

Food Bill

Government Bill

As reported from the Primary Production
Committee

Commentary

Recommendation

The Primary Production Committee has examined the Food Bill and recommends that it be passed with the amendments shown.

Introduction

This bill would on commencement replace the Food Act 1981 and over time the Food Hygiene Regulations 1974 and the Food (Safety) Regulations 2002. It would also make consequential amendments to the Animal Products Act 1999 and the Wine Act 2003. It seeks to provide an efficient, risk-based regulatory regime that places a primary duty on persons trading in food to ensure that what is sold is safe and suitable.

This commentary focuses on the main amendments we recommend and does not address minor technical amendments.

Relationship with other Acts

We recommend amending clause 5 by dividing it into two clauses, clause 5 and clause 5A. Clause 5 would retain the explanation of the

application of the bill. Clause 5A would clarify and provide certainty about the relationship between the bill and the Animal Products Act 1999 and the Wine Act 2003. We also recommend adding a subclause to clause 5A stating that if there is any conflict, duplication or inconsistency between a power or other form of authority conferred under the bill and those in the Animal Products Act or Wine Act in relation to an animal product or wine, then the powers or authorities conferred in the latter Acts would prevail.

Meaning of food business

We recommend that subclause 9(b)(iii) be deleted. In this subclause as introduced the definition of “food business” would capture people who do not trade in food, but are directly or peripherally involved in facilitating the trade of food, such as organisers of food markets or events.

Meaning of safety and suitability

We recommend that clause 11(5) be amended to clarify the definition of suitability as it relates to the “condition” of food. The proposed amendment would replace subclause (5) to make it clear that food is unsuitable if it is decomposed or rotten, contaminated or tainted, contains foreign objects, or is offensive in some other way. To avoid challenge to a food’s suitability on the basis of offensiveness in circumstances where the food is entirely lawful in terms of its composition (for example a vegetarian finding gelatine in a confectionery item “offensive”) we recommend the inclusion of new subclause (5A), to make it clear that a moral, religious, or ethical aversion to a particular food or ingredient would not make the food unsuitable for the purposes of the bill.

We note that in circumstances where the composition of a food is misrepresented (for example, if a café meal were described as vegan but was found by the vegan purchaser to contain animal product, or a product were incorrectly labelled as vegetarian), recourse would be available through the bill’s provisions for “truth in labelling” and through other statutes, such as the Fair Trading Act 1986.

Winemaking operations

We recommend inserting new clause 24A, which is currently clause 43, and amending it to widen the scope of the risk management tool under which winemakers can apply to have their operations included. The amendment would acknowledge that some activities that wine-makers undertake will be subject to national programmes rather than food control plans. The amendment would also clarify that such operators would be required to meet Wine Act standards in relation to their winemaking activities.

Food control plans

We recommend inserting new clause 35A to specify the purposes for which regulations about food control plans could be made. Clause 35A would replace clause 347(1).

This clause would also include specific regulation-making powers, which would clarify the scope of potential regulations in respect of such matters as verification intensity and frequency, and training and competency requirements.

For the sake of clarity, we recommend replacing clauses 36–40 and replacing them with clauses covering the following matters: a chief executive’s power to amend a template food control plan; the circumstances in which a food operator may amend a template food control plan (and the process to be followed in doing so); a chief executive’s ability to register a food control plan template amended by a food operator; a food operator’s ability to amend a food control plan developed by a third party; and a food operator’s ability to amend a food control plan not based on an official template.

We recommend deleting clause 42. It was intended to provide for a person who carries out secondary processing of animal product to incorporate these activities into a registered food control plan in certain circumstances. However, this option is already available under the bill and clause 42 does not provide anything additional.

We recommend amending clause 45(1)(f) to make it clear when a food control plan would have to be verified, by adding the words “after commencement of the operations to which the registered food control plan relates”.

Regulations about national programmes

We recommend amending clause 73(1)(l) to allow national programme regulations to be more specific on the training and competency requirements for persons who are required to operate under those regulations. The amended wording would allow the regulations to require such people to undergo appropriate training, or to demonstrate competency, regarding the safety and suitability of food, food production, and food processing and handling, and to provide training for staff as appropriate.

We also recommend that clause 73(1)(c) be amended to allow regulations to prescribe the intensity of verification. This affects the cost of verification, and we consider it appropriate that this aspect of verification also be regulated.

Horticulture New Zealand and various other submitters were concerned about the potential for duplication and increased compliance costs resulting to their own certification programmes, and that the requirements of the bill could be onerous for their members. We have sought to address this matter and will monitor this closely.

Food handler guidance

A number of submitters were concerned that some of the provisions in the bill were too bureaucratic and costly. Small operators and charitable organisations were particularly concerned about this matter.

We recommend amending clause 92(2) by removing “community-based fund-raising events”, and adding two new subclauses to specify that food handler guidance applies to persons or organisations trading in food for a charitable purpose, and persons or groups trading in food for personal development. This would align this clause with proposed amendments to clauses 94 and 94A.

Charitable purpose

We recommend amending clause 94 to clarify the definition of trading in food for charitable purpose, by replacing “community-based fund-raising activities” with “charitable purpose”. The section would apply to a person or persons or organisation trading in food for a “charitable purpose”. Charitable purpose is defined in clause 94(4) of the bill. Such persons or organisations trading in food for a charitable purpose would therefore be exempt from the requirement to

operate under a food control plan or national programme. The food operator would still have to operate under any food handler guidance that applies to the trade in food concerned. We also recommend requiring that the trade in food for a charitable purpose either occur not more than 20 times in one calendar year or, if it is more frequent, that it be ancillary or incidental to the main activity taking place at that location.

Schedule 3 of the bill further details the specific food sectors and food-selling activities subject to food handler guidance. We recommend a number of amendments to the schedule to make it clear who and what is covered by Schedule 3.

We recommend amending part 1(f) of Schedule 3 by deleting “infrequent” and adding “organisations, and societies (internal)”. This would cover members of a club, organisation, or society selling food to other members where the trade in food was not the purpose of the event or gathering. Along with amended clause 94 this would allow, for example, a church or religious congregation selling food to its members to be subject only to food handler guidance.

We recommend inserting new part 1(fa) into Schedule 3, “Food service sector: clubs, organisations, and societies (external)”. This would cover members of a club, organisation, or society selling food to members and guests where the trade in food was not the purpose of the event or gathering. This is intended to cover events such as a sausage sizzle at a sports match.

We also recommend that part 1(c) of Schedule 3 be amended to include the sector description “fishing vessel operators who supply food for crew”. By virtue of supplying food to crew (which is part of a remuneration package), a vessel operator would fall within the meaning of a food business and thus be captured by this bill. While the hazards associated with such food provision warrant some form of control, we felt the low risk involved and the impracticality of verifying such operations means that the best solution would be to make such activities subject to food handler guidance.

Personal development

We recommend inserting new clause 94A to provide for exemption from operating under a food control plan or national programme in circumstances where food is sold for a specified fund-raising purpose

which would fall outside the scope of clause 94. The purpose must be to provide financial support required by the person selling the food, or a named other person (or group of persons), to achieve a specific purpose or goal. The trade in food would be on a non-commercial scale and on an infrequent basis, that is, no more than 20 times in one calendar year. The person or group would still be required to operate under any food handler guidance that applied to the trade in food concerned.

Small scale businesses

We recommend amending clause 95 by inserting new subclause 95(5) to provide an example of a person to whom the chief executive might grant an exemption from the requirement to operate under a registered food control plan or national programme. This example concerns someone who produces in his or her own home any food for sale, and sells the food to a consumer only, and does not employ or engage anyone else to assist in the production or sale of the food, and does not otherwise sell or distribute the food.

The treatment of very small-scale food businesses has emerged as a matter of particular interest in our consideration of the bill. Very small-scale food traders, or “cottage industries” are not distinguished in the bill. It would be difficult to quantify “small-scale” in terms of profit, quantity of product, or number of people involved in the operation, and it is also difficult to define a “cottage” food industry. Doing so could have the effect of inappropriately including or excluding particular food-trading activities. Therefore we do not recommend a generic “cottage industry” provision, and propose instead that any exemption from the requirement to operate under a food control plan or national programme regulations could be made on a case-by-case basis through the exercise of the chief executive’s exemption power under this clause.

Delegation to territorial authorities

We recommend amending clause 96 by adding subclause 96(7) and 96(8). The chief executive should be able to delegate functions, duties, or powers to territorial authorities. However, delegation of the chief executive’s power to grant an exemption from the requirement to operate under a food control plan or national programme would

be limited. Subclause 96(8) would require a territorial authority acting under delegation to grant, amend, or revoke an exemption under clause 95 in accordance with the special consultative procedure specified in section 83 of the Local Government Act 2002.

Exclusivity of verification functions and activities granted to territorial authorities

We recommend inserting new clause 127A to preclude the chief executive from recognising anyone other than a territorial authority as a verifier for businesses that operate under a template or model food control plan issued under clause 32, and operate exclusively within the district of a single territorial authority, and sell food directly to consumers.

The bill as introduced does not include express provision for territorial authorities to be exclusive verifiers of any food sector. Clause 126 provides that any person or body can apply for recognition as a verifier and can be recognised as such, provided the chief executive is satisfied they are a fit and proper person. It was originally expected that territorial authority verification exclusivity would be given effect through transitional regulations made under clause 397 of the bill; however this is no longer considered appropriate because territorial authority exclusivity may not be a transitional or temporary arrangement. It would have to be determined by the outcome of a review as per new clause 127B.

However, we consider it important that the chief executive's power to monitor the performance of territorial authorities and the Minister's powers of review persist during the exclusivity period.

Review of operation

We recommend inserting new clause 127B to provide for a review of the operation of the new clause 127A as soon as practicable after the expiry of the legislation's introductory period as set out in clause 375.

We consider that the advantages of territorial authorities being granted verification exclusivity outweigh the disadvantages. However, new clause 127B would ensure the arrangement was reviewed by the chief executive as soon as practicable after the expiry of the legislation's introductory period. This review could determine

whether the arrangement could still be justified once the new regime was fully implemented.

Power to issue improvement notice

We recommend inserting new clauses 267A and 267B, to give a food safety officer the authority to issue an improvement notice, and provide a right of review for a person to whom an improvement notice has been issued. The chief executive would also be allowed to initiate a review of a food safety officer's decision to issue an improvement notice.

We felt an improvement notice regime would be a useful addition to the enforcement tools available to encourage compliance with the requirements of the bill. An improvement notice would require corrective actions to be undertaken. This could be used to provide an opportunity to correct any non-compliance, instead of an infringement notice being issued or proceedings being commenced.

Green Party minority view

The Green Party is concerned that the bill deals with the issue of food safety inconsistently and even arbitrarily.

We are concerned about the narrow definition of food safety in the bill, which allows hazards to remain in food provided they can be managed, eliminated, or minimised. We think the definition is way too wide.

The Green Party is particularly concerned at the definition of food safety, given the narrow focus by the New Zealand Food Safety Authority on managing food safety risks of microbial contamination, and the way it consistently ignores contamination by pesticides and other chemicals such as Bisphenol A, and heavy metals.

Finally, we are pleased that this bill will require importers to be registered in New Zealand and that importers will have a duty to be able to trace imported foods back to their source. We would like to see this ability to trace foods back to their source, used as the basis for mandatory country of origin labelling, and full traceability in the food supply, as is being introduced in other countries.

Appendix

Committee process

The Food Bill was referred to the committee on 22 July 2010. The closing date for submissions was 2 September 2010. We received and considered 66 submissions from interested groups and individuals. We heard 26 submissions.

We received advice from the Food Safety branch of the Ministry of Agriculture and Forestry (formerly the New Zealand Food Safety Authority.) The Regulations Review Committee reported to the committee on the powers contained in clauses 21, 178, 180, 346, 367 and 403.

Committee membership

Shane Ardern (Chairperson)

Hon Jim Anderton

Brendon Burns

Dr Ashraf Choudhary

Craig Foss

Sandra Goudie

Colin King

Hon Damien O'Connor

Sue Kedgley was a non-voting member for this item of business.

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kate Wilkinson

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Food Act **2010**.
- 2 Commencement**
This Act comes into force on **1 July 2011**.

