

Brewers, distillers, and manufacturers of vinegar, alcoholic beverages, or malt extract

General description

This food sector covers food businesses that brew, distil, or manufacture from fermentation vinegar, or beverages that are found on analysis to contain 1.15% or more alcohol by volume and businesses that manufacture malt extract.

Examples

Examples include but are not limited to brewers, distillers, or fermenters of—

- alcohol mixes:
- beer:
- grain vinegar:
- spirits:
- malt extract.

What this food sector does not include

This food sector does not include—

- manufacturers of shelf-stable condiments (subject to national programme level 2):
- persons that are exempt from the requirement to operate under a national programme under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Manufacturers of non-alcoholic beverages

General description

This food sector covers food businesses that prepare or manufacture carbonated or non-carbonated beverages, and fruit or vegetable beverages.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- bottled water:
- cola beverages:
- energy drinks:
- sports beverages:
- 100% orange juice (chilled):
- apple drink (shelf-stable):
- berry juice smoothie drink:
- tomato juice.

What this food sector does not include

This food sector does not include—

- brewers, distillers, or manufacturers of vinegars or alcoholic beverages that are found on analysis to contain 1.15% or more alcohol by volume (subject to national programme level 3):
- food businesses that prepare or manufacture beverages in which dairy products comprise the main ingredient (included in the manufacturers of dairy products sector and subject to food control plans):
- food businesses that squeeze juice and serve it to consumers for immediate consumption, for example, at a juice bar (included in the food service sector and subject to food control plans).

Manufacturers of oils or fats for human consumption*General description*

This food sector covers food businesses that prepare or manufacture oil or fat-based products or oil or fat emulsions derived from vegetable or animal sources for human consumption (including any mixture of those sources).

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- margarine:
- olive oil.

What this food sector does not include

This food sector does not include—

- manufacturers of dairy products (subject to food control plans):
- manufacturers of non-shelf-stable sauces, spreads, dips, soups, broths, gravies, or dressings (subject to food control plans):
- manufacturers of shelf-stable condiments (including spreads, sauces, or preserves) (subject to national programme level 2):
- persons that are exempt from the requirement to operate under a national programme under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Manufacturers of food additives, processing aids, vitamins, minerals, or other nutrients intended to be added to food*General description*

This food sector covers food businesses that prepare or manufacture food additives, processing aids, or vitamins, minerals, or other nutrients intended to be added to food. Products may be in liquid or dry form.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- food colourings:
- cream of tartar or baking soda:
- vitamins or minerals intended to be added to food:
- tabletop intense sweeteners:
- baker's or brewer's yeast.

What this food sector does not include

This food sector does not include persons that are exempt from the requirement to operate under a national programme under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Processors of grain

General description

This food sector covers food businesses that process (for example, by milling, malting, rolling, or roasting) grains for consumption or for inclusion in other food products (for example, as flour, malted barley, rolled oats, or puffed cereals).

Examples

Examples include but are not limited to processors of—

- wheat:
- corn:
- rice:
- barley:
- oats.

What this food sector does not include

This food sector does not include businesses that incorporate processed grain into other foods, for example, breakfast cereal or cereal bars (included in the manufacturers of shelf-stable grain-based products sector and subject to national programme level 2).

Retailers that handle food (but do not prepare or manufacture food)

General description

This food sector covers retailers that handle food, for example, by defrosting or reheating food, scooping ice cream, or offering a pick-and-mix confectionery selection.

Distinguishing features of this food sector are that—

- no preparation or manufacturing of food is undertaken; but
- handling occurs, for example, defrosting, heating, or repackaging.

Examples

Examples include but are not limited to food businesses that meet the above general description and that may include—

- dairies:
- service stations.

What this food sector does not include

This food sector does not include other categories of retailers listed in this schedule and in Schedules 1 and 3.

Processors of herbs or spices*General description*

This food sector covers food businesses that prepare, manufacture, or pack herbs or spices beyond minimal processing. Minimal processing includes (but is not limited to) processes such as rinsing, trimming, shelling, and post-harvest treatments, eg, packing, storing, and transport.

The preparation or manufacture may involve taking steps such as grinding, blending, drying, or extracting. This sector includes the production and processing of food-grade salt.

Examples

Examples include but are not limited to—

- food businesses that prepare or manufacture cinnamon, paprika, or food-grade salt:
- food businesses that purchase dried herbs or spices in bulk and repack them, for example, for retail sale.

What this food sector does not include

This food sector does not include producers of fresh herbs or spices (included in the producers of horticultural food sector and subject to national programme level 1).

Manufacturers of dry mix products*General description*

This food sector covers food businesses that prepare, manufacture, blend, or pack dry mix powder products, including powdered desserts, drinks, flavourings, soups, or sauces.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- cake mix:
- drinking chocolate:
- powdered soup:
- teabags.

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture dried egg powder (included in the manufacturers of processed egg products sector and subject to food control plans):
- food businesses that prepare or manufacture dry mix products specifically targeted, designed, or developed for consumption by vulnerable populations (included in the manufacturers of food for vulnerable populations sector and subject to food control plans):
- food businesses that prepare or manufacture dried or powdered dairy products such as milk or whey powder (included in the manufacturers of dairy products sector and subject to food control plans):
- persons that are exempt from the requirement to operate under a food control plan under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003):
- processors of herbs or spices (subject to national programme level 3):
- food businesses that prepare or manufacture fruit and vegetable powders (included in the manufacturers of dried or dehydrated vegetables sector and subject to national programme level 2):
- food businesses that prepare or manufacture dried meat powders (included in the manufacturers of meat, poultry, or fish sector and subject to food control plans).

Part 4

Food sectors subject to national programme level 2

Bakeries that prepare or manufacture bread or bread products only

General description

This food sector covers food businesses that prepare or manufacture bread or bread products for wholesale or direct retail sale to consumers.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- bagels:
- pita bread:
- specialty breads (for example, white, raisin, rye, or soda).

What this food sector does not include

This food sector does not include—

- retail bakeries (whether or not in a supermarket) that prepare or manufacture products in addition to bread or bread-derived products for direct retail to consumers (included in the food retail sector and subject to food control plans);
- wholesale bakeries that prepare or manufacture products in addition to bread or bread products (included in the wholesale bakeries sector and subject to food control plans).

Food service provided to preschool children (including children under 5 years of age) in centre-based service setting

General description

This food sector covers food businesses that prepare or manufacture and serve meals, snacks, or beverages for immediate consumption by children of preschool age (including children under 5 years of age) in a centre-based service setting.

Examples

Examples include but are not limited to food businesses that prepare or manufacture and serve meals, snacks, or beverages for preschool children attending centre-based services such as crèches and kindergartens.

What this food sector does not include

This food sector does not include—

- early childhood education service providers who undertake minimal food handling only (as specified in Schedule 3);
- food businesses that prepare or manufacture and serve meals, snacks, or beverages for consumption by children under 5 years of age in 24-hour live-in or residential settings, including hospitals (included in the food service sector and subject to food control plans);
- food provided to children as part of home-based early childhood education services (as specified in Schedule 3);
- food businesses that prepare or manufacture products specifically targeted, designed, or developed for consumption by children under 5 years of age (included in the manufacturers of food for vulnerable populations sector and subject to food control plans).

Manufacturers of confectionery

General description

This food sector covers food businesses that prepare or manufacture confectionery.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- candy:
- carob:
- chocolate.

What this food sector does not include

This food sector does not include food businesses that prepare or manufacture water-based or iced confectionery and iced desserts (included in the manufacturers of water-based products including ice, ice confectionery, and iced desserts sector and subject to national programme level 2).

Processors of nuts or seeds

General description

This food sector covers food businesses that process or handle nuts or seeds for consumption. Processing and handling in this context includes taking steps in relation to nuts or seeds such as—

- coating:
- roasting (including coffee beans):
- salting:
- mixing with other foods commonly combined with nuts or seeds, such as raisins:
- forming into nut or seed bars where nuts or seeds are the primary component.

Examples

Examples include but are not limited to food businesses that process and handle—

- salted peanuts:
- pumpkin, sesame, or sunflower seed products:
- roasted or ground coffee beans.

What this food sector does not include

This food sector does not include—

- food businesses that grow, harvest, or undertake only minimal processing of nuts or seeds (included in the producers of horticultural food and horticultural packing operations sector and subject to national programme level 1). Minimal processing includes (but is not limited to) processes such as rinsing, trimming, shelling, and drying nuts in their shells, and post-harvest treatments (for example, packing, storing, and transport):
- food businesses that prepare or manufacture nut or seed confectionery, for example, scorched almonds (included in the manufacturers of confectionery sector and subject to national programme level 2):

- food businesses that source nuts in a processed state for the purpose of coating the nuts (for example, with chocolate) for confectionery purposes (included in the manufacturers of confectionery sector and subject to national programme level 2).

Manufacturers of crisps, popcorn, pretzels, or similar snack products

General description

This food sector covers food businesses that prepare or manufacture snack products such as crisps, popcorn, or pretzels.

Examples

Examples include but are not limited to—

- cassava chips:
- curried peas:
- salted potato chips.

What this food sector does not include

This food sector does not include—

- manufacturers of vegetable proteins or other protein products sector (subject to food control plans):
- processors of nuts or seeds (subject to national programme level 2).

