

SOUTH WAIRARAPA DISTRICT COUNCIL

24 FEBRUARY 2016

AGENDA ITEM D8

IMPLEMENTATION OF THE FOOD ACT 2014

Purpose of Report

To outline the changes in how food is prepared, distributed and sold in New Zealand consequent on the coming into force of the Food Act 2014 and Food Regulations 2015. A decision on the scope of Council's role is then sought.

Recommendations

Officers recommend that the Council:

1. *Receive the information.*
2. *Authorise officers to establish the necessary processes and systems to enable Council to undertake its statutory functions under the Food Act 2014.*
3. *Authorise officers to advise the Ministry of Primary Industries that Council does not intend to apply for recognition as a National Programme Verification Agency or Custom FCP's.*

1. Executive Summary

The new Food Act and Regulations take effect from the end of March 2016. There are transitional periods for a number of functions and the introduction of new functions.

If Council undertakes only statutory functions it is automatically deemed to be a Verification Agency under the Act for those functions and no further requirements need be met to operate.

If Council wishes to undertake wider non statutory functions then it will need to meet the Regulations for registration as a Verification Authority – that is operate a full Quality Management System (QMS) of a similar nature to that which operates under the Building Act with all its attendant costs and resource requirements.

Fees and charges also need to be reviewed in consequence of the commencement of the new Act and Regulations, using a methodology specified in the Regulations.

This review is because the functions require more time / resources to undertake compared to the previous system and so costs will increase for

Council. However until Council decides on the scope of activities that it wishes to undertake (whether just its statutory role or to move into a more commercial role), decisions on this should be deferred to the April Council meeting.

2. Background

According to Government, the old food regime was in need of significant updating for a number of reasons. These included its relative inflexibility, its failure to fully control food borne illness, fragmentation of responsibilities, cost variability and lack of consistent processes and systems.

The new Food Act was passed by Parliament in 2014 and is now entering the timeframe where it begins to take effect. The Regulations were promulgated late in 2015 to, in the Ministries words, "facilitate" the implementation process from March this year.

Such late notice of the regulations however, provides Council with little space or time in which to consider its role and set up the requisite new systems and procedures required by the new regime.

3. Overview of New Regime

The Act requires all food premises to operate under either a custom or approved Template Food Control Plan (FCP) or a National Programme.

All Territorial Authorities (TA's) and the Ministry for Primary Industries (MPI) will act as registration authorities for businesses operating under the Food Act 2014 (Section 52) i.e. for Template FCP's or National Programme.

The Act also specifies that TAs are exclusive verifiers of template food control plan businesses they register and that they do not have to apply for recognition or hold any accreditation to provide these verification services.

These two roles will start with the full commencement of the Food Act 2014 on 1 March 2016.

All other food businesses are subject to verification by a third party agency recognised under the Act. This may be an independent agency such asASUREQuality.

It may also be a TA, but only if the TA chooses to provide this wider service and it is recognised as a verifier for national programme and/or custom food control plan food businesses.

TAs do not have automatic statutory recognition to provide these verification services, and must meet the same criteria as other third party providers.

The current Food Hygiene Regulations will cease to exist, however Council will need to continue to register some food premises that do not transition in the first year.

Essentially until 2019 a dual system will exist with both the Food Hygiene Regs under the 1981 Food Act and Food Act 2014 and its regulations operating.

Until a food business transitions to the Food Act regime, they will be subject to Councils current Food Hygiene Registration and Fees.

4. Statutory Functions

Under the Act, Council is therefore required to undertake the following activities:

1. Registration- receiving and processing (administration) of applications for registration of food premises.
2. Compliance and monitoring activities- undertake compliance and monitoring activities in relation to template food control plans.
3. Verification –undertake verification activities for premises operating under a *template food control plan*.

5. Recognised Agencies and Persons

5.1 Template Food Control Plans:

Council is automatically deemed to be a verification authority for template food control plans. This approval expires on 28/02/2019.

Council's EHO's have been appointed as Food Act Officers and/or Food Act Auditors as follows:

- Bronwyn Johnson: MPI appointed Food Act Officer and Food Act Auditor. Expiry date: 17 August 2018.
- Rob McDonald: MPI appointed Food Act Auditor: Expiry Date 17 June 2017.

5.2 National Programmes/Custom FCP:

If Council wishes to verify (audit) National Programmes and/or Custom FCP's, it must make formal application to MPI for recognition as a National Programme Verification Agency under section 137 (1) of the Act.