Part 1

Preliminary provisions

Subpart 1—Introduction

5

- 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) specify the principles for persons with regulatory roles under this Act and summarise what those roles are; and 5
 - (e) state the primary duty of persons who trade in food.
- (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— 10
- (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 risk-based measure generally applies to food businesses in each of those 3 classes; and 15
 - (c) require 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. 20
- (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. 25
- (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 and persons for the purposes of this Act; and 30
 - (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. 35

- (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 management tools, improving the safety and suitability of food, imported food, recognised agencies and recognised persons, information, offences, and administrative matters. It also contains provisions on the issuing of notices, including emergency notices. 5
- (7) **Schedule 1** describes the food sectors that are generally subject to a food control plan. 10
- (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. 15
- (9) **Schedule 3** describes the food sectors that are generally subject to food handler guidance. 20
- (10) **Schedule 4** sets out miscellaneous provisions relating to registrations and recognition under this Act. 25
- (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. 25
- (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) provide for risk-based measures that—
 - (i) minimise and manage risks to public health; and
 - (ii) protect and promote public health; and

- (d) provide certainty for food businesses in relation to how the requirements of this Act will affect their activities; and
- (e) require persons who trade in food to take responsibility for the safety and suitability of that food. 5

5 Application of Act

- (1) This Act applies to food for sale and food-related accessories.
- (2) This section must be read in conjunction with **sections 314 and 315** (which contain provisions that allow the Governor-General, by Order in Council, to exempt certain things or certain classes of persons or operations from the application of all or any provisions of this Act). 10
- (3) To avoid doubt, this Act applies to—
 - (a) an animal product that is produced and 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 15
 - (b) wine that is produced and processed 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. 20
- (4) **Subsection (3)** is subject to—
 - (a) **sections 42 and 43**; and
 - (b) **sections 316 to 319**; and
 - (c) sections 32 to 34 and 60B of the Animal Products Act 1999; and 25
 - (d) **section 15A** of the Wine Act 2003.
- (5) Despite **subsection (3) and sections 320 and 321**, if there is any inconsistency between the applicable requirements of this Act and those of the Animal Products Act 1999 or the Wine Act 2003 in relation to an animal product or wine referred to in that subsection or in those sections, the requirements of those Acts prevail. 30

5 Application of Act

This Act applies to food for sale and food-related accessories. 35

5A Relationship between this Act and Animal Products Act 1999 and Wine Act 2003

- (1) The purpose of this section is to—
 - (a) clarify 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 animal products and wine; and 5
 - (b) minimise 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. 10
- (2) 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 15
 - (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. 20
- (3) **Subsection (2)** is subject to exemptions that may be granted under this Act and, in particular, under—
 - (a) **sections 314 and 315** (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): 25
 - (b) **sections 316 to 318** (which allow for exemptions for certain exports):
 - (c) **sections 320 and 321** (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). 30
- (4) The following provisions apply to minimise 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: 35

- (a) **section 24A** (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 5
- (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). 10
- (5) 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. 15
- (6) 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. 20 25
- 6 Act binds the Crown**
This Act binds the Crown.

Subpart 2—Interpretation

General

- 7 Interpretation** 30
- (1) In this Act, unless the context otherwise requires,—
- adopted joint food standard** has the meaning given to it by **section 359**
- advertise** means to use any form of communication (including selling or giving away any goods or services, but excluding communications of personal opinion made by a natural person 35

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 5

approved class of persons means a class of persons approved by the chief executive under **section 259**

approved document, material, or facility means a document, material, or facility approved by the chief executive under **section 259** 10

approved person—

- (a) means a person approved by the chief executive under **section 259**; and
- (b) includes an approved class of persons

Australia–New Zealand Joint Food Standards Agreement— 15

- (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 20
- (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 25
- (b) includes—
 - (i) a transitional facility or biosecurity control area within the meaning of the Biosecurity Act 1993; and 30
 - (ii) a Customs place or Customs controlled area within the meaning of the Customs and Excise Act 1996 35

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 5
 - (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 10
 - (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 15
- 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 146(3)**, for the purpose of performing their function as a registration authority 20
- 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 25
 - (c) prevent recurrence of the loss of control
- Customs** or **the Customs** has the meaning given to it by section 2(1) of the Customs and Excise Act 1996
- district** means a district of a territorial authority 30
- domestic food standard** has the meaning given to it by **section 366**
- entertainment** includes any social gathering, amusement, exhibition, performance, game, sport, or trial of skill
- export**, in relation to a thing,— 35
- (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 5
- (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: 10
 - (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 15

financial year means a period of 12 months beginning on 1 July in each year and ending on 30 June in the following year 20

food has the meaning given to it by **section 8**

food business has the meaning given to it by **section 9**

food control plan means a plan of a kind described in **section 28**

food handler guidance means guidance of a kind described in **section 92(1)** 25

food-related accessory—

- (a) means any thing that is used, or represented for use, in or for the production, processing and handling, or sale of food; and 30
- (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 243(1)**

food safety regime— 35

- (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: 5
 - (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— 10
 - (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 15
 - (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 20
- importer**—
 - (a) means a person who imports any food; and
 - (b) includes— 25
 - (i) the New Zealand agent or representative of a person who is based overseas and who has arranged the importation of the imported food; and
 - (ii) the consignee of the imported food; and
 - (iii) the person who is or becomes the owner of, or entitled to the possession of, or beneficially interested in, the imported food on or at any time after its importation and before it has ceased to be subject to the control of the Customs 30
- infringement fee**, in relation to an infringement offence, means the amount prescribed by regulations made under **section 353** to be payable for the offence 35

infringement offence means an offence that is declared, by regulations made under **section 353**, 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 5

issuing officer, except in **sections 267A and 267B**, means a District Court Judge, Community Magistrate, Justice of the Peace, or Registrar to whom an application for a search warrant is made under **section 290** 10

joint food standard means 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 15
- (b) is included in the Australia New Zealand Food Standards Code; and
- (c) has been given the force of law—
 - (i) in Australia and New Zealand; or
 - (ii) in New Zealand only 20

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 25

marae includes the area of land on which all buildings such as wharehau (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 30

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 86** 35

movement includes import, export, and transport

national outcomes means the national outcomes issued by the Minister under **section 148**

national programme means a programme of a kind described in **section 71**

official template or model, in relation to a food control plan, means a template or model— 5

(a) issued by the chief executive under **section 32**;

(b) approved by the chief executive under **section 33**

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 10

operate under a national programme means to operate under the national programme as a food business to which the programme applies 15

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

operator verification means a process to ensure that internal practices, procedures, and activities comply with the applicable requirements of this Act 20

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 25

(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: 30

(iv) craft and vehicles

place—

(a) includes— 35

(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 5
- processing and handling** has the meaning given to it by **section 10**
- processor** means, in relation to food for sale, a person who processes and handles the food 10
- 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— 15
- (a) all the people of New Zealand; or
 - (b) a community or section of the people of New Zealand
- recognised agency**—
- (a) means a person or body who is recognised under **section 126**; and 20
 - (b) includes a person or body who is treated as a recognised agency under **section 127**
- recognised person**—
- (a) means a person or class of persons that is recognised under **section 128**; and 25
 - (b) includes a person who is treated as a recognised person under **section 129**
- regional council** means a regional council within the meaning of the Local Government Act 2002
- registered importer** means an importer registered under **section 109** 30
- registration authority** means the chief executive or, as the case may be, the relevant territorial authority
- 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**: 35
 - (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 and recognised persons 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 5
clause 13A of that schedule

relevant territorial authority has the meaning given to it by **section 48(2)**

requirements of this Act includes—

- (a) a requirement of or under this Act: 10
- (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: 15
- (f) a condition imposed under any of **sections 42(5)(c), 43(5)(c), 56, 95(4)(d), 134, 138(3)(a), 259(6)** and **clauses 4(4)(e) and 9 of Schedule 4**

risk-based measure means any of the following:

- (a) a food control plan: 20
- (b) a national programme:
- (c) a monitoring programme:
- (d) food handler guidance

risk management tool—

- (a) means any of the following: 25
 - (i) a food control plan:
 - (ii) a national programme:
 - (iii) a monitoring programme; but
- (b) does not include food handler guidance

safety and suitability has the meaning given to it by **section 11** 30

sale has the meaning given to it by **section 12**

specified conviction—

- (a) means—
 - (i) a conviction for an offence against this Act or the 35
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 107(2)(a)**, includes a conviction (whether in New Zealand or in another country) for any offence relating to trading in food; but
 - (c) for the purposes only of **section 128(4)(b)**, does not include a conviction of the kind described in **paragraph (a)(ii)**
- template or model**, in relation to a food control plan, means a template or model—
- (a) issued by the chief executive under **section 32**;
 - (b) approved by the chief executive under **section 33**
- 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 management tool:

- (c) applicability of a risk management tool to the operations of a food business:
- (d) effectiveness of a risk management tool
- verification agency**—
 - (a) means an agency recognised under **section 126** for the purpose of being responsible for managing and carrying out verification; and 5
 - (b) includes an entity or a person who is treated as a verification agency under **section 127**
- verifier** means— 10
 - (a) a person recognised under **section 128** as suitable to carry out verification; and
 - (b) includes an individual who is treated as a verifier under **section 129**
- written or in writing** means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax, email, or other electronic means. 15
- (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. 20

Meaning of food

8 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 25
 - (b) includes—
 - (i) plants; and
 - (ii) live animals intended for human consumption at the place of purchase; and 30
 - (iii) live animals for human consumption that are sold in retail premises; and
 - (iv) any ingredient or nutrient or other constituent of any food or drink, whether that ingredient or nutrient or other constituent is consumed or represented for consumption on its own by humans, 35

- 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 5
 - (vii) anything that is declared by the Governor-General, by Order in Council made under **section 355**, to be food for the purposes of this Act; but 10
- (c) does not include—
- (i) any tobacco; or
 - (ii) any cosmetics; or
 - (iii) any substances used only as medicines (within the meaning of the Medicines Act 1981), any controlled drugs (within the meaning of the Misuse of Drugs Act 1975), or any restricted substances (within the meaning of the Misuse of Drugs Amendment Act 2005); or 15
 - (iv) any cookware and related products; or 20
 - (v) any packaging (except edible packaging).
- (2) To avoid doubt, neither **subsection (1)(b)(iv)** nor **(v)** requires any ingredient, nutrient, 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. 25

Meaning of food business

9 Meaning of food business

In this Act, unless the context otherwise requires, **food business**— 30

- (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— 35
 - (i) transports or stores food; or
 - (ii) sells food on the Internet; or
 - (iii) ~~provides, for reward, premises (including mobile premises) or services in connection with or for~~

- the purpose of trading in food (for example, an event organiser, an organiser of a market at which food is sold, or a lessor); or
- (iv) is declared by the Governor-General, by Order in Council made under **section 355**, to be a food business for the purposes of this Act; but
- (c) does not include a business, activity, or undertaking that—
- (i) carries on any other business besides trading in food and, in the course of which, acts as an intermediary between persons who trade in food by providing, for reward, premises a place (including mobile premises) or services (for example, an Internet service provider or an auction site on the Internet); or
- (ii) trades exclusively in food-related accessories; or
- (iii) lets for hire any equipment (such as marquees, tables, and chairs); or
- (iv) is declared by the Governor-General, by Order in Council made under **section 355**, not to be a food business for the purposes of this Act.

Meaning of processing and handling

10 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 25 more of the following:

- (a) preparing the food:
- (b) manufacturing the food:
- (c) packing the food:
- (d) transporting the food: 30
- (e) storing the food:
- (f) displaying the food:
- (g) serving the food.