Manufacturers of dried or dehydrated fruit or vegetables

General description

This food sector covers food businesses that prepare or manufacture fruit or vegetable products in which the natural water content has been reduced below the level critical for growth of micro-organisms. This may be achieved by drying, dehydrating, salting, or crystallising. It includes products made using lentils, pulses, or split peas.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- banana chips:
- crystallised ginger:
- dried peas:
- fruit leather bars:
- split peas.

What this food sector does not include

This food sector does not include—

- processors of herbs or spices (subject to national programme level 3):
- horticultural production and packing operations (subject to national programme level 1).

Manufacturers of shelf-stable condiments (including sauces, spreads, or preserves)

General description

This food sector covers food businesses that prepare or manufacture condiment-type foods (including sauces, spreads, or preserves). It includes products that have been acidified or preserved, or have low water activity, and are shelf-stable. Products covered may or may not require refrigeration on opening.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- jams or conserves:
- honey spreads where honey is mixed with other foods:
- nut butters (for example, peanut butter):
- pickles or relishes.

What this food sector does not include

This food sector does not include—

- extractors and packers of honey (subject to national programme level 1):
- manufacturers of non-shelf-stable sauces, spreads, dips, soups, broths, gravies, or dressings (subject to food control plans):
- manufacturers of commercially sterilised food products (subject to food control plans):
- manufacturers of oils or fats for human consumption (subject to national programme level 3):
- persons that are exempt from the requirement to operate under a national programme under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Manufacturers of shelf-stable grain-based products

General description

This food sector covers food businesses that prepare or manufacture shelf-stable grain-based products.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- breakfast cereals:
- savoury or sweet biscuits.

What this food sector does not include

This food sector does not include—

- processors of grain (subject to national programme level 3):
- food businesses that prepare or manufacture snack products made from grain-based products (included in the manufacturers of crisps, popcorn, pretzels, or similar snack products sector and subject to national programme level 2).

Manufacturers of water-based products including ice, iced confectionery, and iced desserts*General description*

This food sector covers food businesses that prepare or manufacture ice and water-based chilled or iced desserts, iced confectionery, or novelties.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- jelly desserts:
- ice blocks:
- water-based sorbets.

What this food sector does not include

This food sector does not include—

- manufacturers of confectionery (subject to national programme level 2):
- manufacturers of dairy-based desserts, for example, cheesecake or custard (included in the manufacturers of dairy products sector and subject to food control plans):
- manufacturers of chilled or frozen desserts that are not ice or water-based or dairy-based (included in the manufacturers of meals and prepared foods sector and subject to food control plans).

Retailers of manufacturer-packaged chilled or frozen food (excluding ice cream, iced confectionery, and iced desserts)

General description

This food sector covers retailers of products that are pre-packaged by a manufacturer and require chilled or frozen storage to maintain safety and suitability (for example, shelf-life). Businesses covered by this food sector do not manufacture, prepare, or handle unpackaged foods.

Examples

Examples include but are not limited to retailers that meet the above general description and sell products including—

- manufacturer-packaged milk or cheese:
- manufacturer-packaged frozen meals.

What this food sector does not include

This food sector does not include other categories of retailers listed in this schedule and in Schedules 1 and 3.

Manufacturers of frozen fruit or vegetables

General description

This food sector covers food businesses that process fresh fruit or vegetables (for example, by cutting, shelling, dicing, and blanching) and then freeze them.

Examples

Examples include but are not limited to food businesses that process—

- free-flow frozen mixed berries:
- snap-frozen peas:
- stir-fry mixes:
- frozen chips and hash browns.

What this food sector does not include

This food sector does not include manufacturers of meals and prepared foods or meal components (subject to food control plans).

Part 5

Food sectors subject to national programme level 1

Extractors and packers of honey

General description

This food sector is restricted to food businesses that extract and pack honey and comb honey.

What this food sector does not include

This food sector does not include—

- manufacturers of shelf-stable condiments (including spreads, sauces, or preserves) (subject to national programme level 2):
- manufacturers of sugar or related products (subject to national programme level 1):
- persons that are exempt from the requirement to operate under a national programme under sections 349 (certain persons covered by the Animal Products Act 1999) and 350 (certain persons covered by the Wine Act 2003).

Horticultural production and packing operations

General description

This food sector covers food businesses that are horticultural producers (farmers or growers) or packers of horticultural food produce. It includes food businesses that grow, harvest, sort, grade, and undertake minimal processing of horticultural produce. Produce in this context includes (but is not limited to) fruit, vegetables, herbs, spices, nuts, cereal grains, seeds, fungi, and grasses. Minimal processing includes (but is not limited to) processes such as rinsing, trimming, shelling, and post-harvest treatments (for example, waxing, packing, storing, and transport).

Examples

Examples include but are not limited to—

- apple packhouses:
- businesses that grow, harvest, and minimally process produce following harvest:
- businesses that wholesale horticultural produce that was not grown by those businesses on land adjacent to the place of sale:
- drying of nuts in their shells.

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture frozen or chilled fruit and vegetables (or their products) that have undergone more than sorting, washing, and minimal heating (under the sector manufacturers of meals and prepared foods and subject to a food control plan):
- manufacturers of fresh ready-to-eat salads (subject to food control plans):
- horticultural producers that sell produce they have grown themselves directly to consumers (as specified in Schedule 3):
- manufacturers of dried or dehydrated fruit or vegetables (subject to national programme level 2):
- manufacturers of frozen fruit or vegetables (subject to national programme level 2):
- manufacturers of non-alcoholic beverages (subject to national programme level 3):
- processors of herbs or spices (subject to national programme level 3).

Manufacturers of sugar or related products

General description

This food sector covers food businesses that prepare or manufacture sugar or related sugar-based products.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- molasses:
- raw sugar:
- syrups (glucose, flavoured).

What this food sector does not include

This food sector does not include—

- extractors and packers of honey (subject to national programme level 1):
- food businesses that prepare or manufacture jams or preserves (included in the manufacturers of shelf-stable condiments sector and subject to national programme level 2):
- food businesses that prepare or manufacture malt extract (included in the brewers, distillers, and manufacturers of vinegar, alcoholic beverages, or malt extract sector and subject to national programme level 3).

Retailers of hot beverages and shelf-stable manufacturer-packaged foods only*General description*

This food sector covers mobile or vehicle-based food businesses that sell hot beverages directly to consumers. Such businesses may sell shelf-stable manufacturer-packaged food. A mobile or vehicle-based food business in this context includes businesses operating from any kiosk, movable stand, mobile shop, or vehicle, or from any similar movable structure.

Examples

Examples include but are not limited to mobile or vehicle-based food businesses selling tea, coffee, or hot chocolate.

What this food sector does not include

This food sector does not include—

- mobile or vehicle-based businesses that undertake any preparation or manufacturing of the food for retail, other than the making of hot beverages such as coffee or tea (included in the food service sector and subject to food control plans):
- other categories of retailers included in this schedule, and in Schedules 1 and 3.

Retailers of manufacturer-packaged ice cream or iced confectionery*General description*

This food sector covers food businesses that retail manufacturer-packaged ice cream or iced confectionery that requires frozen storage. These businesses do not prepare or manufacture or pack food. These businesses also do not sell food that is unpackaged or requires chilled or frozen storage, other than ice cream and iced confectionery. These retailers may sell manufacturer-packaged shelf-stable food or beverages.

Examples

Examples include but are not limited to retailers that meet the above general description and sell—

- manufacturer-packaged ice creams:
- manufacturer-packaged ice blocks:
- manufacturer-packaged frozen yoghurt.

What this food sector does not include

This food sector does not include other categories of retailers in this schedule and in Schedules 1 and 3.

Transporters or distributors of food products

General description

This food sector covers businesses whose primary activity is to distribute, transport, or store products that include food. This food sector is not intended to cover those food businesses that only undertake distribution, transportation, or storage that is incidental to an alternative primary activity.

Included in this food sector are businesses whose primary activities involve—

- responsibility for vehicle-docking services involving food:
- responsibility for vehicles, aircraft, railway wagons, ships, shipping containers, bulk tanks, trailers, or any other form of transport used in the transport of food:
- working in pre-retail distribution or transport.

Examples

Examples include but are not limited to—

- temperature-controlled transport:
- ambient transport (of shelf-stable food):
- cold storage:
- warehouses.

What this food sector does not include

This food sector does not include—

- food businesses that undertake distribution, transportation, or storage of food that is incidental to an alternative primary activity:
- persons that are exempt from the requirement to operate under a national programme under section 349 (certain persons covered by the Animal Products Act 1999) and section 350 (certain persons covered by the Wine Act 2003).

Schedule 2 Part 4: amended, on 2 March 2018, by section 54(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Schedule 2 Part 4: amended, on 2 March 2018, by section 54(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Schedule 3

Food sectors not required to operate under food control plan or national programme

ss 3(9), 20 to 25, 28

Part 1 Overview

Details of the food sectors that are not required to operate under a food control plan or a national programme are provided in Part 3 of this schedule.

Examples are provided in Part 3 of this schedule for the purpose of clarifying the general description of food sectors. The examples do not comprise an exhaustive list of all food types or businesses in a sector to which this schedule applies.