Council will have to have in place a Quality Management System similar to that required under the Building Act and will have to operate and be audited in a similar way. The requirements of the required Quality Management

System are specified in Regulation 110 Food Regulations 2015. These closely reflect what is specified in the Building Act regulations.

TA's cannot apply to MPI for recognition as a National Programme Verification Agency without a QMS.

As at 10/2/2016, MPI QMS approval system is still to be finalised. A decision has not yet been made by MPI regarding who will undertake assessment of the TA's QMS. It is likely to be an external agency. There will be a charge to the TA for the QMS assessment (e.g. this is \$10,000pa under the BAct system).

MPI are currently working on QMS guidance documents which are due by March but which are not presently available, so providing a more accurate costing is difficult.

Currently only Third Party auditors will be deemed approved to verify NP/CFCP businesses as at 1 March 2016.

Essentially Council cannot do anything further apart from make a general decision about whether they want to be in the business of verifying National Programmes and possibly CFCP's.

If Council chooses not to be a verifier it will still need to have a process in place to handle the registration of these businesses. These food businesses will then need to use third party auditors.

Given the unknown, but very likely (based on Building Act requirements) high cost of setting in place, resourcing and running a QMS model for food, Council would need to either increase rating funding or agree to a fee structure or a fee/rating structure that funded these additional costs.

At this stage for comparison purposes only, the BCA QMS as a whole costs Council between \$70-90000 per annum (direct system costs and staff component). I would not expect the food QMS to have an equivalent cost but estimate it could be in the order of a third to half that amount (\$23,000 to \$45,000pa).

In addition in the food area, because of the increased time and skill requirements for food auditing under the wider FCP system, additional staff may well be required both in a professional role (0.5 -1.0 FTE) and administrative support (0.5 – 1.0 FTE) if Council goes beyond its statutory role. Training and other requirements (staff skill levels) would likely also be more demanding.

6. Decision on wider verification role

Businesses covered by template FCP's are automatically regulated by Council, so our services will have to be developed further to deal with these (mainly new software setups, documents and forms).

It is expected that practically all premises regulated by Council through the existing Food Hygiene Regulations will be covered by template FCP's. Only two or three additional premises in the resthome category have been identified to be added to the existing premises at this stage.

The work required for the template FCP's is greater by orders of magnitude (estimated 2 to 4 times) than under the Food Hygiene Regulations so this will create an ongoing greatly increased workload for Council to manage.

In addition if a business does not wish to be under an NP then we believe they can opt to register under a template FCP. There would be a possible disadvantage in that for them of being subject to shorter registration periods; however these would not be any more than under the present regime.

Lastly, even if Council did setup ISO systems and the like and obtain verification status for NP, this regime is likely to last only until 2019. MPI have signalled already that there are likely to be substantive changes at that time for Council's, as it is the clear intent of the new Act and Regulations that the whole sector is opened up to private certification companies and that the Council's role could be further restrained to help stimulate a favourable "market response" to private involvement.

To conclude, for the above reasons (para 5.2 and 6) but in particular because the template FCP's pick up most of the food industry currently covered by Council (business as usual) and the impact of extending verification to pick up say NP businesses in terms of workload and cost is unnecessary, it is recommended at this stage that Council not move to be verified for NP purposes.

7. Data Requirements for MPI

MPI is required to create a public register of all FCP and NP registrations.

The Food Act requires the provision of quite extensive information in order for a food business to be registered which is then passed onto MPI.

Council can in the interim continue to use the current MPI VIP portal (a web based data transfer system) for this purpose. This will only apply to existing food premises currently in the portal NOT new applications.

The VIP portal is old and in the near future will not be supported by MPI, so this is only going to be a short term option for Council.

SWDC currently uses NCS to capture some of the data required but not all.

NCS has been given written assurance that MAGIQ will have the systems required put into place. This has as yet not occurred. MAGIQ will need to provide comprehensive training for Administration Officer and Environmental Health Officers. The estimated cost of these changes and training is in the order of \$10,000.

8. Administration setup tasks yet to be completed

1. New forms for registration of food business. MPI have template
2. New audit/Verification templates. This is part of the work plan for the Wellington Cluster Group.
3. New Food Control Plans and diaries for food businesses.
4. SOP for accepting and processing registrations
5. SOP for verification and reporting procedures
6. Staff training for both EHOs and Administration
7. Updating the Councils website
8. System in place to provide advisory information for Food Businesses/education system and transition
9. Updating forms and Counter information
10. Fees schedule (once approved by Council)

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