*Meaning of safety and suitability***11 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. 5
- (2) **Safety**—
- (a) 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; and
 - (b) includes a condition in which hazards are identified, controlled, managed, eliminated, or minimised. 10
- ~~(3) **Suitability** means a condition in which the matters specified in **subsection (4)** are appropriate to food in terms of its intended use.~~
- (3) **Suitability** means a condition in which the matters specified in— 15
- (a) **subsection (4)** are appropriate to food in terms of its intended use; and
 - (b) **subsection (5)** do not apply.
- (4) ~~Those~~ The matters referred to in **subsection (3)(a)**— 20
- (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 25
 - (ii) matters of quality or presentation of the food that relate to a purely commercial decision by the person trading in the food.
- ~~(5) An example of food that is unsuitable is food that—~~
- ~~(a) is in a condition that is offensive or is so perished as to affect its intended use; or 30~~
 - ~~(b) contains, has attached to it or enclosed with it, or is in contact with any thing—~~
 - ~~(i) that is offensive; or~~
 - ~~(ii) that is so perished as to affect the food's intended use; or 35~~
 - ~~(iii) the presence of which would be unexpected and unreasonable in that type of 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: 5
 - (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. 10
- (5A) Food is not unsuitable merely because it contains any substance or thing that is permitted by this Act or a requirement of this Act. 15
- (6) **Safety and suitability** and **safe and suitable**, in relation to food, have meanings corresponding to the definition of **safety** set out in **subsection (2)** and the definition of **suitability** set out in **subsection (3)**. 20
- (7) A reference to the safety and suitability of food or to safe and suitable food is a reference to food that complies with all applicable requirements of this Act.
- (8) **Subsections (6) and (7)** are to avoid doubt and do not limit the Interpretation Act 1999. 25

Meaning of sale

12 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 30
 - (b) includes—
 - (i) reselling food for processing and handling or for human consumption; and
 - (ii) offering food or attempting to sell food, or receiving or having food in possession for sale, or exposing food for sale, or sending or delivering 35

- food for sale, or causing or permitting food to be sold, offered, or exposed for sale; and
- (iii) bartering food; and
 - (iv) selling, or offering to sell, any thing of which any food forms a part; and 5
 - (v) supplying food, together with any accommodation, service, or entertainment, as part of an inclusive charge; and
 - (vi) supplying food in exchange for payment or in relation to which payment is to be made in a shop, hotel, restaurant, at a stall, in or on a craft or vehicle, or any other place; and 10
 - (vii) for the purpose of advertisement or to promote any trade or business, offering food as a prize or reward to the public, whether on payment of money or not, or giving away food; and 15
 - (viii) exporting food; and
 - (ix) every other method of disposition of food for valuable consideration.
- (2) The sale, offer, or exposure for sale of any food is to be treated, unless the contrary is proved, as a sale, an offer, or an exposure for sale of the food for human consumption. 20
- (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. 25
- (4) The supply of food by or on behalf of the Crown that is funded directly in whole or in part by the Crown ~~for the purpose (whether in whole or in part)~~, or that is funded by any other means, is to be treated as a sale of the food, unless an enactment provides otherwise. 30
- Compare: 1981 No 45 s 4(1)–(5), (9)

Subpart 3—Regulatory roles

Principles for persons with regulatory roles under this Act

- 13 Principles governing relationships between Minister, chief executive, and territorial authorities** 5
- 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 10
 - (b) the need for a co-ordinated and aligned approach among themselves in fulfilling their respective roles and responsibilities under this Act.
- 14 Principles to be applied in performing functions or duties, or exercising powers, under this Act** 15
- 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 take into account the following principles to the extent that they are relevant to those functions, duties, or powers: 20
- (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: 25
 - (c) the need to promote standards and control mechanisms that are, as far as practicable, risk-based and science-based:
 - (d) the need for efficiency and to minimise compliance costs: 30
 - (e) the importance of ensuring that regulatory requirements are applied consistently and fairly across sectors and groups in relation to factors such as risk:
 - (f) the importance of providing services in a co-ordinated and coherent manner as far as practicable. 35

*Outline of regulatory roles under this Act***15 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, 5
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 10
 - (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 15
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 re- 20
covery provisions:
 - (vi) provide for exemptions, waivers, and refunds in relation to those levies:
 - (vii) exempt persons from the application of this Act generally: 25
 - (viii) exempt food to be exported from certain requirements of this Act:
 - (ix) declare anything to be food for the purposes of this Act:
 - (x) declare a business to be or not to be a food busi- 30
ness for the purposes of this Act:
 - (xi) declare any Act to be an Act for the purposes of **section 332(3)**:
 - (xii) declare any person to be a person for the purposes of **section 332(4)**; and 35
 - (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.

16 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 5
 - (b) providing information to the food industry and the public on matters relating to the safety and suitability of food; and 10
 - (c) implementing, managing, monitoring, and auditing the risk-based measures for the safety and suitability of food; and 15
 - (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 20
 - (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 25
 - (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 30
 - (j) monitoring compliance with the applicable requirements of this Act; and
 - (k) monitoring and implementing the enforcement system under this Act and working collaboratively with territorial authorities and other regulatory bodies; and 35
 - (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 5
- (o) carrying out any functions that are incidental and related to, or consequential upon, the roles set out in **paragraphs (a) to (n)**.

17 Role of territorial authorities 10

- (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 15
 - (b) facilitating the administration and performance of functions and activities that support the role of the chief executive under this Act; and 20
 - (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 25
 - (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, if so recognised under this Act; and
 - (g) carrying out any functions that are incidental and related to, or consequential upon, the roles set out in **paragraphs (a) to (f)**. 30

Subpart 4—Primary duty of persons who trade in food

18 Primary duty of persons who trade in food

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

5

Part 2

Risk-based measures

Subpart 1—General

Preliminary

19 Overview of this Part

10

(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 that generally applies to food businesses in each of those classes; and 15
- (b) provides, in **Schedule 1**, a description of food sectors that are generally subject to a food control plan; and 20
- (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 25
- (d) provides, in **Schedule 3**, a description of food sectors that are generally subject to food handler guidance; and
- (e) specifies which risk-based measure generally applies if a food sector is not specified in any of **Schedule 1, 2, or 3** or if a food sector is described in more than 1 of those schedules; and 30
- (f) requires every person who trades in food to operate the person's food business under the risk-based measure that generally applies to the food sector that the food 35

- business is in, 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, national programme, and food handler guidance; and 5
 - (h) sets out the circumstances in which a monitoring programme may be imposed as an additional measure to, or as a replacement measure for, a food control plan, national programme, or food handler guidance.
- (3) This Part also contains provisions that exempt persons, groups of persons, or food businesses from operating under food control plans or national programmes (for example, **sections 94, 94A, and 95**). 10

Classification of food sectors

- 20 Classification of food sectors for purpose of assigning applicable risk-based measures** 15
- (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 20
 - (b) is for the purpose of assigning a risk-based measure that generally applies to food businesses in those food sectors.
 - (2) Accordingly, **Schedules 1 to 3**—
 - (a) classify food sectors into 3 risk-based classes; and 25
 - (b) assign a risk-based measure that generally applies to food businesses in each of those 3 risk-based classes according to 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: 30
 - (b) food sectors that generally pose a medium or medium-to-low level of risk to public health are classified in **Schedule 2** and— 35

- (i) food businesses in food sectors classified in **Part 2** of that schedule must operate under a level 3 national programme:
 - (ii) food businesses in food sectors classified in **Part 3** of that schedule must operate under a level 2 national programme: 5
 - (iii) food businesses in food sectors classified in **Part 4** 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 must operate under food handler guidance. 10
 - (4) The levels of national programme specified in **subsection (3)(b)** are listed in descending order of risk. 15
 - (5) This section is subject to **sections 23, 24, and 26**.
- 21 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 20 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 25
 - (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 30
 - (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— 35
 - (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; 5
- and
- (b) be satisfied that there has been appropriate consultation on the regulations in accordance with **section 341**.
- (3) A food sector to which regulations under **subsection (1)** relate may be described, without limitation, by— 10
 - (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 15 are carried out in relation to food; or
 - (e) any combination of the matters described in **paragraphs (a) to (d)**.

Application of risk-based measures

- 22 Determining applicable risk-based measure for food businesses that come within food sectors not classified in Schedules 1 to 3** 20
- (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 25 which this section applies is a level 3 national programme.
- 23 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— 30
 - (a) more than 1 of **Schedules 1 to 3**;
 - (b) more than 1 of **Parts 2 to 4 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 highest level of risk; or
- (b) operate the food business under a combination of the risk-based measures specified under **section 20(3)** for each aspect of the food business. 5

24 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 20, 22, 23, and 25 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 20(3)** or, as the case may be, **section 23**, the risk-based measure that would generally apply to the food business is a risk-based measure that is other than a food control plan. 10 15

24A 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 operates, or is required to operate, under a food control plan or a national programme for activities other than winemaking; and 20
 - (b) who is a winemaker within the meaning of section 4(1) of the Wine Act 2003; and
 - (c) who does not require an official assurance issued under section 42 of that Act; and 25
 - (d) whose wine is not subject to export eligibility requirements under section 38 of that Act.
- (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. 30
- (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: 35
 - (a) **sections 49 to 53** in respect of an application relating to a food control plan:

- (b) regulations made under **section 73** 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: 5
- (b) the feasibility, effectiveness, and efficiency of operating under a food control plan:
- (c) any other matters that the chief executive considers relevant. 10
- (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. 15 20
- (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 325**. 25

*Requirement to operate under applicable
risk-based measure*

- 25 Requirement to operate under applicable risk-based measure** 30
- Every person who trades in food must operate the person's food business under the risk-based measure that applies to the food sector that the food business is in,—
- (a) as specified in **Schedule 1, 2, or 3**; or
- (b) if **section 22 or 23** applies, as determined in accordance with that section. 35

26 Exception to section 25

Section 25 does not apply if an operator of a food business—

- (a) chooses, under **section 24**, to operate the food business under a food control plan; or
- (b) is required to operate the food business under a monitoring programme, which may, in certain limited circumstances specified in **section 86(2)**, replace some or all of the need for the food business to operate under a food control plan or a national programme, or under food handler guidance; or
- (c) is granted an exemption under **section 95** to operate the food business under a risk-based measure specified for a food sector that is classified under a lower level of risk (for example, an exemption to operate under food handler guidance instead of operating under a food control plan); or
- (d) is a person to whom **section 320 or 321** applies.

Subpart 2—Food control plans

*Preliminary***27 Purpose of this subpart** 20

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 25**28 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

29 Food control plan: development

- (1) A food control plan may be individually developed by a person or food business for the food business to which it is to apply.
- (2) Alternatively, a food control plan may be developed by 1 person or food business and then adopted and amended to suit the operations of some other food business. 5
- (3) In developing a food control plan, the following matters must be taken into account in order to achieve the safety and suitability of food:
 - (a) the identification of all relevant hazards and other factors that are reasonably likely to occur or arise; and 10
 - (b) the identification of appropriate control measures and the basis for considering them valid; and
 - (c) the identification of process, performance, or product parameters; and 15
 - (d) any other matters specified in a notice under **section 367**.

30 Food control plan: coverage

- (1) A food control plan may apply to 1 or more food businesses.
- (2) Conversely, a food business may also be covered by 1 or more food control plans. 20

31 Food control plan: based on official template or model

- (1) Despite **section 29**, a food control plan may be fully based on ~~a~~ an official template or model.
- (2) For the purposes of **subsection (1)**, a food control plan is fully based on ~~a~~ an official template or model even though some parts of the template or model are not applicable to the food business and are not included in the food control plan. 25

32 Food control plan: chief executive's power to issue template or model

- (1) ~~The chief executive may, by notice under **section 367**,—~~ 30
 - (a) ~~issue a template or model for different types of food sectors or food businesses; and~~
 - (b) ~~amend, replace, or revoke a template or model.~~

-
- (1) The chief executive may, by notice under **section 367**, issue a template or model for different types of food sectors or food businesses.
- (2) If the chief executive issues ~~or amends~~ a template or model, the chief executive must— 5
- (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. 10
- (3) The chief executive must ensure that the requirements in **section 29(3)** are met when developing a template or model.
- (4) This section does not limit or affect **section 33**.
- 33 Food control plan: chief executive's power to approve template or model developed by third party** 15
- (1) The chief executive may, by notice under **section 367**, 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. 20
- ~~(3) An approval must end within 3 years from the date of approval.~~
- (3) An approval must end within—
- (a) 3 years from the date of approval; or
- (b) a shorter period specified by the chief executive. 25
- (4) The notice under **section 367** 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 367** approving the template or model for a period of up to 3 years. 30
- (6) The chief executive may suspend or withdraw an approval by issuing a notice under **section 367**.
- (7) This section does not limit or affect ~~section 37~~ **section 39**. 35

34 Food control plan: form

A food control plan must be in writing in a form acceptable to the chief executive.