The following provides a summary of the food sectors that are not required to operate under a food control plan or a national programme under this schedule:

- (a) accommodation providers: food for up to 10 guests:
- (b) accommodation providers: snacks or breakfasts:
- (c) home-based early childhood education services:
- (d) early childhood education service providers who undertake minimal food handling only:
- (e) fishing vessel operators who supply food to crew:
- (f) food trading: once a year:
- (g) food service sector: catering of specified nature:
- (h) food service sector: clubs, organisations, and societies (internal):
- (i) food service sector: clubs, organisations, and societies (external):
- (j) horticultural producers: direct sales of own produce to consumers only:
- (k) retailers or direct sellers of shelf-stable, manufacturer pre-packaged food.

Part 2 Interpretation

In this schedule, unless the context otherwise requires, **shelf-stable**, in relation to food, means that—

- (a) the food can be stored at room or ambient temperature before its packaging is opened; and
- (b) after its packaging is opened, the food may or may not require refrigeration.

Part 3

Food sectors not required to operate under food control plan or national programme

Accommodation providers: food for up to 10 guests

General description

This food sector covers persons who manage or own a building, facility, or private dwelling and within that building, facility, or dwelling provide paid accommodation for up to 10 guests per night and prepare, serve, or provide food only for those guests.

Example

An example includes but is not limited to a small farmstay where guests are invited to dine with the host family.

What this food sector does not include

This food sector does not include accommodation providers that prepare food for guests in kitchens that are not home kitchens.

Accommodation providers: snacks or breakfasts

General description

This food sector covers accommodation providers who provide paid accommodation to guests, and who only provide to their resident guests—

- pre-packaged snacks; or
- breakfasts; or
- both.

Examples

Examples include but are not limited to—

- a motel providing tea, coffee, milk, and biscuits for its overnight guests:
- a backpackers' lodge providing breakfast supplies (fruit, milk, cereals, bread, etc) to its guests, but not providing other food:
- a motel that offers cooked or continental breakfast only to its guests.

What this food sector does not include

This food sector does not include accommodation providers that provide food to non-resident guests and other members of the general public.

Home-based early childhood education services*General description*

This food sector covers food businesses and persons who provide home-based early childhood education services and who prepare or prepare and serve food for the children in their care.

Example

An example includes but is not limited to persons who provide care or education services in their own homes.

What this food sector does not include

This food sector does not include—

- early childhood education service providers who undertake minimal food handling only (as specified in this schedule):
- food businesses that prepare or manufacture and serve meals, snacks, or beverages for preschool children (including children under 5 years of age) in a centre-based service setting (subject to national programme level 2):
- food businesses that prepare or manufacture and serve meals, snacks, or beverages for consumption by children under 5 years of age in non-residential (day) care settings (included in the food service—non-residential (day) care for children under 5 years sector and subject to national programme level 2):
- food businesses that prepare or manufacture food specifically targeted, designed, or developed for consumption by children under 5 years of age (included in the manufacturers of food for vulnerable populations sector and subject to food control plans).

Early childhood education service providers who undertake minimal food handling only*General description*

This food sector covers early childhood education service providers who, as part of the service, provide limited food that requires minimal handling.

Example

An example includes but is not limited to a crèche where very limited food is provided by the crèche to children attending at the crèche (for example, cut fruit, or biscuits that have not been prepared on site).

What this food sector does not include

This food sector does not include—

- food businesses that prepare or manufacture and serve meals, snacks, or beverages for consumption by children under 5 years of age in 24-hour live-in or

residential settings, including hospitals (included in the food service sector and subject to food control plans):

- food businesses that prepare or manufacture and serve meals, snacks, or beverages for preschool children (including children under 5 years of age) in a centre-based service setting (subject to national programme level 2):
- food businesses that prepare or manufacture food products specifically targeted, designed, or developed for consumption by children under 5 years of age (included in the manufacturers of food for vulnerable populations sector and subject to food control plans):
- food businesses and persons who provide home-based early childhood education services and who prepare or prepare and serve food for the children in their care (as specified in this schedule).

Fishing vessel operators who supply food to crew

General description

This food sector is limited to fishing vessel operators who supply food to the crew of a fishing vessel that is operating within the territorial waters or internal waters of New Zealand.

Example

An example includes but is not limited to food provided to the crew members of a fishing vessel.

Food trading: once a year

General description

This food sector covers persons who trade in food on not more than 1 occasion in any calendar year, but who do not ordinarily trade in food.

Examples

Examples include but are not limited to—

- a family with a food stall at an annual cultural festival:
- food provided at a home garage sale.

What this food sector does not include

This food sector does not include persons who trade in food on more than 1 occasion in any calendar year.

Food service sector: catering of specified nature

General description

This food sector covers very small-scale food catering and service activities in people's homes or in places where verification or enforcement activities may not be

possible because of the infrequency of the catering activity or the inaccessibility of the location.

Example

An example includes but is not limited to food provided at climbing huts.

Food service sector: clubs, organisations, and societies (internal)

General description

This food sector covers members of a club, organisation, or society selling food they have produced to other members at events or gatherings held and attended by members where the trade in food is not the purpose of the event or gathering.

Examples

Examples include but are not limited to—

- a cricket club match tea:
- a church or religious congregation preparing food and selling it to its members.

Food service sector: clubs, organisations, and societies (external)

General description

This food sector covers members of a club, organisation, or society selling food to members and guests at events or gatherings held by the club, organisation, or society where the trade in food is not the purpose of the event or gathering.

Example

An example includes but is not limited to a sausage sizzle at a match day.

What this food sector does not include

This food sector does not include the provision of—

- catered meals to members of the club, organisation, or society or visitors to their premises:
- food at a club bar:
- meals to members or guests at the club's, organisation's, or society's rooms on a week-to-week basis.

Horticultural producers: direct sales of own produce to consumers only

General description

This food sector covers individual horticultural producers that—

- only minimally process and handle (for example, wash or rinse) horticulture produce they have grown themselves:
- sell this produce directly to consumers.

Such producers do not wholesale their produce.

Examples

Examples include but are not limited to—

- roadside stalls or markets where food is sold by horticultural producers selling their own horticultural produce only;
- horticultural producers selling only produce grown either on the land on which their premises stand or on land adjacent to the land on which those premises stand (farm-gate sales).

What this food sector does not include

This food sector does not include producers of horticultural food that grow, harvest, and minimally process their produce and then sell this produce by means other than directly to consumers (subject to national programme level 1).

Retailers or direct sellers of shelf-stable, manufacturer pre-packaged food

General description

This food sector covers food businesses that retail only shelf-stable, manufacturer-packaged food. Such businesses do not process or package food in any way, or retail chilled or frozen food.

Examples

Examples include but are not limited to retailers that meet the above general description and may include—

- convenience food stores;
- food stalls;
- video shops;
- businesses with vending machines.

What this food sector does not include

This food sector does not include other categories of retailers listed in Schedules 1 and 2.

Schedule 4

Miscellaneous provisions relating to registrations

ss 3(10), 8(1), 61, 62 to 64, 67, 68, 70, 88,
90 to 92, 95, 96, 119, 122 to 124, 127, 128,
243, 291, 354

Part 1

Preliminary

1 Overview

- (1) This Part of this schedule deals with preliminary matters, including interpretation.
- (2) Part 2 of this schedule contains provisions relating to the renewal of the registration of—
 - (a) food control plans; and
 - (b) food businesses that are subject to national programmes; and
 - (c) importers.
- (3) Part 3 of this schedule contains provisions (including notice requirements) relating to the suspension of the operations of—
 - (a) operators of registered food control plans; and
 - (b) registered food businesses that are subject to national programmes; and
 - (c) registered importers.
- (4) Part 4 of this schedule sets out the procedure for the cancellation of the registration of—
 - (a) registered food control plans; and
 - (b) registered food businesses that are subject to national programmes; and
 - (c) registered importers.

2 Interpretation

In this schedule, unless the context otherwise requires,—

affected person means any of the following, as the case may require:

- (a) an operator of a registered food control plan;
- (b) an operator of a registered food business that is subject to a national programme;
- (c) a registered importer

proper authority means,—

- (a) for a food control plan, the registration authority (as defined in section 8); or

- (b) for a national programme, the registration authority (as so defined); or
- (c) for an importer, the chief executive

registration means any of the following, as the case may require:

- (a) the registration of a food control plan under subpart 2 of Part 2 of this Act:
- (b) the registration of a food business that is subject to a national programme under subpart 3 of Part 2 of this Act:
- (c) the registration of an importer under Part 3 of this Act.

Part 2

Renewal of registration

3 Renewal of registration

- (1) A registration may be renewed by paying the prescribed fee (if any) to the proper authority at any time during the period that the registration is effective.
- (2) On payment of the prescribed fee, the proper authority may renew the registration for a further period determined by the proper authority unless the proper authority is satisfied that any 1 or more of the criteria specified in section 56 or 86(b) or, as the case may be, section 116 are no longer being met.

3A Renewal of affected registrations that expire during, or within specified period after, severe weather event

[Repealed]

Schedule 4 clause 3A: repealed, at the close of 30 June 2023, by clause 3A(6).

3A Renewal of registrations that expire during, or in 4 weeks after, COVID-19 lockdown period

[Repealed]

Schedule 4 clause 3A: repealed, on 20 December 2022, by clause 3A(7).

Part 3

Suspension of operations

Mandatory suspension

4 Notice requirements for mandatory suspension

- (1) Before exercising the power to suspend all or any operations under section 62, 90, or 122, the proper authority must give the affected person—
 - (a) written notice of the proposed suspension and the reason for it; and
 - (b) a reasonable opportunity to make written submissions.

