



## **PRACTICE NOTE 10**

March 2020

# **FOOD ACT 2014**

## **Voluntary and Mandatory Suspension of Operations**

### **Purpose**

This document sets out guidance for Territorial Authorities on how to handle Voluntary and Mandatory Suspension of Operations under Food Control Plan (FCP) or National Programme (NP). It examines how these measures affect verification and registration.

### **Approach**

This document draws on the content of the Food Act 2014 (the Act). It has been developed in collaboration with multiple Territorial Authorities (TAs) and stakeholders within the Ministry for Primary Industries (MPI).

### **Intended Audience**

Territorial Authorities, Registration Authorities, Verification Agencies.

## **Context**

Periodically food businesses operating under a registered FCP or NP may choose to close for extended periods for reasons such as the seasonal nature of their business or for personal reasons. The food business operator is able to suspend their operations by sending notification of voluntary suspension to their registration authority.

Additionally a registration authority may make a decision to utilise a mandatory suspension of operations.

A suspension of operations can lead to issues with the date set under performance based verification and the date by which a food business should be verified.

This document examines some of the options open to registration authorities to deal with issues related to voluntary and mandatory suspension of operations.

## **Voluntary Suspension**

A food business may voluntarily suspend all operations under s64 (FCP) or s92 (NP), or the operations of one or more food businesses under s64, by sending a written notice to their registration authority. The requirement to submit a written notice is set out in cl7 of Sch4 of the Act. There are also provisions covering some entities subject to registration with MPI.

A voluntary suspension notice must specify the start date of the suspension; and the period of the suspension; and if the operations of one or more food businesses under s64, the food businesses or sites to which the suspension applies. The minimum period of suspension is three months but this can be extended to a maximum of 12 months.

## Mandatory Suspension

In contrast to the ability of a food business to suspend its own activities, a registration authority may suspend the operations of a food business [mandatory suspension] for a variety of reasons (see s62 and 90) including:

- If it believes a food control plan is no longer effective (a food business not being verified in time is cited as an example of this point). Note: there is no similar provision for food businesses operating under a NP.
- If food traded no longer meets the requirements of the Act.
- If food traded presents a health risk.
- A serious failure of operations or other matters including failure to comply with a condition of registration.

Generally, before a registration authority uses its powers to suspend operations it must set out in writing its reasons for proposing a mandatory suspension and give the affected person an opportunity to make a written submission. However, a registration authority may suspend operations immediately and urgently in the interest of human life or public health.

If the situation isn't extraordinary and the registration authority chooses to apply a mandatory suspension it must set out a notice in writing (see cl 4 of Sch4). The notice is required to cover the reason for the suspension, the period of the suspension, the date of commencement, which operations are covered by the notice, any relevant conditions to the suspension and the operator's right to seek a review.

## The Effect of Suspension

In both the case of a voluntary or mandatory suspension, it is the operation of the food business that is suspended, not its registration. The clock continues to run on the registration and renewal time frames continue in accordance with statutory requirements. It is important to note that upon expiry of the registration of an FCP or NP, a suspension would cease to have effect.

When a business gives notice of suspension of its operations, or a registration authority applies a mandatory suspension, the registration authority is able to exercise additional powers that are set out in s65 of the Act. Section 65 allows the registration authority to direct that food must not be sold; and direct appropriate action be taken to deal with affected food, food related accessory, or operations; and exercise power in s285. Section 285 enables directions to be given to manage food or food-related accessories including 285(2)(c) destroying it; (n) storing it; and (q) verifying it.

It is important to note that the registration authority should update the public register (MAPS) to indicate the operations of the business have been suspended.

Section 93 contains several additional powers that can be utilised by a registration authority including being able to issue directions around the sale of food. Exercise of these powers does not necessarily require involvement of an FSO and is separate to the powers available to those officers.

## Miscellaneous Provisions relating to Registrations

As previously noted, Schedule 4 of the Act outlines requirements in relation to both voluntary and mandatory suspensions. Clause 9 of this schedule provides powers to the registration authority to impose conditions and give directions in relation to suspension. For both FCPs and NPs conditions may be imposed in respect of the implementation and operation of a suspension (cl9(1)) and additionally for FCPs, conditions may be imposed that relate to the "requirement for verification, including its frequency, duration, focus, and scope."

## Verification and Suspensions

If a suspension has been issued, the Territorial Authority could still elect to require the business to be verified according to its normal cycle of verification, but that would appear to be largely impractical because the business is no longer operating.

As noted above, s285 enables direction to be given for verification but only in relation to managing food or food-related accessories. Otherwise cl 9 of Sch 4 may be useful depending on the scenario. This empowers the registration authority to impose conditions on the implementation and operation of a suspension. Conditions can address the matter of verification, including its frequency, duration, focus, and scope. To be clear, this empowering is not available to verification agencies.

With regard to the issue of directions, territorial authority staff will need to be careful to ensure they understand who that authority has delegated in their organisation to give directions or impose conditions. The verification module of Titiro does not currently accommodate such a direction (the software holds to the PBV step issued at the last verification) It is intended this will be addressed in future versions of Titiro.

## **Review of Decisions**

When a territorial authority elects to issue a notice of mandatory suspension the recipient of the notice may seek a review of the decision, under the TA's internal processes or from MPI under s 355 of the Act. This review process will be covered in more detail in separate guidance.

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## Flowchart – Handling Mandatory and Voluntary Suspension