Compare: 1999 No 93 s 17(1)(a)

35 Food control plan: contents

5

A food control plan must set out—

- (a) the name, trading name, and business address (including the electronic address, if available) of—
 - (i) the operator whose plan it is; and
 - (ii) the food business or businesses covered by the plan (whether or not the business is owned by the operator whose plan it is); and
- (b) 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
- (c) 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
- (d) how the applicable requirements of this Act (as defined in section 7(1)) will be met under the plan; and
- (e) a description of the hazards and other factors that are reasonably likely to occur or arise; and
- (f) 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) corrective actions; and
 - (v) operator verification activities; and
 - (vi) document control and record keeping; and
- (g) any validation information as appropriate; and

- (h) any procedures necessary to prepare for, mitigate, and deal with the impact of an emergency on the safety and suitability of food that may be specified in regulations or in notices under **section 367**; and
- (i) any other matters that may be specified in regulations or in notices under **section 367**. 5

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

35A Regulations 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: 10
 - (a) stating matters relating to the content and purpose of a food control plan for the food sectors referred to in **section 20(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: 15
 - (c) prescribing verification requirements, including provisions that deal with the frequency, intensity, and cost of verification and that require a person to allow verifiers to enter a place for the purpose of carrying out verifications: 20
 - (d) prescribing requirements for the registration of food control plans and providing for the manner and form in which a person must register a food control plan: 25
 - (e) prescribing requirements for the validation and evaluation of food control plans:
 - (f) providing for any other matters that may be necessary or desirable to give effect to or to administer the registration of food control plans: 30
 - (g) requiring persons who operate under food control plans to undergo appropriate training, or to demonstrate competency, in relation to the safety and suitability of food, food production, and food processing and handling, and to provide training for staff as appropriate: 35

- (h) requiring the supervision of certain specified persons and the use of equipment in certain specified circumstances:
- (i) requiring reports to be made in respect of breaches of a food control plan: 5
- (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: 10
- (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. 15
- (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 341**. 20
- (3) This section does not limit the generality of **section 347**.

Amendments to food control plans

- 36 Amendments to food control plan based on template or model issued by chief executive** 25
- (1) This section applies if the chief executive, by notice under **section 367**, does any of the following things under **section 32** in relation to a template or model issued by the chief executive under that section:
 - (a) amends the template or model; or 30
 - (b) revokes the template or model and replaces it with another template or model; or
 - (c) revokes the template or model without replacing it with another template or model.
 - (2) The operator of a registered food control plan based on the template or model that is so amended or revoked must comply with any requirements specified by the chief executive in the 35

notice under **section 367** within the time specified in that notice.

(3) Without limiting **subsection (2)**, the requirements that may be specified in the notice include—

- (a) the application of the new template or model to existing operations covered by the plan; and 5
- (b) the options available to the operator under the new template or model (for example, whether to fully apply the new template or model or to use the new template or model as a basis for a food control plan that is not fully based on a template or model); and 10
- (c) the transitional provisions required if the new template or model is to be applied; and
- (d) how the documentation relating to the food control plan that is being replaced is to be handled or managed; and 15
- (e) any other matters that may be necessary to give effect to the amendment, replacement, or revocation of the template or model.

37 Amendments to food control plan based on template or model approved by chief executive

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(1) This section applies if a person or an industry body that developed a template or model that the chief executive approved under **section 33** amends the template or model.

(2) The operator of a registered food control plan based on the template or model that is so amended must comply with any requirements specified by the chief executive; by notice under **section 367**, within the time specified in the notice.

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38 Significant amendments to food control plan

(1) This section applies if the chief executive, by notice under **section 367**, specifies what amendments to a food control plan must be treated as significant amendments.

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(2) Without limiting **subsection (1)**, the matters that may be specified in the notice under **section 367** include—

- (a) details of what are or are not significant amendments; and
- (b) an explanation of the effect of a significant amendment; and

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- (c) guidance on how outdated documentation should be handled or managed; and
 - (d) any other matters that are necessary to give effect to this section.
 - (3) The operator of a registered food control plan must amend that plan and apply for registration of any amendment that constitutes a significant amendment as so specified in accordance with **subsection (1)**. 5
 - (4) The operator of a registered food control plan must apply for registration of the amendment to the plan before any change, event, or other matter that must be treated as a significant amendment as so specified in accordance with **subsection (1)**; if the operator knows of the change, event, or other matter in advance, and in all other cases must do so without unreasonable delay. 10 15
- Compare: 1999 No 93 s 25
- 39 Application for registration of amendment**
- (1) The operator of a registered food control plan may apply to the appropriate registration authority (as specified in **section 48**) for registration of— 20
 - (a) an amendment to the plan under **section 36 or 37**; or
 - (b) a replacement plan under **section 36**.
 - (2) **Sections 49 to 53** apply, with any necessary modifications, to an application for registration under **subsection (1)** as if it were an application for registration under **section 49**. 25
- 40 Registration of amendment to, or replacement for, food control plan**
- As soon as practicable after determining to register an amendment to, or a replacement for, a registered food control plan, the registration authority must— 30
- (a) give written notice of the registration of the amendment or replacement to the chief executive, if the registration authority is the relevant territorial authority; or
 - (b) make an appropriate entry on the relevant public register, if the registration authority is the chief executive or if the chief executive receives the written notice under **paragraph (a)**. 35

*Amendments to food control plans***36** Chief executive's power to amend, replace, or revoke template or model issued under section 32

- (1) The chief executive may, by notice under **section 367**, amend, replace, or revoke a template or model issued under **section 32**. 5
- (2) An operator of a registered food control plan based on the template or model that is amended or replaced in accordance with **subsection (1)**—
- (a) must comply with any requirements specified by the chief executive in the notice under **section 367** within the time specified in that notice; but 10
- (b) is not obliged to re-register the food control plan.
- (3) An operator of a registered food control plan based on the template or model that is revoked, and not replaced, in accordance with **subsection (1)**— 15
- (a) may continue to operate under the food control plan until the expiry of the period specified in the notice under **section 367**; but
- (b) must, before the expiry of that period, apply to the appropriate registration authority (that is, the relevant territorial authority) for an alternative food control plan to be registered. 20
- (4) If the chief executive amends or replaces a template or model in accordance with **subsection (1)**, the chief executive must— 25
- (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 30
- (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.

37 Operator may amend food control plan based on template or model issued under section 32

- (1) An operator of a registered food control plan based on a template or model issued by the chief executive under **section 32** may amend the food control plan. 5
- (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 in respect of 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. 10
- (4) On receipt of an application under **subsection (3)**, the appropriate registration authority must forward the application to the chief executive if the appropriate registration authority is not the chief executive. 15
- (5) For the purposes of this section, the chief executive may, by notice under **section 367**, specify what amendments to a food control plan must be treated as significant amendments.

38 Chief executive may register food control plan amended by operator under section 37 20

- (1) On receipt of an application made under **section 37(3)**, the chief executive may—
 - (a) require the amended food control plan to be evaluated before registering the plan; and 25
 - (b) register the amended food control plan as—
 - (i) a food control plan issued under **section 32**; or
 - (ii) a food control plan that applies only to the food business of the operator who amended the plan.
- (2) If **subsection (1)(b)(i)** applies, the chief executive must— 30
 - (a) give written notice of the amendment to the relevant territorial authority; and
 - (b) make an appropriate entry in the relevant public register.
- (3) If **subsection (1)(b)(ii)** applies, the chief executive becomes the appropriate registration authority in respect of the plan. The chief executive must give written notice to the relevant territorial authority that the relevant territorial authority is no 35

longer the appropriate registration authority in respect of the plan.

39 Operator may amend food control plan based on template or model approved under section 33

- (1) An operator of a registered food control plan based on a template or model approved under **section 33** may amend the food control plan. 5
- (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 in respect of the plan (that is, the chief executive). 10
- (3) If the amendment to the food control plan is a significant amendment, the operator must apply to the chief executive for the amended plan to be registered.
- (4) On receipt of an application under **subsection (3)**, the chief executive may require the amended food control plan to be evaluated before registering the plan. 15
- (5) For the purposes of this section, the chief executive may, by notice under **section 367**, specify what amendments to a food control plan must be treated as significant amendments. 20

40 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. 25
- (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 in respect of the plan (that is, the chief executive).
- (3) If the amendment to the food control plan is a significant amendment, the operator must apply to the chief executive for the amended plan to be registered. 30
- (4) On receipt of an application under **subsection (3)**, the chief executive may require the amended food control plan to be evaluated before registering the plan. 35

- (5) If the chief executive considers that the amendment to the food control plan is so extensive that it constitutes a new food control plan, the chief executive may treat the application for registration of the amended food control plan as an application for registration of a new food control plan. 5
- (6) For the purposes of this section, the chief executive may, by notice under **section 367**, specify what amendments to a food control plan must be treated as significant amendments.
- 40A** **Sections 49 to 53, 55, and 56 apply to applications for registration of amended food control plans** 10
Sections 49 to 53, 55, and 56 apply with any necessary modifications to an application under **section 37(3), 39(3), or 40(3)** for an amended food control plan to be registered.

Requirement to register food control plans

- 41** **Food control plans must be registered** 15
 An operator of a food business that is required to operate under a food control plan must—
- (a) register the food control plan that is proposed to apply to the food business; and
 - (b) ensure that, before any food is sold by the food business,— 20
 - (i) the food business is operating under the registered food control plan; and
 - (ii) the food is imported, produced, or, as the case may be, processed and handled under the registered food control plan. 25

Other provisions relating to registered food control plans

- 42** **Secondary processor of animal product that is food may apply for operations to be included under registered food control plan** 30
- (1) This section applies to a person—
- (a) who is required to operate under a food control plan; and

-
- (b) who is a secondary processor (within the meaning of section 4(1) of the Animal Products Act 1999) of an animal product that is food; and
 - (c) who does not require an official assurance issued under section 61 of that Act. 5
 - (2) A person to whom this section applies may apply to the chief executive to include the person's secondary processing operations under a registered food control plan.
 - (3) **Sections 49 to 53** apply to an application under **subsection (2)**, subject to **subsections (4) and (5)** and with any necessary modifications. 10
 - (4) In determining the application, the chief executive must take into account the following matters:
 - (a) the frequency, type, and nature of the secondary processing operations. 15
 - (b) the feasibility, effectiveness, and efficiency of operating under a food control plan:
 - (c) any other matters that the chief executive considers relevant.
 - (5) If the chief executive decides to approve the application,— 20
 - (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 Animal Products Act 1999 in respect of the person's secondary processing operations in relation to the part that is covered by 25 a registered food control plan; and
 - (c) the chief executive may impose any reasonable conditions on the person, including the condition that specified standards set under the Animal Products Act 1999 are covered by the person's registered food control plan. 30
 - (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 35 **section 325**.

43 ~~Winemaker may apply for winemaking operations to be included under registered food control plan~~

- (1) This section applies to a person—
- (a) who is required to operate under a food control plan; and 5
 - (b) who is a winemaker within the meaning of section 4(1) of the Wine Act 2003; and
 - (c) who does not require an official assurance issued under section 42 of that Act; and
 - (d) whose wine is not subject to export eligibility requirements under section 38 of that Act. 10
- (2) A person to whom this section applies may apply to the chief executive to include the person's winemaking operations under a registered food control plan.
- (3) **Sections 49 to 53** apply to an application under **subsection (2)**; subject to **subsections (4) and (5)** and with any necessary modifications. 15
- (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; 20
 - (b) the feasibility, effectiveness, and efficiency of operating under a food control plan;
 - (c) any other matters that the chief executive considers relevant. 25
- (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 in respect of the person's winemaking operations in relation to the part that is covered by a registered food control plan; and 30
 - (c) the chief executive may impose any reasonable conditions on the person, including the condition that specified wine standards are covered by the person's registered food control plan. 35
- (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 325.~~

44 Requirements of Act to prevail in cases of inconsistency with registered food control plan 5

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. 10

Duties of operators of registered food control plans

45 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 to which the food control plan applies comply with the relevant requirements set out in the plan: 15
 - (b) ensure that the operations of that food business comply with the applicable requirements of this Act:
 - (c) ensure that the plan is consistent with the applicable requirements of this Act: 20
 - (d) adequately implement and resource all operations under the plan, including provision for the instruction, competency, training, and supervision of staff to achieve the safety and suitability of food: 25
 - (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 person: 30
 - (g) give relevant 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): 35

- (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: 5
- (j) comply with **section 46**.
- (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— 10
 - (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 15
 - (b) the person in control of each food business agrees to carry out the duties under **subsection (1)** for the business that person controls.
- (3) To avoid doubt, the duties set out in **subsection (1)** also apply to the person in control of each food business referred to in **subsection (2)(b)**. 20

Compare: 1999 No 93 s 16

- 46 Operator of registered food control plan must notify registration authority of significant change in circumstances** 25
- (1) The operator of a registered food control plan must give written notice to the registration authority of any significant change in circumstances within the time specified in a notice under **section 367**. 30
 - (2) In this section, **significant change in circumstances**—
 - (a) means—
 - (i) any change in the information that the operator has provided in respect of an application for registration of the food control plan under **section 49** in respect of the information required under **section 35(a) to (c)** and under **section 51**: 35

- (ii) any matter that results in the food control plan not meeting the criteria under **section 52**; and
- (b) includes—
 - (i) any change that a notice issued under **section 367** specifies to be a significant change of circumstances for the purposes of this section: 5
 - (ii) any change in the ownership or control of the food business concerned (but not in a company's shareholding, unless the change in shareholding results in control of the company passing to 1 or 10 more different persons).