- (2) Subclause (1) does not apply if the proper authority considers it necessary in the interest of human life or public health to suspend the operations urgently.
- (3) If the proper authority suspends all or any operations under section 62, 90, or 122, the proper authority must give written notice of the suspension to the affected person.
- (4) The notice must specify—
 - (a) the reason for the suspension; and
 - (b) the period of the suspension; and
 - (c) the date on which or the time at which the suspension commences; and
 - (d) the operations to which the suspension applies; and
 - (e) any conditions in respect of the implementation and operation of the suspension.
- (5) The notice must also specify the affected person's right to seek a review under section 355.

5 Notice requirements for extension of mandatory suspension

- (1) Before exercising the power under section 63, 91, or 123 to extend the period of a suspension, the proper authority must give the affected person—
 - (a) written notice of the proposed extension and the reason for it; and
 - (b) a reasonable opportunity to make written submissions.
- (2) If the proper authority extends the period of suspension under subclause (1), the proper authority must, as soon as practicable, give the affected person written notice of the person's right to seek a review of the decision to extend the suspension under section 355.

6 Additional requirements relating to mandatory suspension of operations

- (1) This clause sets out additional requirements relating to the mandatory suspension of operations under section 62, 90, or 122.
- (2) If the proper authority decides to suspend operations, the proper authority must, as soon as practicable, give written notice of the suspension to—
 - (a) the appropriate verifier or verification agency (if any); and
 - (b) if the proper authority is the relevant territorial authority, the chief executive.

Voluntary suspension

7 Notice requirements for voluntary suspension

- (1) If an affected person suspends all operations under section 64, 92, or 124, or the operations of 1 or more food businesses under section 64, the affected person must give written notice of the suspension to the proper authority.

- (2) The notice must specify—
 - (a) the period of the suspension; and
 - (b) the date on which or time at which the suspension commences, which date must be after the date of the notice; and
 - (c) if the operations of 1 or more food businesses are suspended under section 64, the food businesses to which the suspension applies.

8 Proper authority may require further information

- (1) On receiving the notice referred to in clause 7 of this schedule, the proper authority may require the affected person to supply further information within a specified time.
- (2) Without limiting subclause (1), the information to be supplied may include information about any food held by the affected person.

Supplementary provisions common to mandatory and voluntary suspensions

9 Power to impose conditions and to give directions in relation to suspension

- (1) The proper authority may impose conditions in respect of the implementation and operation of a suspension under sections 62, 64, 90, 92, 122, and 124.
- (2) Without limiting subclause (1), the conditions that may be imposed under that subclause in relation to the suspension of a registered food control plan under section 62 or 64 may include conditions relating to the requirement for verification, including its frequency, duration, focus, and scope.
- (3) The proper authority may give any directions under section 285 that appear to the proper authority to be reasonable in relation to any food under the control of the affected person on the date on which or time at which the suspension commences.
- (4) For the purposes of subclause (3) and to the extent that it is necessary, section 285 applies to a proper authority as if references to the chief executive were references to the proper authority.
- (5) A condition or direction given under this clause takes effect on and from a date that the proper authority specifies.
- (6) The affected person must comply with a condition or direction given under this clause.

Part 4

Cancellation of registration

10 Procedure for cancellation of registration

- (1) The procedure for the cancellation of registration is as follows:

-
- (a) the proper authority must give the affected person written notice of the proposal to cancel the registration; and
 - (b) the notice must—
 - (i) contain or be accompanied by a statement of the proper authority's reason for proposing the cancellation (including the facts and assumptions on which the proposal is based); and
 - (ii) state the date on which the proposed cancellation is to take effect; and
 - (c) the proper authority must give the affected person a reasonable opportunity to make written submissions; and
 - (d) the proper authority must then give the affected person written notice of—
 - (i) the decision on the proposal to cancel the registration; and
 - (ii) the reason for the decision on that proposal; and
 - (iii) if the decision is to cancel the registration, the date on which the cancellation takes effect.
- (2) The notice under subclause (1)(d) must also specify the affected person's right to seek a review under section 355.

Schedule 5

Public registers

ss 3(11), 8(1), 59, 88, 166, 443

Part 1

Preliminary

1 Overview

- (1) Part 2 of this schedule contains provisions relating to the public registers of food control plans.
- (2) Part 3 of this schedule contains provisions relating to the public register of food businesses subject to a national programme.
- (3) Part 4 of this schedule contains provisions relating to the public register of recognised agencies, recognised persons, and recognised classes.
- (4) Part 5 of this schedule contains provisions relating to the public register of importers.
- (5) Part 6 of this schedule contains provisions relating to the public register of review decisions.
- (6) Part 7 of this schedule contains provisions common to all of those public registers.

Part 2

Public registers of food control plans

2 Requirement for, and purpose of, public registers of food control plans

- (1) The chief executive must keep and maintain, or arrange to be kept and maintained, 1 or more public registers of food control plans that record all food control plans registered under subpart 2 of Part 2 of this Act.
- (2) The purpose of the public registers is—
 - (a) to enable members of the public to know—
 - (i) what business operations are subject to food control plans; and
 - (ii) who the operators of those plans are and the position or designation of the persons who are responsible for the day-to-day management of those plans; and
 - (b) to facilitate the ability of the chief executive and territorial authorities to achieve the safety and suitability of food; and
 - (c) to facilitate the compliance, audit, and other supporting and administrative functions of the Ministry and territorial authorities under this Act.

3 Inspection of public register of food control plans

The chief executive must—

- (a) make the public register of food control plans available for public inspection, free of charge, at reasonable hours at the head office of the Ministry; and
- (b) supply to any person, on request and on payment of a reasonable charge (if there is one), a copy of any entry on the public register.

4 Contents of public registers of food control plans

A public register of food control plans must contain all of the following information in relation to each registered food control plan:

- (a) the name, trading name, and business address (including the electronic address, if available) of—
 - (i) the food business or businesses covered by the plan; and
 - (ii) if the plan applies to only 1 food business, the operator of the food business; and
 - (iii) if the plan applies to more than 1 food business, the operator of the plan and the operator of each food business covered by the plan; and
- (b) the operators' physical and electronic addresses for the purposes of section 378(3)(a); and
- (c) the position or designation of the person who is responsible for the day-to-day management of the plan, as nominated by the person in control of the food business or businesses;
- (d) the date on which the plan was first registered, the date on which registration expires, and the registration number or other unique identifier allocated to the plan;
- (e) the scope of the operations to which the plan applies;
- (f) the physical address or, if appropriate, the location of the food business or its nominated home base;
- (g) the name of the registration authority;
- (h) any other particulars that may be prescribed in regulations;
- (i) the name of the verifier or verification agency that will carry out verification functions in respect of the plan.

Part 3

Public register of food businesses subject to national programme

5 Requirement for, and purpose of, public register of food businesses subject to national programme

- (1) The chief executive must keep and maintain a public register of food businesses subject to a national programme that are registered under subpart 3 of Part 2 of this Act.
- (2) The purpose of the public register is—
 - (a) to enable members of the public to know—
 - (i) what business operations are subject to a national programme; and
 - (ii) who the operators of those food businesses are and the position or designation of the persons who are responsible for the day-to-day management of those businesses; and
 - (b) to facilitate the ability of the chief executive and territorial authorities to achieve the safety and suitability of food; and
 - (c) to facilitate the compliance, audit, and other supporting and administrative functions of the Ministry under this Act.

6 Inspection of public register of food businesses subject to national programme

The chief executive must—

- (a) make the public register of food businesses that are subject to a national programme available for public inspection, free of charge, at reasonable hours at the head office of the Ministry; and
- (b) supply to any person, on request and on payment of a reasonable charge (if there is one), a copy of any entry on the public register.

7 Contents of public register of food businesses subject to national programme

The public register of food businesses that are subject to a national programme must contain all of the following information in relation to each food business:

- (a) the full name and business address (including the electronic address, if available) of—
 - (i) the owner of the food business; or
 - (ii) the person in control of the food business;
- (b) the trading name of the food business;
- (c) the position or designation of the person who is responsible for the day-to-day management of the food business, as nominated by the person in control of the food business;

- (d) the date on which the food business was first registered, and the registration number or other unique identifier allocated to it;
- (e) the scope of the operations of the food business;
- (f) the physical address or, if appropriate, the location of the food business or its nominated home base;
- (g) the name of the registration authority;
- (h) the name of the verifier or verification agency (if any);
- (i) the duration of registration specified in regulations made under section 76(1)(e) (if any);
- (j) any other particulars that may be prescribed in regulations.

Part 4

Public register of recognised agencies, recognised persons, and recognised classes

8 Requirement for, and purpose of, public register of recognised agencies, recognised persons, and recognised classes

- (1) The chief executive must keep and maintain a public register of the following that are recognised under subpart 1 of Part 4 of this Act:
 - (a) recognised agencies;
 - (b) recognised persons;
 - (c) recognised classes.
- (2) The purpose of the public register is—
 - (a) to enable members of the public, and particularly the operators of food control plans, to know who is recognised to carry out particular functions and activities for the purposes of this Act; and
 - (b) to facilitate the ability of the chief executive and territorial authorities to achieve the safety and suitability of food; and
 - (c) to facilitate the compliance, audit, and other supporting and administrative functions of the Ministry under this Act.