Registration of food control plans

47 Application for registration: who may apply

An operator of a food business to which a food control plan is proposed to apply may apply to the appropriate registration authority for the registration of that food control plan. 15

Compare: 1999 No 93 s 20(1)

48 Application for registration: who is appropriate registration authority

- (1) The appropriate registration authority is,— 20
 - (a) for a food control plan that is fully based on a template or model issued by the chief executive under **section 32**, the relevant territorial authority; or
 - (b) for any other case,—
 - (i) the chief executive; or 25
 - (ii) a territorial authority, if regulations made under this Act provide accordingly.
- (2) **Relevant territorial authority** means,—
 - (a) if the application for registration relates to a place, the territorial authority that, under this Act, is responsible for performing the function of a registration authority for the district or combined district where that place is situated; or 30
 - (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 35

authority for the district or combined district where the business address of the mobile food business is situated.

49 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 chief executive; and 5
 - (b) include the information described in **subsection (2)** or, as the case may be, **subsection (3)**; and
 - (c) be accompanied by the prescribed fee (if any).
- (2) For a food control plan that is fully based on ~~a~~ an official template or model (~~whether issued by the chief executive under **section 32** or approved by the chief executive under **section 33**~~), the information referred to in **subsection (1)(b)** is— 10
 - (a) the information required under **section 35(a) to (c)** that provides a comprehensive and accurate representation of all the requirements of those paragraphs and any information required under **section 35(i)**; and 15
 - (b) the reference number of the official template or model used; and
 - (c) any further information and other material (including declarations, if appropriate) that may be required by notice under **section 367** or by regulations made under this Act. 20
- (3) For a food control plan that is not fully based on ~~a~~ an official template or model, the information referred to in **subsection (1)(b)** is— 25
 - (a) either of the following:
 - (i) an outline of the information required under **section 35(a) to (c)** 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; or 30
 - (ii) a copy of the entire food control plan, as may be required by notice under **section 367**; and
 - (b) unless waived by the chief executive on a case-by-case basis or by notice under **section 367**, a report of an independent evaluation, carried out not more than 6 months before the date of the application for registra- 35

- tion, of the validity of the food control plan in terms of **sections 29, 34, and 35**; and
- (c) an indication of the verifier and verifying agency that will carry out verification functions in respect of the plan; and 5
 - (d) any further information and other material (including declarations, if appropriate) that may be required by notice under **section 367** or by regulations made under this Act. 10
- Compare: 1999 No 93 s 20(2), (3)
- 50 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 49**. 15
- 51 Registration authority may require further information**
- (1) The registration authority may require an applicant to supply 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. 20
 - (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. 25
- Compare: 1999 No 93 s 21
- 52 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 30
 - (b) if implemented appropriately, the food control plan will enable safe and suitable food to be traded; and
 - (c) the business, or its operator, is resident in New Zealand (within the meaning of section YD 1 or YD 2 of the Income Tax Act 2007); and 35

- (d) the operator of the food business is able to comply with the requirements of this Act.

Compare: 1999 No 93 s 22

53 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 325**.

Compare: 1999 No 93 s 23

54 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 within the time specified in a notice under **section 367**.
- (2) In this section, **significant change in circumstances**—
 - (a) means—
 - (i) any change in the information that the applicant has provided in respect of the application for registration of the food control plan under **section 49** in respect of the information required under **section 35(a) to (c)** and under **section 51**; 30
 - (ii) any matter that results in the food control plan not meeting the criteria under **section 52**; and
 - (b) includes—
 - (i) any change that a notice issued under **section 367** specifies to be a significant change of circumstances for the purposes of this section: 35

- (ii) any change in the ownership or control of the food business concerned (but not in a company's shareholding, unless the change in shareholding results in control of the company passing to 1 or more different persons). 5

55 Registration of food control plan

If the registration authority decides to register a food control plan, the registration authority must, as soon as practicable,—

- (a) enter the name of the operator of the food business covered by the plan or of the operator of the plan, and the date of registration of the plan, on the relevant public register; and 10
- (b) give the applicant written notice of the date on which the registration takes effect, which notice must state any conditions imposed under **section 56**. 15

Compare: 1999 No 93 s 22(3)

56 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. 20
- (2) The registration authority may, at any time, by written notice to the operator of a food control plan, revoke, amend, or add to any conditions imposed in respect of the plan.
- (3) If the registration authority imposes 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— 25
 - (a) the conditions and the reason for imposing them; and
 - (b) the operator's right to seek a review of the conditions under **section 325**. 30

57 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 35

- (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 56**; or 5
 - (b) is cancelled under **section 64**; or
 - (c) is surrendered under **section 68**.
- (3) The registration may be renewed for further periods in accordance with **Part 2 of Schedule 4**.

58 Registration may not be transferred 10

- (1) The registration of a food control plan applies only to the particular operator specified in the plan and—
 - (a) may not be transferred to a different operator; and
 - (b) may not vest by operation of law in any person other than the operator whose plan it is. 15
- (2) For the purposes of this section, the following circumstances will, except as otherwise specified by the chief executive by notice under **section 367**, be treated as involving a change in the operator of a registered food control plan and so require registration of a new food control plan rather than the amendment of an existing registered plan: 20
 - (a) a change in the name of a company (but not in a company's shareholding, unless the change in shareholding results in control of the company passing to 1 or more different persons): 25
 - (b) a change in the members of a partnership (but not in members' respective shares in the partnership):
 - (c) the death, bankruptcy, receivership, voluntary administration, or liquidation of the operator of the plan. 30

Compare: 1999 No 93 s 24

Suspension of operations under registered food control plan

59 Mandatory suspension

- (1) The registration authority may, at any time, suspend all or any operations under a registered food control plan in accordance 35

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 5
- (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 10
- (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. 15

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

Compare: 1999 No 93 s 27

60 Registration authority may extend mandatory suspension 20

- (1) The registration authority may extend the period of a suspension under **section 59** in accordance with **clause 5 of Schedule 4** if the registration authority considers it necessary in the circumstances.
- (2) The period of extension— 25
 - (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. 30

61 Voluntary suspension

- (1) If the operator of a registered food control plan wishes to suspend all operations under 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. 35

- (3) The maximum period of suspension under this section is 12 months.

62 Effect of suspension

- (1) If all or any operations under a registered food control plan are suspended under **section 59 or 61**, the registration authority may— 5
- (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 10
 - (c) exercise any of the relevant powers under **section 253**. 15
- (2) **Section 253** 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 suspension under **section 59 or 61** does not affect any other actions that the registration authority may take under this Act. 20

Compare: 1999 No 93 s 27(8)

Removal of registration of food control plans

63 Removal from public register 25

The registration authority must remove a food control plan from the relevant public register if the registration authority—

- (a) cancels the registration of the food control plan under **section 64**; or
- (b) records the surrender of the registration of the food control plan under **section 68**. 30

64 Cancellation of registration

The registration authority may cancel the registration of a food control plan in accordance with **Part 4 of Schedule 4** if satisfied that— 35

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- (a) suspending operations under the plan under **section 59** 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 5
 - (ii) repeated suspensions in the past under that section or **section 61**; or
 - (b) the period of a suspension of the plan under **section 59** 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 10
 - (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 15
 - (d) the plan has ceased to be relevant to the operations it purports to cover because there has been a change in— 20
 - (i) the identity of 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 25
 - (iv) the type of trading being carried out; or
 - (e) the operator of the plan has ceased to operate as an importer, producer, processor, or seller of food and has either—
 - (i) surrendered the registration of the plan; or 30
 - (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 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). 35

Compare: 1999 No 93 s 28(1)

65 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. 5

66 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 10

(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 15

(c) exercise any of the other powers under **section 253**.

(2) **Section 253** 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. 20

(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) 25

67 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 64** if the food business were the only one operating under the plan. 30

(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 busi- 35

nesses that will continue to be covered by the plan and whether the plan will continue to achieve safe and suitable food.

- (3) **Section 64 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 that section or that schedule to cancellation of the plan's registration were references to removal of a food business from the coverage of the plan. 5

Compare: 1999 No 93 s 28A

68 Surrender of registration 10

- (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) As soon as practicable after being notified of a surrender under **subsection (1)**, the registration authority must record the surrender on the relevant public register. 15
- (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)

69 Effective date of surrender 20

A surrender takes effect—

- (a) on the date specified in the notice given to the registration authority under **section 68(1)**; or
- (b) if no date is specified, on the date on which the registration authority receives that notice. 25

Subpart 3—National programmes

Preliminary

70 Purpose of this subpart

The purpose of this subpart is to set out provisions about the nature, content, and effect of a national programme. 30

*National programmes***71 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— 5
- (a) imposing controls on a food business in relation to matters such as (without limitation) good operating practice, documentation requirements, verification requirements, and registration requirements; and 10
 - (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. 15
- (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 20(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. 20
- (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. 25

72 How national programme may be imposed

- (1) A national programme may be imposed by regulations made under **section 73** and, if required, supplemented by specifications set by the chief executive by notice under **section 367**. 30
- (2) Any regulations or specifications referred to in **subsection (1)** may—
- (a) apply to particular food businesses or food sectors or to classes of food businesses or food sectors: 35

- (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. 5
 - (3) To avoid doubt, **section 367(6)** applies if the chief executive issues a notice setting specifications for the purposes of **subsection (1)**. 10
- Compare: 1999 No 93 ss 38(2), 39(3), (4)

73 Regulations 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) stating the scope and purpose of a national programme for ~~each of the levels of national programmes specified the food sectors referred to in~~ **section 20(3)(b)**: 15
 - (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: 20
 - (c) prescribing verification requirements, including provisions that deal with the frequency, intensity, and cost of verification and that require a person to allow verifiers ~~on to premises to enter a place~~ for the purpose of carrying out verifications: 25
 - (d) prescribing requirements for the registration of information and providing for the manner and form in which a person must register information:
 - (e) 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): 30
 - (f) setting out criteria for the registration of a food business that is subject to a national programme, including criteria for refusing registration and the consequences of the refusal: 35

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- (g) providing for conditions to be imposed by the registration authority on the registration of a food business that is subject to a national programme:
 - (h) prescribing procedures, criteria, and other requirements for the mandatory or voluntary suspension, cancellation, and surrender of the registration of a food business that is subject to a national programme, including providing for the date on which the suspension, cancellation, or surrender takes effect: 5
 - (i) prescribing the duration of the registration of a food business that is subject to a national programme: 10
 - (j) 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: 15
 - (k) prescribing requirements relating to the safety and suitability of food and to good operating practice:
 - ~~(h) requiring persons who operate food businesses to undergo training courses on the safety and suitability of food, and to provide training for staff as appropriate:~~ 20
 - (l) requiring persons who operate under a national programme to undergo appropriate training, or to demonstrate competency, in relation to the safety and suitability of food, food production, and food processing and handling, and to provide training for staff as appropriate: 25
 - (m) requiring the supervision of certain specified persons and the use of equipment in certain specified circumstances:
 - (n) requiring persons subject to a national programme to collect and keep certain records and documents in relation to the programme and to prepare reports about those records and documents: 30
 - (o) requiring reports to be made in respect of breaches of a national programme: 35
 - (p) 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:

- (q) 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:
- (r) prescribing any other matters that may be necessary for the purpose of giving effect to a national programme. 5
- (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 341**. 10
- Compare: 1999 No 93 s 39(1)
- 74 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 15
- (b) allows the Minister or the chief executive to impose specifications or other requirements as to the performance of any activities. 20
- Compare: 1999 No 93 s 39(2)
- 75 Requirements of national programme to prevail in cases of inconsistency with other regulations or specifications made under this Act** 25
- If there is any inconsistency between the requirements of a national programme and the provisions of any other regulations or specifications made under this Act, the requirements of the national programme prevail.
- Requirement for food businesses subject to national programme to register* 30
- 76 Food businesses subject to national programme must be registered**
- An operator of a food business that is subject to a national programme must— 35

- (a) register the food business in accordance with **section 79**; and
- (b) ensure that the food business is registered before it trades in food.