9 Inspection of public register of recognised agencies, recognised persons, and recognised classes

The chief executive must—

- (a) make the public register of recognised agencies, recognised persons, and recognised classes available for public inspection, free of charge, at reasonable hours at the head office of the Ministry; and
- (b) supply to any person, on request and on payment of a reasonable charge (if there is one), a copy of any entry on the public register.

10 Contents of public register of recognised agencies, recognised persons, and recognised classes

- (1) The public register of recognised agencies, recognised persons, and recognised classes must contain all of the following information:
 - (a) for each recognised agency and recognised person,—
 - (i) the full name and the business or other contact address (including the electronic address, if available) of the agency or person; and
 - (ii) any suspension of the agency’s or person’s recognition:
 - (b) for each recognised class,—
 - (i) a definition of the class that allows the class to be accurately and readily identified; and
 - (ii) 1 or more of the following:
 - (A) a list of the members of the class:
 - (B) a statement specifying where a copy of a list of the members of the class may be obtained:
 - (C) a statement specifying where information about the membership of the class may be obtained; and
 - (iii) a list of any members, or a description of any categories of members, within the class that are excluded from the recognised class in accordance with section 141(5) ; and
 - (iv) any suspension of the class’s recognition; and
 - (v) a list of any members of the class whose recognition has been suspended, withdrawn, or surrendered and the date on which the suspension, withdrawal, or surrender takes effect:
 - (c) the specified functions and activities of each recognised agency, recognised person, and recognised class:
 - (d) the date on which each agency, person, and class was recognised and the duration of that recognition:
 - (e) any other particulars that may be prescribed in regulations.
- (2) A suspension of recognition that is recorded on the public register must specify—
 - (a) the date and time the suspension starts; and
 - (b) the period of the suspension; and
 - (c) the specified functions and activities that the suspension relates to.
- (3) If a person is recognised as both a recognised agency and a recognised person, the information referred to in subclause (1)(a)(i) and (c) to (e) must either—
 - (a) be recorded twice, once in the recognised person part of the register, and again in the recognised agency part of the register; or

- (b) be recorded in one of those areas of the register and cross-referenced in the other area of the register.

Part 5

Public register of importers

11 Requirement for, and purpose of, public register of importers

- (1) The chief executive must keep and maintain a public register of importers who are registered under Part 3 of this Act.
- (2) The purpose of the public register is—
 - (a) to enable members of the public to know who is registered to import food for the purpose of sale; and
 - (b) to facilitate the compliance, audit, and other supporting and administrative functions of the Ministry under this Act.

12 Inspection of public register of importers

The chief executive must—

- (a) make the public register of importers available for public inspection, free of charge, at reasonable hours at the head office of the Ministry; and
- (b) supply to any person, on request and on payment of a reasonable charge (if there is one), a copy of any entry on the public register.

13 Contents of public register of importers

The public register of importers must contain all of the following information in relation to each importer:

- (a) the full name, trading name, and business address (including the electronic address, if available) of the importer;
- (b) the date of registration of the importer and the date of its expiry;
- (c) if applicable, the date on which the suspension, cancellation, or surrender of the importer's registration took effect and, for a suspension, the period of its duration;
- (d) any other particulars that may be prescribed in regulations.

Part 6

Public register of review decisions

14 Requirement for, and purpose of, public register of review decisions

- (1) The chief executive must keep and maintain a public register of decisions on reviews of decisions described in section 354(2) or (4).

- (2) The purpose of the public register is to enable members of the public to know the outcome of reviews of decisions described in those sections.

15 Inspection of public register of review decisions

The chief executive must—

- (a) make the public register of review decisions available for public inspection, free of charge, at reasonable hours at the head office of the Ministry; and
- (b) supply to any person, on request and on payment of a reasonable charge (if there is one), a copy of any entry on the public register.

16 Contents of public register of review decisions

The public register of review decisions—

- (a) may contain any details about a review decision that the chief executive considers appropriate;
- (b) must not specify the outcome of a review until—
 - (i) the period specified in section 362(2) for bringing an appeal has expired; or
 - (ii) if an appeal under section 362, 364, or 365 is pending, the appeal has been determined.

Part 7

Supplementary provisions common to all public registers

17 Form of, and access to, public registers

- (1) A public register required to be kept under clause 2, 5, 8, 11, or 14 may be kept in any manner the chief executive thinks fit, including, either wholly or partially, by means of a device or facility—
 - (a) that records or stores information electronically or by other means; and
 - (b) that permits the information so recorded to be readily inspected or reproduced in usable form; and
 - (c) that permits the information to be accessed by electronic means, including by means of remote log-on access.
- (2) A public register must be operative at all times unless the chief executive suspends the operation of the register, in whole or in part, in accordance with subclause (3).
- (3) The chief executive may refuse access to a public register or otherwise suspend the operation of a public register, in whole or in part, if the chief executive considers that it is necessary to do so due to an event or cause beyond the reasonable control of the chief executive.

18 Alterations to public registers

The chief executive may, at any time, make any amendments to a public register required to be kept under clause 2, 5, 8, 11, or 14 if they are necessary to—

- (a) reflect any changes in the information referred to in clause 4, 7, 10, 13, or 16; or
- (b) correct a mistake caused by any error or omission on the part of the chief executive.

19 Certain personal information may be excluded from public registers

Despite clause 4, 7, 10, 13, or 16, the chief executive may omit or remove information about the business address of a person from a public register if—

- (a) the person requests the chief executive to do so on the basis that the address relates to a dwellinghouse; and
- (b) the chief executive considers that the disclosure of the information on the public register would constitute an unreasonable interference with the privacy of any individual.

Schedule 6

Material incorporated by reference

ss 3(12), 444

1 Interpretation

In this schedule,—

material means written material that is 1 or more of the following:

- (a) a standard, requirement, or recommended practice of an international or a national organisation:
- (b) a standard, requirement, or recommended practice prescribed in any country or jurisdiction, or by any group of countries:
- (c) any other written material that deals with technical matters and is, in the opinion of the chief executive, too large or impractical to include in, or print as part of, the specified document

specified document means any of the documents specified in section 444.

2 Incorporation of material by reference in specified documents

- (1) Material may be incorporated by reference in a specified document—
 - (a) in whole or in part; and
 - (b) with modifications set out in the specified document.
- (2) Material that is incorporated by reference in a specified document has legal effect as part of the specified document.

3 Effect of amendments to, or replacement of, material incorporated by reference

- (1) An amendment to, or a replacement of, material (other than a standard work of reference to which section 445 applies) that is incorporated by reference in a specified document (the **original document**) has legal effect as part of the original document only if a specified document made after the making of the original document states that the particular amendment or replacement has that effect.
- (2) If the specified document is an adopted joint food standard, subclause (1) applies as if the second reference in that subclause to a specified document were a reference to the relevant instrument under section 400.

Schedule 6 clause 3(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

4 Amendments to, or replacement of, material incorporated by reference to be of same general character as original material

- (1) A specified document may not state that an amendment to, or replacement of, material that is incorporated by reference in the specified document (the

original document) has effect as part of the original document unless the amendment or replacement material is of the same general character as the material amended or replaced.

- (2) If the specified document is an adopted joint food standard, subclause (1) applies as if the first reference in that subclause to a specified document were a reference to the relevant instrument under section 400.

Schedule 6 clause 4(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

5 Proof of material incorporated by reference

- (1) A copy of material that is incorporated by reference in a specified document, including any amendment to, or replacement of, that material, must be—
- (a) certified as a correct copy of the material by the chief executive; and
 - (b) retained by the chief executive.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the specified document of that material.
- (3) Subclauses (1) and (2) do not apply to an adopted joint food standard or a standard work of reference (as defined in section 445(4)).

Schedule 6 clause 5(3): amended, on 2 March 2018, by section 55(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

6 Effect of expiry of material incorporated by reference

- (1) Material that is incorporated by reference in a specified document (the **original document**) that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the original document only if a specified document made after the making of the original document states that the material ceases to have legal effect.
- (2) If the specified document is an adopted joint food standard, subclause (1) applies as if the second reference in that subclause to a specified document were a reference to the relevant instrument under section 400.

Schedule 6 clause 6(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

7 Requirement to consult on proposal to incorporate material by reference

- (1) This clause applies to—
- (a) a specified document that incorporates material by reference; and
 - (b) a specified document that states that an amendment to, or a replacement of, material that is incorporated by reference in the specified document has legal effect as part of the specified document.
- (2) Before a specified document to which this section applies is made, the chief executive must—

- (a) make copies of the material proposed to be incorporated by reference or the proposed amendment to, or replacement of, material that is incorporated by reference (the **proposed material**) available for inspection during working hours for a reasonable period, free of charge, at the head office of the Ministry and any other places that the chief executive may, at his or her discretion, determine are appropriate (the **inspection sites**); and
 - (b) make copies of the proposed material available for purchase at a reasonable price at the inspection sites, unless doing so would infringe copyright in that material or be inconsistent with any other enactment or rule of law; and
 - (c) make copies of the proposed material available free of charge on an Internet site maintained by or on behalf of the Ministry, unless doing so would infringe copyright in that material or be inconsistent with any other enactment or rule of law; and
 - (d) give notice in the *Gazette*, or by any other means that the chief executive may, at his or her discretion, determine are appropriate, stating that—
 - (i) the proposed material is available for inspection during working hours, free of charge, the places at which it can be inspected, and the period during which it can be inspected; and
 - (ii) copies of the proposed material can be purchased and the places at which they can be purchased; and
 - (iii) if applicable, the proposed material is available on the Internet, free of charge, and giving the Internet site address; and
 - (e) allow a reasonable opportunity for persons to comment on the proposal to incorporate the proposed material by reference; and
 - (f) consider any comments made.
- (3) The chief executive—
- (a) may make copies of the proposed material available in any other way that he or she considers appropriate in the circumstances; and
 - (b) must, if paragraph (a) applies, give notice in the *Gazette* stating that the proposed material is available in other ways and give details of where or how it can be accessed or obtained.
- (4) The chief executive may comply with subclause (2)(c) by providing a hyper-text link from an Internet site maintained by or on behalf of the Ministry to a copy of the proposed material that is available, free of charge, on an Internet site that is maintained by or on behalf of someone else.
- (5) The references in subclauses (2) and (3) to the proposed material include, if the material is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.

- (6) A failure to comply with this clause does not invalidate the specified document that incorporates material by reference.
- (7) Subclauses (1) to (6) do not apply to an adopted joint food standard.

8 Access to material incorporated by reference

- (1) The chief executive must—
 - (a) make the material referred to in subclause (4) (the **incorporated material**) available for inspection during working hours free of charge at the inspection sites; and
 - (b) make copies of the incorporated material available for purchase at a reasonable price at the inspection sites, unless doing so would infringe copyright in that material or be inconsistent with any other enactment or rule of law; and
 - (c) make copies of the incorporated material available, free of charge, on an Internet site maintained by or on behalf of the Ministry, unless doing so would infringe copyright in that material or be inconsistent with any other enactment or rule of law; and
 - (d) give notice in the *Gazette*, or by any other means that the chief executive may, at his or her discretion, determine are appropriate, stating that—
 - (i) the incorporated material is incorporated in the specified document and the date on which the specified document was made; and
 - (ii) the incorporated material is available for inspection during working hours, free of charge, and the places at which it can be inspected; and
 - (iii) copies of the incorporated material can be purchased and the places at which they can be purchased; and
 - (iv) if applicable, the incorporated material is available on the Internet, free of charge, and giving the Internet site address.
- (2) The chief executive—
 - (a) may make copies of the incorporated material available in any other way that he or she considers appropriate in the circumstances; and
 - (b) must, if paragraph (a) applies, give notice in the *Gazette* stating that the incorporated material is available in other ways and details of where or how it can be accessed or obtained.
- (3) The chief executive may comply with subclause (1)(c) by providing a hypertext link from an Internet site maintained by or on behalf of the Ministry to a copy of the incorporated material that is available, free of charge, on an Internet site that is maintained by or on behalf of someone else.
- (4) The material is—

- (a) material incorporated by reference in a specified document:
 - (b) any amendment to, or replacement of, that material that is incorporated in the specified document or the material referred to in paragraph (a) with the amendments or replacement material incorporated:
 - (c) if the material referred to in paragraph (a) or (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.
- (5) A failure to comply with this clause does not invalidate the specified document that incorporates material by reference.
- (6) Subclause (1)(d) does not apply to an adopted joint food standard.

9 Application of Legislation Act 2019 to material incorporated by reference

Subpart 1 of Part 3 and section 114 of the Legislation Act 2019 do not apply to material that is incorporated by reference in a specified document merely because it is incorporated.

Schedule 6 clause 9: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 7

Consequential amendments, repeals, and revocations

ss 3(13), 447

Part 1

Amendments to Acts and repeal of Acts

Agricultural Compounds and Veterinary Medicines Act 1997 (1997 No 87)

Section 4A(5): omit “Food Act 1981” and substitute “Food Act 2014” in each place.

Section 4B(4) (as enacted by section 16 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014): omit and substitute:

(4) In this section,—

border information and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993

Ministry has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 2(1) of this Act.

Section 4C(3) (as enacted by section 18(1) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014): omit and substitute:

(3) In this section,—

border information and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993

Director-General has the meaning given in section 2(1) of this Act

Ministry has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 2(1) of this Act.

Section 55(3): omit “Food Act 1981” and substitute “Food Act 2014”.

Section 79: omit and substitute:

79 Relationship with other Acts

Nothing in this Act affects the requirements of any of the following Acts in relation to any substance, mixture of substances, or biological compound:

- (a) Misuse of Drugs Act 1975:
- (b) Wild Animal Control Act 1977:
- (c) Medicines Act 1981:
- (d) Biosecurity Act 1993:
- (e) Hazardous Substances and New Organisms Act 1996:
- (f) Animal Products Act 1999:
- (g) Animal Welfare Act 1999:
- (h) Food Act 2014.

Animal Products Act 1999 (1999 No 93)

Section 4(1): insert in its appropriate alphabetical order:

food control plan has the meaning given to it in the Food Act 2014

Definition of **Food Act regime** in section 4(1): repeal and substitute:

Food Act regime means the regime under the Food Act 2014

Definition of **food safety programme** in section 4(1): repeal.

Definition of **Food Standards Code** in section 4(1): repeal and substitute:

Food Standards Code has the same meaning as adopted joint food standard under the Food Act 2014

Section 4(1): insert in its appropriate alphabetical order:

national programme has the meaning given to it in the Food Act 2014

Definition of **regulated animal product** in section 4(1): omit “Food Act 1981” and substitute “Food Act 2014”.

Section 4(1): insert in its appropriate alphabetical order:

risk-based measure has the meaning given to it in the Food Act 2014

Section 6A(4) (as enacted by section 16 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014): omit and substitute:

(4) In this section,—

border information and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993

Ministry has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 4(1) of this Act.

Section 6B(3) (as enacted by section 18(2) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014): omit and substitute:

(3) In this section,—

border information and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993

Director-General has the meaning given in section 4(1) of this Act

Ministry has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 4(1) of this Act.

Section 7(3): omit “Food Act 1981” and substitute “Food Act 2014”.

Section 12(5): omit “safety programme” and substitute “control plan”.

Section 13(2)(b): omit “safety programme” and substitute “control plan”.

Section 17(5): omit “safety programme within the meaning of the Food Act 1981, provided the food safety programme is registered as a risk management programme under section 34” and substitute “control plan within the meaning of the Food Act 2014 or components of a national programme”.

Animal Products Act 1999 (1999 No 93)—continued

Section 18(1)(b): omit “safety programmes” and substitute “control plans”.

Section 19(g): omit “(and, if appropriate in the case of a food safety programme registered as a risk management programme under section 34, the approved auditor under the Food Act 1981)”.

Section 19(i): omit “safety programme” and substitute “control plan”.

Section 22(2): repeal and substitute:

- (2) Registration may be subject to any reasonable conditions that the Director-General specifies. The conditions may include, but are not limited to, conditions relating to the commencement of operations under the programme.

Section 22(3A): repeal and substitute:

- (3A) The Director-General may, at any time, give the operator a notice in writing—
- (a) imposing further conditions as if they were imposed on registration under subsection (2); or
 - (b) amending or revoking any conditions imposed under that subsection.

Section 27: insert after subsection (4):

- (4A) The operator of a registered risk management programme may suspend all or any operations under the programme for a minimum of 3 months and a maximum of 12 months.
- (4B) An operator who suspends a programme under subsection (4A) must give the Director-General a notice in writing stating—
- (a) the date on which the suspension starts, which must be a date after the date of the notice; and
 - (b) the date on which the suspension ends; and
 - (c) which operations are suspended; and
 - (d) how the operator intends to deal with any affected animal material or product.

Section 28(2): repeal and substitute:

- (2) The Director-General may deregister a risk management programme under this section only if—
- (a) the Director-General has given the operator of the programme notice orally or in writing—
 - (i) saying that the Director-General intends to deregister the programme; and
 - (ii) stating the reason for deregistration; and
 - (iii) setting a reasonable date by which the operator must respond to the Director-General; and

Animal Products Act 1999 (1999 No 93)—continued

- (iv) stating that the operator’s response may be made orally or in writing; and
- (b) the Director-General—
 - (i) has heard any representations that the operator wants to make; or
 - (ii) has received no response from the operator by the date set.

Section 31: omit “equivalence of food safety programmes” and substitute “equivalence of food control plans”.

Section 31(b): omit “food safety programmes as risk management programmes, and allowing switching between programmes” and substitute “food control plans as risk management programmes, and allowing switching between plans and programmes”.

Section 32(1): omit “Food Act 1981” and substitute “Food Act 2014”.

Section 32(1): omit “a food safety programme or under the Food Hygiene Regulations 1974” and substitute “the applicable risk-based measure under the Food Act 2014”.

Section 32(6)(a): omit “Food Act 1981 and any relevant territorial authority (as defined in section 8B of the Food Act 1981)” and substitute “Food Act 2014 and any relevant territorial authority (as defined in section 8(1) of the Food Act 2014)”.

Section 33(2): omit “safety programme” and substitute “control plan”.

Section 34(1): omit “safety programme recognised as a risk management programme to be operated on an intermittent basis may apply to the Director-General for registration of the programme” and substitute “control plan recognised as a risk management programme to be operated on an intermittent basis may apply to the Director-General for registration of the plan”.

Section 34(3): omit “safety programme” and substitute “control plan”.

Section 34(3)(b): omit “the programme” and substitute “the plan”.

Section 34(3)(d): omit “Food Act 1981” and substitute “Food Act 2014”.

Section 34(4)(a): omit “programme is to be subject to the verification requirements of this Act or the audit requirements of the Food Act 1981” and substitute “plan is to be subject to the verification requirements of this Act or the Food Act 2014”.