Duties of operators of food businesses subject to national programme 5

77 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 **sections 76 and 78** this section and **section 78**: 10
- (b) ensure that the operations of the food business comply with the relevant requirements set out in the national programme: 15
- (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 provision for the instruction, competency, training, and supervision of staff to achieve the safety and suitability of food: 20
- (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 person and with the frequency required in the national programme: 25
- (f) give relevant 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): 30
- (g) keep a copy of all documents required to be kept under the national programme.

78 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 within the time specified in a notice under **section 367**. 5
- (2) In this section, **significant change in circumstances**—
 - (a) means any change in the nature of the food business that would impact on the level of national programme applicable to that food business or would require it to operate under a food control plan; and 10
 - (b) includes—
 - (i) any change that a notice issued under **section 367** specifies to be a significant change of circumstances for the purposes of this section: 15
 - (ii) any change in the ownership or control of the food business (but not in a company's shareholding, unless the change in shareholding results in control of the company passing to 1 or more different persons): 20
 - (iii) any change to the verifier or verification agency for the food business.

Registration of food businesses subject to national programme

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79 Registration of food business

- (1) An operator of a food business that is subject to a national programme must ~~register~~ ensure that the food business is registered with the appropriate registration authority in accordance with regulations made under **section 73**. 30
- (2) The appropriate registration authority is either the chief executive or the relevant territorial authority, as provided for by those regulations.
- (3) If the registration authority decides to register a food business that is subject to a national programme, the registration authority must, as soon as practicable,— 35

- (a) enter the name of the operator of the food business, and the date of registration, on the relevant public register; and
 - (b) give the operator written notice of the date on which the registration takes effect and the conditions of registration (if any) imposed by the registration authority. 5
- (4) The registration of a food business applies only to the particular operator concerned and—
- (a) may not be transferred to a different operator; and
 - (b) may not vest by operation of law in any person other than the operator. 10

Suspension of operations of registered food business under national programme

80 Mandatory suspension

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 regulations made under **section 73**. 15

81 Voluntary suspension

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 regulations made under **section 73**. 20

Removal of registration of food business 25

82 Removal from public register

The registration authority must remove a food business that is subject to a national programme from the relevant public register if the registration authority—

- (a) cancels the registration of the food business under **section 83**; or 30
- (b) records the surrender of the registration of the food business under **section 84**.

83 Cancellation of registration

The registration authority may cancel the registration of a food business that is subject to a national programme in accordance with regulations made under **section 73**.

84 Surrender of registration

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The operator of a registered food business that is subject to a national programme may, at any time, surrender the registration of the food business in accordance with regulations made under **section 73**.

Subpart 4—Monitoring programmes

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85 Purpose of this subpart

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

86 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; ~~and or~~

(b) for ensuring the effectiveness of the food safety regime; ~~and or~~

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(c) for enhancing, or determining the need for, adopted joint food standards, domestic food standards, or national outcomes; ~~and or~~

(d) for determining regulatory performance against the objectives of minimising and managing the food risks in respect of public health.

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- (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

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(b) it is not feasible or practicable to provide for the monitoring measures and related activities by means of other risk-based measures.

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- (3) A monitoring programme may be imposed on any food sector despite the fact that the sector is already subject to ~~other risk-based measures~~ a risk-based measure.

87 **Monitoring programme: scope**

A monitoring programme must specify its purpose, and may— 5

- (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: 10
- (d) provide for reporting requirements relating to certain results (including specified contaminants or pathogens in food):
- (e) authorise or provide for technical matters and specifications and matters of detail to be specified by the chief executive by notice under **section 367**: 15
- (f) authorise or provide for operational matters to give effect to the monitoring programme (for example, periodic sampling plans). 20

88 **How monitoring programme may be imposed**

- (1) A monitoring programme may be imposed by way of—
 - (a) regulations made under **section 347** on the recommendation of the Minister; and
 - (b) if required, a notice issued by the chief executive under **section 89**. 25
- (2) Any regulations or notice referred to in **subsection (1)** may be supplemented by specifications set by the chief executive by notice under **section 367**, which may provide for any other matters necessary to give effect to the monitoring programme that have not been provided for by the chief executive in the notice referred to in **subsection (1)(b)**. 30
- (3) Any regulations referred to in **subsection (1)(a)** may authorise the chief executive to exempt, after taking into account the matters specified in **subsection (4)**, any person or group of persons from compliance with, or from the application of, any provisions of a monitoring programme. 35

- (4) The matters referred to in **subsection (3)** are—
- (a) the circumstances specified in **section 86(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. 5
- (5) Before recommending the making of regulations under **section 347**, the Minister must—
- (a) be satisfied that 1 or both of the circumstances specified in **section 86(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 10
 - (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: 15
 - (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 341**. 20

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

89 Chief executive may specify certain matters by notice

For the purpose of giving effect to a monitoring programme, the chief executive may issue a notice that specifies the following matters that are necessary to give effect to the matters provided for in **section 87**: 25

- (a) sampling plans:
- (b) sampling regimes:
- (c) test methodologies:
- (d) competencies: 30
- (e) procedures to be followed:
- (f) reporting:
- (g) provision of information:
- (h) surveillance and the consequences of surveillance.

90 Monitoring programme not invalid on certain grounds 35

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. 5

Compare: 1999 No 93 s 39(2)

Subpart 5—Food handler guidance

91 Purpose of this subpart

The purpose of this subpart is to set out provisions about the nature and effect of food handler guidance. 10

92 Food handler guidance: general description

(1) Food handler guidance—

- (a) is guidance issued by ~~a registration authority~~ the chief executive about the steps that are necessary to achieve safe and suitable food; and 15
- (b) is intended to be educative only; and
- (c) does not, on its own, impose any duties on a person or food business that is subject to it.

(2) The following are subject to food handler guidance: 20

- (a) food businesses in food sectors classified in **Schedule 3**;
- (b) ~~persons to whom section 94 applies (that is, persons involved in community-based fund-raising events);~~
- (c) ~~persons who are exempted under section 95 from the requirement to operate under a registered food control plan or a national programme.~~ 25
- (b) a person or an organisation to whom section 94 applies (that is, a person or an organisation trading in food for a charitable purpose): 30
- (c) a person or group of persons to whom section 94A applies (that is, a person or group of persons trading in food for a personal development purpose):
- (d) a person who is exempted under section 95 from the requirement to operate under a registered food control plan or a national programme. 35

93 Food handler guidance: effect

- (1) A person or food business that is subject to food handler guidance—
- (a) is not required to operate under a risk management tool; and 5
 - (b) is not subject to the verification requirements of this Act.
- (2) However, a person or food business that is subject to food handler guidance—
- (a) must comply with any other applicable requirements of this Act; and 10
 - (ab) 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 15
 - (b) is liable to prosecution if the failure to comply with those requirements any of the requirements referred to in paragraphs (a) and (ab) is an offence against this Act, the Animal Products Act 1999, or the Wine Act 2003. 20

94 Exemption for certain persons involved in community-based fund-raising activities

- (1) This section applies to a person—
- (a) who is not ordinarily in the business of trading in food; but 25
 - (b) who—
 - (i) organises or conducts a community-based fund-raising activity; or
 - (ii) trades in food in connection with, or as part of, that activity. 30
- (2) A person to whom this section applies is exempt from the requirement to operate under a registered food control plan or a national programme in respect of the community-based fund-raising activity.
- (3) However, the person must operate under any food handler guidance that applies to any trading in food being carried out in connection with, or as part of, the community-based fund-raising activity. 35

- (4) In this section, ~~community-based fund-raising activity—~~
- (a) ~~means an activity that is held or conducted by a non-profit community organisation for the sole purpose of raising funds for the benefit of the community or a significant section of the community; and~~ 5
 - (b) ~~includes, for example, sausage sizzles and preparing and selling home baking or home preserves for a charity fund-raiser or church bazaar.~~
- 94 Exemption if trading in food is for charitable purpose** 10
- (1) This section applies if a person or an organisation (whether a body corporate or not)—
- (a) trades in food for a charitable purpose; and
 - (b) carries out trading in food for that purpose—
 - (i) on a non-commercial scale; and
 - (ii) on either of the following: 15
 - (A) an infrequent basis that does not exceed, regardless of the location, more than 20 occasions in each calendar year; or
 - (B) a regular or frequent basis so long as the trading is an ancillary or incidental component of activities being undertaken by the person or organisation at the place where the trading occurs (for example, a permanent stall selling donated food at a hospice). 20
- (2) The person or organisation is exempt from the requirement to operate under a registered food control plan or a national programme. 25
- (3) However, the person or organisation must operate under any food handler guidance that applies to the trade in food concerned. 30
- (4) In this section, **charitable purpose** includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.
- 94A Exemption if trading in food is for personal development purpose** 35
- (1) This section applies if a person or group of persons—

-
- (a) trades in food for a personal development purpose; and
 - (b) carries out trading in food for that purpose—
 - (i) on a non-commercial scale; and
 - (ii) on an infrequent basis that does not exceed, regardless of the location, more than 20 occasions in each calendar year. 5
 - (2) The person or group is exempt from the requirement to operate under a registered food control plan or a national programme.
 - (3) However, the person or group must operate under any food handler guidance that applies to the trade in food concerned. 10
 - (4) In this section, **personal development purpose** means a purpose that relates to the intellectual, emotional, physical, social, cultural, or other personal development of a person or members of a group.
- 95 Chief executive may grant exemption from requirement to operate under registered food control plan or national programme** 15
- (1) The chief executive may exempt any person, group of persons, or any 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— 20
 - (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 business concerned— 25
 - (a) has demonstrated a valid and appropriate reason to operate under food handler guidance that outweighs the public interest in maintaining consistency of treatment of persons and food businesses in the same food sector; 30
 - and
 - (b) has 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: 35

- (a) the hazards and other factors that are relevant in achieving safe and suitable food:
 - (b) the potential impact on consumers:
 - (c) the frequency of operation:
 - (d) the feasibility, effectiveness, and efficiency of operating under a food control plan or a national programme: 5
 - (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. 10
- (4) An exemption—
- (a) must be granted by notice under **section 367**; and
 - (b) may be amended or revoked at any time by the chief executive by further notice under **section 367**; and 15
 - (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— 20
- (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 employ or engage any other person to assist in the production or sale of the food; and 25
 - (d) does not otherwise sell or distribute the food.

Compare: 1999 No 93 s 14

96 Chief executive may delegate functions, duties, or powers under section 95 to territorial authorities 30

- (1) The chief executive may delegate any of the chief executive's functions, duties, or powers under **section 95** to ~~any officer or employee of a territorial authority or to any officers or employees of more than 1 territorial authority~~ 1 or more territorial authorities. 35
- (2) A ~~person~~ territorial authority to whom any functions, duties, or powers are delegated under this section may perform those functions and duties, or exercise those powers, in the same

- manner (subject to **subsection (7)**) and with the same effect as if they had been imposed or conferred on that ~~person~~ territorial authority directly by this Act and not by delegation.
- (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 ~~delegate~~ territorial authority. 5
- (4) A ~~person~~ territorial authority acting under the delegation is presumed to be acting in accordance with its terms in the absence of proof to the contrary. 10
- (5) A delegation under this section may be made to—
- (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or position, or of a specified class of offices or positions. 15
- (6) A delegation under this section does not affect—
- (a) the performance of any function or duty, or the exercise of any power, by the chief executive; or
 - (b) the responsibility of the chief executive for the actions of a person acting under the delegation. 20
- (7) A delegation of the chief executive's power to grant an exemption under **section 95** must be subject to the following conditions:
- (a) the exemption may only be granted to a food business that is operating entirely within the district of the territorial authority to whom the power is delegated; and 25
 - (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. 30
- (8) A territorial authority acting under delegation must grant, amend, or revoke an exemption under **section 95** in accordance with the special consultative procedure specified in section 83 of the Local Government Act 2002 rather than in the manner specified in **section 95(4)**. 35

Part 3

Food imported for purpose of sale

Preliminary

- 97 Purpose of this Part** 5
- 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.
- 98 Interpretation** 10
- 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.
- 99 Restriction on importation of food for purpose of sale** 15
- (1) A person (**person A**) must not import any food for the purpose of sale unless—
- (a) person A is a registered importer; or
 - (b) if person A is not a registered importer, person A is importing the food through an agent who is a registered importer. 20
- (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 25 for the purpose of sale.
- 100 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: 30
- (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 350** are complied with; and
- (c) any notices issued under **section 367** are complied with; and
- (d) there are no discrepancies that suggest that it may be 5
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 the importer has made a declaration 10
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 15
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 20

101 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 25
of this Act, including the requirement—
 - (i) to maintain procedures and processes to demonstrate that the record-keeping requirements of this Act in relation to the source or traceability and processing and handling of the food im- 30
ported by the importer are being complied with; and
 - (ii) to give relevant recognised persons the freedom and access that will allow them to carry out their functions and activities under this Act (including 35
verification functions and activities).