Section 34(4)(b): omit “audit or”.

Section 34(4)(c): omit “programme” and substitute “plan”.

Section 34(5): omit “safety programme” and substitute “control plan”.

Section 34(6): omit “a programme” and substitute “a plan”.

Section 34(6)(b): omit “Food Act 1981” and substitute “Food Act 2014”.

Section 34(6)(d): omit “approved auditor under the Food Act 1981” and substitute “verifier or verification agency under the Food Act 2014”.

Section 34(7): omit “safety programmes” and substitute “control plans”.

Animal Products Act 1999 (1999 No 93)—continued

Section 34(7)(a): omit “programmes are to be subject to the verification regime of this Act or the audit regime of the Food Act 1981” and substitute “plans are to be subject to the verification regime of this Act or the Food Act 2014”.

Section 60B(1)(a): omit “Part 2A of the Food Act 1981” and substitute “the Food Act 2014”.

Section 87(1)(a): omit “safety programme” and substitute “control plan”.

Section 133(1)(c): omit “Food Act 1981 in relation to a food safety programme that is registered as a risk management programme pursuant to section 34” and substitute “Food Act 2014”.

Section 133(3): repeal and substitute:

- (3) A person who commits an offence against this section is liable,—
- (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 3 months; and
 - (ii) a fine not exceeding \$50,000.

Section 134(2): repeal and substitute:

- (2) A person who commits an offence under subsection (1) is liable on conviction to—
- (a) in the case of a body corporate, a fine not exceeding \$200,000;
 - (b) in the case of an individual, a fine not exceeding \$50,000.

Section 134(3): repeal.

Section 140(1)(a)(vii): omit “safety programme” and substitute “control plan”.

Section 148(1): omit “temporary” and substitute “interim”.

Section 161(1): omit “food safety programmes” and substitute “regulated control schemes, risk-based measures”.

Section 161(5)(a)(vi): repeal.

Section 161(5)(a): insert after subparagraph (xib):

- (xic) the Local Government Act 2002:
- (xid) the Wine Act 2003:
- (xie) the Food Act 2014:

Section 161(5)(e): omit “safety programmes” and substitute “control plans”.

Section 161(5): add:

- (g) a territorial authority, as defined in the Local Government Act 2002.

Section 166(1)(a): omit “safety programme” and substitute “control plan”.

Biosecurity Act 1993 (1993 No 95)

Paragraph (c)(i) of the definition of **Ministry-related border management function** in section 41A (as enacted by section 7(1) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014): omit “Food Act 1981” and substitute “Food Act 2014”.

Coroners Act 2006 (2006 No 38)

Paragraph (g) of the definition of **other investigating authority** in section 9: repeal and substitute:

- (g) a food safety officer as defined in section 8(1) of the Food Act 2014:

Crown Proceedings Act 1950 (1950 No 54)

In section 6(1), after “except as provided in subsection (4A)” insert “or (4B)”.

In section 6(4), after “Except as provided in subsection (4A)” insert “or (4B)”.

After subsection (4A), insert:

- (4B) Despite specified persons being immune from liability under section 351 of the Food Act 2014,—
 - (a) a court may find the Crown itself liable in tort in respect of the actions or omissions of those persons; and
 - (b) for the purpose of determining whether the Crown is so liable, the court must disregard the immunity in section 351.

Customs and Excise Act 1996 (1996 No 27)

Section 132B(1)(d) (as enacted by section 16 of the Customs and Excise (Border Processing—Trade Single Window and Duties) Amendment Act 2014): omit “Food Act 1981” and substitute “Food Act 2014”.

Paragraph (c)(i) of the definition of **Ministry-related border management function** in section 282D (as enacted by section 27 of the Customs and Excise (Border Processing—Trade Single Window and Duties) Amendment Act 2014): omit “Food Act 1981” and substitute “Food Act 2014”.

Paragraph (f) of the definition of **Border management function Act** in section 288(1A) (as enacted by section 35(8) of the Customs and Excise (Border Processing—Trade Single Window and Duties) Amendment Act 2014): omit “Food Act 1981 (*see* section 8AAA(3)(b) of that Act)” and substitute “Food Act 2014 (*see* section 132 of that Act)”.

Schedule 1: omit “Food Act 1981” and substitute “Food Act 2014”.

Fisheries Act 1996 (1996 No 88)

Section 89(2)(g): omit “section 20 of the Food Act 1981 by an officer” and substitute “sections 304 and 312 of the Food Act 2014 by a food safety officer”.

Geographical Indications (Wine and Spirits) Registration Act 2006 (2006 No 60)

Heading to section 60: omit “**New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002**” and substitute “**joint food standards**”.

Section 60: omit “the New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002” and substitute “any joint food standard adopted under the Food Act 2014”.

Health Act 1956 (1956 No 65)

Paragraph (b) of the definition of **drinking water** in section 69G: omit “Food Act 1981” and substitute “Food Act 2014”.

Section 69ZZZE(a): omit “Food Act 1981” and substitute “Food Act 2014”.

Local Government Act 2002 (2002 No 84)

New section 152A: insert after section 152:

152A Effect of Food Act 2014 on bylaws

- (1) This section applies to the following documents:
 - (a) the Food Act 2014;
 - (b) regulations under the Food Act 2014;
 - (c) adopted joint food standards under the Food Act 2014;
 - (d) domestic food standards under the Food Act 2014;
 - (e) notices under the Food Act 2014;
 - (f) directions given by the chief executive of the Ministry under the Food Act 2014.
- (2) If a bylaw made by a council is inconsistent with a document,—
 - (a) the document prevails and the bylaw has no effect to the extent of the inconsistency; and
 - (b) the council must amend or revoke the bylaw to remove the inconsistency.
- (3) The council need not use the special consultative procedure set out in section 83 to amend or revoke the bylaw to remove the inconsistency, despite anything in this Act.
- (4) A council must not make a bylaw that is inconsistent with a document.

Privacy Act 1993 (1993 No 28)

Part 1 of Schedule 2: insert the following item after the item relating to the Fisheries Act 1996:

Food Act 2014

Clauses 2, 5, 8, 11, and 14 of Schedule 5

Psychoactive Substances Act 2013 (2013 No 53)

Section 9(3): repeal paragraph (f) and substitute the following paragraph:

- (f) anything that is ordinarily used or represented for use as food or drink for human beings:

Sale and Supply of Alcohol Act 2012 (2012 No 120)

Section 58(3): omit “section 11C of the Food Act 1981” and substitute “the Food Act 2014”.

Search and Surveillance Act 2012 (2012 No 24)

Schedule: replace the item relating to the Food Act 1981 with:

Food Act 2014	282	Chief executive may give directions to complete and supply declaration	Subpart 5 of Part 4
	283	Chief executive may give directions to impose movement or related controls	Subpart 5 of Part 4
	292	Chief executive may require production of information	Subpart 5 of Part 4
	293	Chief executive may require production of information	Subpart 5 of Part 4
	294	Verifiers' rights of access and certain other powers	Subpart 5 of Part 4
	295	Recognised person may exercise right of access to places, information, documents, etc	Subpart 5 of Part 4
	299	Use of equipment by food safety officers to facilitate entry and search	Section 110(e)
	300	Food safety officer may copy documents, etc	Subpart 5 of Part 4
	306	Food safety officer may seize, condemn, and require disposal	Part 4 (other than subparts 2, 3, 6, and 8 and sections 118, 119, 125(4), 131(5)(f), and 133)
	308	Food safety officer may ask about documents, etc	Subpart 5 of Part 4
	309	Food safety officer must identify himself or herself	Section 131
	311	Food safety officer may enter places without search warrant	Part 4 (other than subparts 2, 3, 6, and 8 and sections 118 and 119)
	322	Requirements about applications for search warrant	Sections 98 to 100
	323	Issuing officer's power to issue search warrant	Sections 102 to 104 and 107, and subpart 5 of Part 4
	325	How search warrant can be transmitted	Section 105

Search and Surveillance Act 2012 (2012 No 24)—continued

326	Search powers under warrant	Section 110
327	How search powers to be carried out	Sections 106, 111 to 114, 115(1)(b) and (3), 116 to 130, 131(1) to (5), 132, 133, 134, and 135
328	How seized property may be disposed of	Part 4 (other than subparts 2, 3, 4, and 8)
329	Documents relating to search warrant must be retained	Section 101

Veterinarians Act 2005 (2005 No 126)

Section 89A(a)(v): omit “Food Act 1981” and substitute “Food Act 2014”.

Wine Act 2003 (2003 No 114)

Section 4(1): insert in its appropriate alphabetical order:

extension product means a product to which all the following apply:

- (a) it is food, wine vinegar, or commodity-based spirits; and
- (b) it is made by a winemaker; and
- (c) it is made at the place or area covered by the winemaker’s wine standards management plan or subject to an exemption under section 6 or 11 from the requirement to have such a plan; and
- (d) it is produced from wine or partially fermented commodities; and
- (e) it has been processed in such a way that it is not wine or a wine product

Section 4(1): insert in their appropriate alphabetical order:

food control plan has the meaning given to it in the Food Act 2014

national programme has the meaning given to it in the Food Act 2014

Definition of **Food Act regime** in section 4(1): repeal and substitute:

Food Act regime means the regime under the Food Act 2014

Definition of **food safety programme** in section 4(1): repeal.