- (2) To avoid doubt, **subsection (1)** applies whether or not the importer is registered under this Act.

Compare: 1999 No 93 s 51

102 Duty of registered importer

Without limiting **section 101**, a registered importer must 5
comply with any applicable requirements of this Act.

Registration of importers

103 Who must be registered

For every consignment of food imported into New Zealand,
there must be a person resident in New Zealand (within the 10
meaning of section YD 1 or YD 2 of the Income Tax Act 2007)
who is registered as an importer under this Act.

104 Application for registration

An application for registration must—

- (a) be made in writing to the chief executive in a form or 15
manner approved by the chief executive; and
(b) be accompanied by the prescribed fee (if any).

105 Chief executive may refuse to process application for registration

The chief executive may refuse to process an application for 20
registration if the applicant does not provide an application
that complies with **section 104**.

106 Chief executive may require further information

- (1) The chief executive may require an applicant to supply further 25
information or material before determining whether or not to
register the applicant.
- (2) An application for registration lapses if the information or ma-
terial is not supplied—
- (a) within 3 months after the date of the requirement; or
- (b) within any further time that the chief executive may 30
allow by written notice to the applicant.

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

107 Criteria for approval of application for registration

- (1) The chief executive must approve an application for registration that complies with **section 104** 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 5
for the purposes of **subsection (1)**, the chief executive must take into account all of the following matters:
 - (a) any specified conviction entered against the applicant or any director or manager of the applicant:
 - (b) whether there has in the past been a serious or repeated 10
failure by the applicant to comply with the duties of an importer in **section 101** or the duty of a registered importer in **section 102**:
 - (c) whether there are other grounds for considering that the applicant is likely in the future to fail to comply with 15
those duties:
 - (d) any other matters that the chief executive considers relevant.

108 Refusal to register

- (1) If the chief executive proposes to refuse to register an appli- 20
cant, 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 25
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 30
under **section 325**.

Compare: 1999 No 93 s 56

109 Registration

- If the chief executive approves an application for registration, the chief executive must, as soon as practicable,—
- (a) enter the applicant's name and the date of registration 35
on the relevant public register; and

- (b) give the applicant written notice of the date on which the registration takes effect.

110 Duration of registration

- (1) An importer's registration is effective from the date of registration until— 5
 - (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— 10
 - (a) is cancelled under **section 118**; or
 - (b) is surrendered under **section 121**.
- (3) The registration may be renewed for further periods in accordance with **Part 2 of Schedule 4**.

111 Registration may not be transferred 15

- 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.

112 Registered importers must notify chief executive of significant change in circumstances 20

- (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**— 25
 - (a) means—
 - (i) any change in the information that the registered importer has provided under **sections 104 and 106** for an application for registration;
 - (ii) any matter that results in that person not meeting the criteria under **section 107**; and 30
 - (b) includes any change that a notice issued under **section 367** specifies to be a significant change of circumstances for the purposes of this section.

*Suspension of registered importer's operations***113 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— 5
- (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. 10
- (2) The maximum period of suspension under this section is 3 months.

114 Chief executive may extend mandatory suspension

15

- (1) The chief executive may, in accordance with **clause 5 of Schedule 4**, extend the period of a suspension under **section 113** if the chief executive considers it necessary in the circumstances.
- (2) The period of extension— 20
- (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.

115 Voluntary suspension

25

- (1) A registered importer may, at any time, suspend all of the importer's operations in accordance with **clause 7 of Schedule 4**. 25
- (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. 30
- (3) The registered importer may extend the period of suspension up to a maximum period of 12 months.

116 Effect of suspension

- (1) If all or any of a registered importer's operations are suspended under **section 113 or 115**, the chief executive may—
- (a) direct that any food produced or processed and handled under any affected operations must not be sold; and 5
 - (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 253**.
- (2) A suspension under **section 113 or 115** does not affect any other actions that the chief executive may take under this Act. 10

*Removal of importer's registration***117 Removal from public register**

The chief executive must remove an importer's name from the relevant public register if the chief executive—

- (a) cancels that importer's registration under **section 118**; 15
or
- (b) records the surrender of that importer's registration under **section 121**.

118 Cancellation of registration

The chief executive may cancel the registration of an importer 20 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 107(2)(b)** that— 25
 - (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 30 under this Act (excluding any infringement fee).

Compare: 1999 No 93 s 58(1)

119 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 35

to the importer under **clause 10(1)(d) of Schedule 4**, which must be a date after the date of that notice.

120 Effect of cancellation of registration

- (1) If an importer's registration is cancelled, the chief executive may— 5
- (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 10
 - (c) exercise any of the other powers under **section 253**.
- (2) A cancellation of registration does not affect any other actions that the chief executive may take under this Act. 15
- Compare: 1999 No 93 s 28(4), (5)

121 Surrender of registration

- (1) An importer may, at any time, surrender that importer's registration by written notice to the chief executive.
- (2) As soon as practicable after being notified of a surrender under **subsection (1)**, the chief executive must record the surrender on the relevant public register. 20

122 Effective date of surrender

A surrender takes effect on the date stated in the relevant public register.

Part 4
**Provisions relating to recognition,
territorial authorities, administration,
and enforcement**

Subpart 1—Recognised agencies and
recognised persons 5

Preliminary

123 Purpose of this subpart

- (1) The purpose of this subpart is to provide for the chief executive to recognise— 10
 - (a) agencies that—
 - (i) are responsible for managing and carrying out verification functions and activities and other specialist functions and activities; and
 - (ii) may manage and supply recognised persons; and 15
 - (b) persons who carry out—
 - (i) verification functions and activities; and
 - (ii) other specialist functions and activities.
- (2) To avoid doubt, a person may apply to be both a recognised agency and a recognised person under this subpart. 20

*Duties of recognised agencies and recognised
persons*

124 Duties of recognised agencies

- When carrying out the specified functions and activities for which it is recognised, a recognised agency must ensure that— 25
- (a) it carries out only those functions and activities of a recognised agency that it has been recognised to carry out:
 - (b) the recognised persons it is responsible for managing (if any) continue to meet all applicable competency requirements: 30
 - (c) it is adequately resourced and its systems are maintained to a level that ensures it is able to carry out the functions and activities in relation to which it is recognised: 35

- (d) it has documented policies and procedures to safeguard the confidentiality of the information obtained or created while carrying out its functions and activities:
- (e) it has systems, processes, and procedures to manage appropriately any conflict of interest that might arise while carrying out its functions and activities: 5
- (f) it complies with any applicable requirements of this Act.

125 Duties of recognised persons

When carrying out the specified functions and activities for which the person is recognised, a recognised person must ensure that the person— 10

- (a) carries out only those functions and activities of a recognised person that the person has been recognised to carry out: 15
- (b) maintains all applicable competency requirements:
- (c) maintains an appropriate degree of impartiality and independence in carrying out the functions and activities that the person has been recognised to carry out:
- (d) maintains appropriate confidentiality, particularly in respect of commercially sensitive matters, relating to operations and activities the person may come into contact with in the course of carrying out the functions and activities that the person has been recognised to carry out (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: 20 25
- (e) reports the following to the registration authority, in accordance with the applicable requirements of this Act: 30
 - (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: 35
 - (iv) any other matter that is required to be reported by a relevant recognised person by or under this Act:

- (f) complies with any applicable requirements of this Act.

Recognition

126 Recognition of agency responsible for verification and other specialist functions and activities

- (1) The chief executive may, on the application of a person or body, recognise that person or body as an agency that, for the purposes of this Act,—
 - (a) is responsible for the management and carrying out of either or both of the following:
 - (i) verification functions and activities: 10
 - (ii) other specialist functions and activities; and
 - (b) may manage and supply recognised persons to perform verification and other specialist functions and activities.
- (2) Without limiting **subsection (1)**, the functions and activities that a person or body may be recognised for include— 15
 - (a) verification functions and activities in relation to—
 - (i) food control plans:
 - (ii) national programmes:
 - (iii) monitoring programmes:
 - (b) other verification functions and activities: 20
 - (c) the provision of independent evaluations of the validity of food control plans for the purposes of **section 49(3)(b)**:
 - (d) other specialist functions and activities specified in a notice issued under **section 367**. 25
- (3) A person or body may be recognised as an agency under this section even though the persons managed by the agency have not been recognised to carry out the agency's functions.
- (4) Before granting recognition as an agency, the chief executive must be satisfied that the applicant is a fit and proper person to manage and carry out the particular functions and activities concerned. 30
- (5) In determining whether an applicant is a fit and proper person for the purposes of **subsection (4)**, the chief executive must take into account the following matters: 35

- (a) the competencies and resources of the applicant to meet and maintain the specified functions and activities that the applicant is to be recognised for:
 - (b) any specified conviction entered against the applicant or any director or manager of the applicant: 5
 - (c) the applicant's character or reputation, including, if appropriate, the character or reputation of the directors of the applicant or of those responsible for its management or control:
 - (d) the applicant's ability to maintain an appropriate degree of impartiality and independence in managing and carrying out the functions and activities: 10
 - (e) any applicable requirements of this Act:
 - (f) any other matters that the chief executive considers relevant. 15
- (6) This section is subject to **section 127A**.

127 Certain persons or bodies may be treated as recognised agency

- (1) For the purposes of this Act, the chief executive may, without receiving an application under **section 126(1)**, grant recognition to any of the following persons or bodies to carry out functions and activities as an agency specified by the chief executive: 20
- (a) the Ministry:
 - (b) any group of persons within the Ministry that is designated by the chief executive for the purpose: 25
 - (c) any department of the public service listed in Schedule 1 of the State Sector Act 1988:
 - (d) any territorial authority.
- (2) **Sections 126 and 133 to 144** apply to any recognition granted under **subsection (1)** accordingly, to the extent they are relevant and with all necessary modifications. 30
- (3) This section is subject to **section 127A**.

127A Recognition for certain verification functions and activities may only be granted to territorial authorities 35

- (1) Despite **sections 126 and 127**, the chief executive must not recognise any person or body besides a territorial authority as

an agency that, for the purposes of this Act, is responsible for carrying out verification functions and activities in relation to a food business that is—

- (a) operating under a food control plan based on a template or model issued under **section 32**; and 5
 - (b) operating entirely within the district of a single territorial authority; and
 - (c) selling food directly to consumers.
- (2) To avoid doubt, nothing in this section limits or affects the application of **sections 130 to 144 and 157 to 169** in respect of a territorial authority carrying out verification functions and activities described in **subsection (1)**. 10

127B Review of operation of section 127A

As soon as practicable after the expiry of the Act's introductory period (as defined in **section 375**), the chief executive must— 15

- (a) review the operation of **section 127A** 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 127A**; and 20
- (c) present a report of the review to the Minister within 6 months of commencing the review.

128 Recognition of person responsible for verification and other specialist functions and activities 25

- (1) The chief executive may, on the application of a person, recognise that person or a class of persons to which that person belongs as being suitable to carry out verification functions and activities or other specialist functions and activities for the purposes of this Act. 30
- (2) Without limiting **subsection (1)**, the functions and activities that a person or class of persons may be recognised for include—
 - (a) verification functions and activities in relation to—
 - (i) food control plans: 35
 - (ii) national programmes:
 - (iii) monitoring programmes:

- (b) other verification functions and activities:
- (c) the provision of independent evaluations of the validity of food control plans for the purposes of **section 49(3)(b)**:
- (d) other specialist functions and activities specified in a notice issued under **section 367**. 5
- (3) Before granting recognition, the chief executive must be satisfied that the applicant is a fit and proper person to carry out the particular functions and activities concerned.
- (4) In determining whether an applicant is a fit and proper person for the purposes of **subsection (3)**, the chief executive must take into account the following matters: 10
 - (a) the relevant competencies of the applicant:
 - (b) any specified conviction entered against the applicant:
 - (c) the applicant's character and reputation: 15
 - (d) the applicant's ability to maintain an appropriate degree of impartiality and independence in carrying out the functions and activities:
 - (e) any applicable requirements of this Act:
 - (f) any other matters that the chief executive considers relevant. 20

129 Certain individuals to be treated as recognised person

- (1) For the purposes of this Act, the chief executive may, without receiving an application under **section 128(1)**, grant recognition to any officer or employee of the Ministry or of any department of the public service listed in Schedule 1 of the State Sector Act 1988 to carry out functions and activities specified by the chief executive that the individual is qualified for under **section 128(1)**. 25
- (2) **Sections 128 and 133 to 144** apply to any recognition granted under subsection (1) accordingly, to the extent they are relevant and with all necessary modifications. 30

130 Application for recognition

An application for recognition under **section 126 or 128** must— 35

- (a) be made in writing to the chief executive in a form or manner approved by the chief executive; and

- (b) be accompanied by the prescribed fee (if any).