Definition of **New Zealand food standard** in section 4(1): omit “Part 2A of the Food Act 1981” and substitute “the Food Act 2014”.

Section 4(1): insert in its appropriate alphabetical order:

partial process product means a product to which all the following apply:

- (a) it is food, juice, or verjuice; and
- (b) it results from the processing of commodities without their undergoing fermentation; and
- (c) it is made by a winemaker; and

Wine Act 2003 (2003 No 114)—continued

- (d) it is made at the place or area covered by the winemaker’s wine standards management plan or subject to an exemption under section 6 or 11 from the requirement to have such a plan

Definition of **wine product** in section 4(1): omit “Food Act 1981” and substitute “Food Act 2014”.

Section 4(4): omit “Food Act 1981” and substitute “Food Act 2014”.

Section 10: repeal.

New heading and sections 15A to 15C: insert after section 15:

Relationship between Food Act regime and wine standards management plans

15A Persons involved with both food and wine

- (1) This section applies to winemakers who make extension products, partial process products, or wine products.
- (2) The winemakers may choose to apply subsection (3) or (4).
- (3) Winemakers who choose to apply this subsection must include all their operations in their registered food control plans or register all their operations under a national programme. The Food Act 2014, and its provisions on verification, apply to their products.
- (4) Winemakers who choose to apply this subsection must include all their operations in their registered wine standards management plans. This Act, and its provisions on verification, apply to their products as if they were wine.
- (5) Winemakers who also make food, or sell it at retail, must, subject to section 27 of the Food Act 2014, do both the following:
 - (a) comply with the Food Act regime for their food operations; and
 - (b) comply with their wine standards management plans for all their wine-making operations.

15B Application for intermittent use of food control plan as wine standards management plan

- (1) An operator of a food control plan may apply to the Director-General to register a food control plan (**food plan**) as a wine standards management plan (**wine plan**) for use intermittently.
- (2) The application—
 - (a) must be made in a manner approved by the Director-General; and
 - (b) must be accompanied by the prescribed fee (if any); and
 - (c) is subject to sections 18 to 20 as if it were made under section 18.
- (3) The Director-General must impose conditions on registration specifying—
 - (a) the times during which the food plan’s operator may use the plan; and

Wine Act 2003 (2003 No 114)—continued

- (b) the manner in which the food plan's operator may use the plan; and
 - (c) the notice that the food plan's operator must give of the food plan's being in use.
- (4) The Director-General must also impose a condition on registration specifying whether and to what extent the food plan is subject to the verification requirements of this Act or the Food Act 2014. In setting the condition, the Director-General must take into account—
- (a) the desirability of continuity in verification services, functions, or requirements; and
 - (b) export eligibility requirements.
- (5) The Director-General must—
- (a) advise the applicant of the conditions that the Director-General has imposed under subsections (3) and (4) and section 19(2); and
 - (b) give the applicant the opportunity to withdraw the application.
- (6) The Director-General must as soon as practicable after registration notify the following persons of the fact and conditions of registration:
- (a) the applicant; and
 - (b) the applicant's verifier or verification agency (if applicable); and
 - (c) the applicant's verifier or verification agency under the Food Act 2014; and
 - (d) either—
 - (i) the chief executive of the agency for the time being responsible for the administration of the Food Act 2014; or
 - (ii) the relevant territorial authority.

Compare: 1999 No 93 s 34(1), (2), (4)–(6)

15C Intermittent use of food control plan as wine standards management plan

- (1) This section applies when a food control plan (**food plan**) is registered as a wine standards management plan (**wine plan**) under section 15B.
- (2) While an operator is using the registered food plan, the operator is treated as a person who—
- (a) is required to have a wine plan for the operations for which the operator is using the registered food plan; and
 - (b) is not required to comply with the Food Act regime for the operations for which the operator is using the registered food plan.
- (3) While an operator is not using the registered food plan,—
- (a) the operator is treated as a person who is required to comply with the Food Act regime; and

Wine Act 2003 (2003 No 114)—continued

(b) this Act does not apply to the operator.

Compare: 1999 No 93 s 34(3)

Section 24: insert after subsection (4):

(4A) The operator of a registered wine standards management plan may suspend all or any operations under the plan for a minimum of 3 months and a maximum of 12 months.

(4B) An operator who suspends a plan under subsection (4A) must give the Director-General a notice in writing stating—

- (a) the date on which the suspension starts, which must be a date after the date of the notice; and
- (b) the date on which the suspension ends; and
- (c) which operations are suspended; and
- (d) how the operator intends to deal with any affected product.

Section 32: repeal and substitute:

32 Application to extension products, partial process products, and wine products

- (1) This section applies to extension products, partial process products, and wine products that are made or required to be made under a registered wine standards management plan under section 12 or 15A.
- (2) Standards and specifications set under this subpart may apply to the products as if they were wine.
- (3) In this subpart, **wine** includes the products.

Section 101(3): repeal and substitute:

- (3) A person who commits an offence against this section is liable,—
 - (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to—
 - (i) imprisonment for a term not exceeding 3 months; and
 - (ii) a fine not exceeding \$50,000.

Section 113A(4) (as enacted by section 16 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014): omit and substitute:

- (4) In this section,—
 - border information** and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993
 - Ministry** has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 4(1) of this Act.

Wine Act 2003 (2003 No 114)—continued

Section 113B(3) (as enacted by section 18(5) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014): omit and substitute:

(3) In this section,—

border information and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993

Director-General has the meaning given in section 4(1) of this Act

Ministry has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 4(1) of this Act.

Section 119(1): insert after paragraph (b):

(ba) for the purposes of section 15B, specifying criteria for determining whether all or any class or classes of registered food control plans are to be subject to the verification regime of this Act or the Food Act 2014:

(bb) for the purposes of section 15B, if it is appropriate to allow exemptions in the interests of avoiding unnecessary or undesirable duplication of equivalent duties or matters under this Act and the Food Act 2014, exempting persons from compliance with specified requirements imposed under either Act, or providing for their exemption, whether wholly, partly, or conditionally:

(bc) for the purposes of section 15B, prescribing any other matters relating to the registration of food control plans as wine standards management plans:

Part 2

Amendments to regulations and revocation of regulations

Animal Products (Exemptions and Inclusions) Order 2000 (SR 2000/209)

Clause 8A(1)(c): omit “food safety programme approved under the Food Act 1981” and substitute “risk-based measure under the Food Act 2014”.

Clause 10(2)(b): omit “food safety programme under the Food Act 1981” and substitute “risk-based measure under the Food Act 2014”.

Animal Products (Fees, Charges, and Levies) Regulations 2007 (SR 2007/130)

Item 4 of Part 1 of Schedule 1: omit “safety programme” and substitute “control plan”.

Biosecurity (Meat and Food Waste for Pigs) Regulations 2005 (SR 2005/150)

Regulation 7(1)(c): omit “Inspectors within the meaning of regulation 2(1) of the Food Hygiene Regulations 1974” and substitute “food safety officers under the Food Act 2014”.

Dairy Industry (National Residue Monitoring Programme) Regulations 2002 (SR 2002/139)

Paragraph (a)(ii) of the definition of **residue** in regulation 3: omit “the New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standard and Food Standards Code applicable to New Zealand” and substitute “a regulation or a notice under the Food Act 2014”.

Dietary Supplements Regulations 1985 (SR 1985/208)

Regulation 12(2): omit “, and any other food conditioners specified in the Food Regulations 1984 (SR 1984/262),”.

Fisheries (Licensed Fish Receivers) Regulations 1997 (SR 1997/291)

Regulation 5(1)(a): omit “Food Hygiene Regulations 1974” and substitute “Food Act 2014”.

Regulation 5(1)(b): revoke.

Food Act Commencement Order 1984 (SR 1984/178)

Revoke.

Food (Fees and Charges) Regulations 1997 (SR 1997/100)

Revoke.

Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001 (SR 2001/117)

Definition of **food** in regulation 3: omit “section 2 of the Food Act 1981” and substitute “section 9 of the Food Act 2014”.

Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001 (SR 2001/112)

Definition of **food** in regulation 6(2): omit “section 2 of the Food Act 1981” and substitute “section 9 of the Food Act 2014”.

Definition of **food additive** in regulation 6(2): revoke and substitute:

food additive means a substance added to food and regulated under an adopted joint food standard as defined in the Food Act 2014.

Weights and Measures Regulations 1999 (SR 1999/373)

Definition of **spirit dispenser** in regulation 2: omit “regulations 233 to 233H of the Food Regulations 1984” and substitute “an adopted joint food standard as defined in the Food Act 2014”.

Notes

1 *General*

This is a consolidation of the Food Act 2014 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6

Therapeutic Products Act 2023 (2023 No 37): Part 11 subpart 2

Organic Products and Production Act 2023 (2023 No 14): section 162

Severe Weather Emergency Legislation Act 2023 (2023 No 4): Part 2 subpart 1

Statutes Amendment Act 2022 (2022 No 75): Part 18

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Education and Training Act 2020 (2020 No 38): section 668

Privacy Act 2020 (2020 No 31): section 217

COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13): section 3

Statutes Amendment Act 2019 (2019 No 56): Part 18

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Food Safety Law Reform Act 2018 (2018 No 3): Part 1

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b), (c)

Food Regulations 2015 (LI 2015/310): Schedule 1 clause 7

Food Act 2014 (2014 No 32): Schedule 4 clauses 3A(6), 3A(7)