131 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 grant the applicant recognition. 5
- (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.

132 Refusal to grant recognition

10

- (1) If the chief executive proposes to refuse to grant an applicant recognition for the functions and activities applied for, the chief executive must give the applicant—
- (a) a written notice that clearly informs the applicant of the grounds proposed for refusal; and 15
 - (b) a reasonable opportunity to make written submissions.
- (2) If the chief executive finally determines to refuse to grant recognition, the chief executive must, as soon as practicable, give the applicant written notice of—
- (a) the decision and the reason for it; and 20
 - (b) the applicant's right to seek a review of the decision under **section 325**.

133 Grant of recognition

- (1) If the chief executive determines to grant an applicant recognition, the chief executive must, as soon as practicable,— 25
- (a) enter the applicant's name in the relevant public register under **Part 4 of Schedule 5**; and
 - (b) give the applicant a notice of recognition.
- (2) The notice of recognition must specify— 30
- (a) the functions and activities that,—
 - (i) for a recognised agency, the applicant is responsible for managing and carrying out; or
 - (ii) for a recognised person, the applicant is responsible for carrying out; and
 - (b) any conditions imposed under **section 134**; and 35

- (c) the duration of the recognition under **section 135**.

134 Chief executive may impose conditions on grant of recognition

- (1) The chief executive may grant recognition subject to any conditions that the chief executive thinks fit and specifies in the notice of recognition. 5
- (2) Without limiting **subsection (1)**, the conditions of recognition may include requirements as to the provision of returns, records, and other information the chief executive may reasonably require from time to time to ensure that the recognised agency or the recognised person is properly carrying out the functions and activities the agency or the person is recognised for. 10
- ~~(3) In the case of a recognised laboratory, a condition may include reporting requirements relating to certain test results (including a requirement to report specified contaminants or pathogens in food).~~ 15
- (4) The chief executive—
- (a) may, at any time, by written notice to a recognised agency or a recognised person, revoke, amend, or add to any conditions imposed under **subsection (1)**; and 20
- (b) must give the recognised agency or the recognised person a reasonable opportunity to make written submissions if a condition is varied under **paragraph (a)**.
- (5) **Subsection (4)(b)** does not apply if a variation to the condition is made on the application of the recognised agency or the recognised person in accordance with the terms of that application. 25

135 Duration of recognition

- (1) A grant of recognition is effective for— 30
- (a) a specified period commencing on the date stated in the notice of recognition given under **section 133(1)(b)**; or
- (b) an indefinite period.
- (2) A grant of recognition continues in force until— 35
- (a) it is withdrawn under **section 142**; or

- (b) it is surrendered under **section 143**; or
- (c) for recognition granted for a specific period, the expiry of that period.

136 Recognition may not be transferred

A recognition applies only to the particular agency or the particular person specified in the notice of recognition and—

- (a) may not be transferred to a different agency or person; and
- (b) may not vest by operation of law in any person other than the agency or person so specified.

137 Recognition fees

- (1) A recognised agency or a recognised person is liable to pay the prescribed fee (if any) for recognition.
- (2) A recognition fee is payable either annually or at a greater interval, as may be prescribed.
- (3) Different levels of fees may be prescribed for recognition of different types of functions and activities, agencies, or persons.
- (4) A failure to pay the appropriate fee within 30 days of the due date may result in the withdrawal of recognition by the chief executive, in accordance with **section 142(1)(f)**.

Suspension of recognition

138 Mandatory suspension

- (1) The chief executive may, at any time, suspend all or part of the recognition of an agency or a person in accordance with **clause 4 of Schedule 4** if the chief executive has reasonable grounds to believe that the performance of the agency or the person is unsatisfactory, taking into account the requirements of the recognition.
- (2) The maximum period of suspension under this section is 3 months.
- (3) The chief executive may—
 - (a) impose conditions that must be satisfied before the suspension may be lifted:

- (b) require an agency or a person suspended under this section to take appropriate action to remedy the deficiency or failure that resulted in suspension.

139 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 138** if he or she considers the conditions that were imposed under that section have not been satisfied within the suspension period. 5
- (2) The period of extension— 10
 - (a) may be for any further period that the chief executive notifies in writing to the agency or the person before the expiry of the original suspension; but
 - (b) must not exceed a further 3 months.

140 Effect of suspension

- (1) A suspension under **section 138** or an extension of suspension under **section 139** does not affect any other actions that the chief executive may take under this Act. 15
- (2) The chief executive must notify— 20
 - (a) the relevant recognised agency of the suspension, or extension of suspension, of recognition of a person for whom the agency is responsible: 25
 - (b) any relevant recognised person of the suspension, or extension of suspension, of recognition of an agency that manages that person. 25

Removal of recognition

141 Removal from public register

The chief executive must remove the name of a recognised agency or a recognised person from the relevant public register if the chief executive— 30

- (a) withdraws the recognition of the agency or the person under **section 142**; or
- (b) records the surrender of the agency's or the person's recognition under **section 143**.

142 Withdrawal of recognition

- (1) The chief executive may withdraw all or part of the recognition of an agency or a person in accordance with **Part 4 of Schedule 4** if satisfied that—
- (a) suspending all or part of the agency's or the person's recognition under **section 138** would be justified, but it would be more appropriate to withdraw the recognition because of—
 - (i) the failure of the agency or the person to properly attend to matters that would lead to the suspension of recognition; or
 - (ii) repeated suspensions in the past under that section; or
 - (b) the agency or the person is not, or is no longer, a fit and proper person to carry out the functions or activities for which the recognition was granted; or
 - (c) the agency or the person has failed to comply with any term or condition of the recognition, or has failed to meet any performance criteria specified by the chief executive in a notice issued under **section 367**; or
 - (d) the agency or the person has failed to comply with any 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 functions or activities for which the recognition was granted; or
 - (e) the agency or the person has ceased to operate as a recognised agency or a recognised person; or
 - (f) the agency or the person has failed to pay any fees imposed or prescribed by or under this Act or any regulations made under this Act (excluding any infringement fee).
- (2) As soon as practicable after withdrawing the recognition of an agency or a person, the chief executive must,—
- (a) if the withdrawal relates to a recognised agency, notify the withdrawal to every recognised person for whom the agency is responsible; or
 - (b) if the withdrawal relates to a recognised person, notify the withdrawal to the recognised agency that manages that person.

- (3) If recognition is withdrawn, the recognised agency or the recognised person must, as soon as practicable, send the agency's or, as the case may be, the person's notice of recognition to the chief executive.

143 Surrender of recognition 5

- (1) A recognised agency or a recognised person may, at any time, surrender that recognition by written notice to the chief executive.
- (2) As soon as practicable after being notified of a surrender under **subsection (1)**, the chief executive must record the surrender on the relevant public register. 10
- (3) As soon as practicable after the surrender of recognition, the recognised agency or recognised person must, before the date on which the surrender takes effect,—
- (a) if the surrender relates to a recognised agency, notify the surrender to every recognised person for whom the agency is responsible; or 15
 - (b) if the surrender relates to a recognised person, notify the surrender to the recognised agency that manages that person. 20

144 Effective date of surrender

A surrender takes effect—

- (a) on the date specified in the notice given under **section 143(1)**; or
- (b) if no date is specified, on the date on which the chief executive receives that notice. 25

Miscellaneous

145 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: 30
- (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 127**; or 5
 - (b) an officer or employee of the Ministry who is granted recognition as a recognised person under **section 129**; or
 - (c) a department of the public service listed in Schedule 1 of the State Sector Act 1988. 10
- (3) A person appointed as a recognised person under **section 128** may not be treated as an employee of the Ministry only by reason of that appointment.

Subpart 2—Territorial authorities

Functions and duties of territorial authorities 15

146 Functions of territorial authority

- (1) The functions of a territorial authority set out in **subsection (2)** are incidental, related, or consequential to the role specified in **section 17**.
- (2) A territorial authority has the following functions: 20
- (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, if so recognised under this Act) in relation to certain food control plans and national programmes, and as otherwise provided for under this Act: 25
 - (d) to administer the system that disseminates food handler guidance:
 - (e) as directed by the chief executive, 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, national programmes registered by the territorial authority, or to investigate any other matters: 30
 - (f) to instigate appropriate corrective and preventative actions for matters described in **paragraph (e)**: 35

-
- (g) to enable its food safety officers to enforce the applicable requirements of this Act:
 - (h) to respond to recalls and to respond in an emergency situation, in accordance with any directions given by the chief executive: 5
 - (i) to disseminate information and provide advice promoting the safety and suitability of food to food businesses and the public:
 - (j) to perform administrative functions relating to this Act, including— 10
 - (i) gathering information:
 - (ii) receiving applications for registration of food control plans:
 - (iii) transferring information to the Ministry:
 - (iv) if requested under **section 157(1)(b)**, reporting 15
 - to the chief executive:
 - (k) 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: 20
 - (l) to perform any other function relevant to its role.
- (3) 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 (2)(a)** in the combined district of the territorial authorities that are parties to the agreement. 25
- (4) If 2 or more territorial authorities have combined under **subsection (3)**, they may designate any of them as the territorial authority responsible for performing the function of a registration authority for the combined district. 30
- (5) A territorial authority may not contract out any of the following functions, except to another territorial authority:
- (a) the function of a recognised agency, if it is so recognised under this Act; and
 - (b) any of the functions referred to in **subsection (2)(a), (d), and (e) to (i)**. 35
- (6) A territorial authority may not contract out the function referred to in **subsection (2)(c)** to a person who is not recognised to carry out that function under this Act.

- (7) If a territorial authority contracts out 1 or more of its functions, it continues to have responsibility for that function.

147 Duties of territorial authority

A territorial authority must—

- (a) ensure it has adequate resources and capability to carry out its role, functions, and duties and to exercise its powers under this Act: 5
- (b) ensure its functions, duties, and powers under this Act are managed, performed, and exercised in accordance with any relevant national outcomes issued under **section 148**: 10
- (c) 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: 15
- (d) ensure that relevant persons who are employed or engaged by the territorial authority for the purposes of this Act maintain their competencies:
- (e) 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: 20
- (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 under **section 367** (which reports must include any details specified in the notice under that section): 25
- (g) provide capability to respond as required in an emergency situation in accordance with any directions given by the chief executive: 30
- (h) if it is being reviewed under **section 158**, facilitate the conduct of the review and provide any information required under **section 162** by the person conducting the review: 35
- (i) carry out any other function, duty, or direction imposed or given by or under this Act.

*National outcomes for territorial authorities***148 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 5
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 **para-** 10
graph (a).
- (2) The Minister must not issue, amend, or revoke a national out-
come under this section unless the Minister—
 - (a) has first consulted the Minister of Local Government; 15
and
 - (b) is satisfied that consultation has been carried out in ac-
cordance with **section 341** 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— 20
 - (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*

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

- (1) A territorial authority that has functions, duties, and powers 30
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 terri-
torial authority or the regional council—
 - (a) agrees in writing to the transfer; and
 - (b) is able to meet any national outcomes issued under **sec-** 35
tion 148 for the relevant district.
- (2) However, a territorial authority may not transfer the function
of a recognised agency, if it is so recognised under this Act.

150 Effect of transfer to territorial authority or regional council

- (1) If a territorial authority transfers any functions, duties, or powers under **section 149**, the territorial authority ceases to be responsible for the performance or exercise of those functions, duties, and powers. 5
- (2) If functions, duties, and powers are transferred under **section 149** to a territorial authority, that territorial authority is responsible for the performance or exercise of those functions, duties, and powers. 10
- (3) If functions, duties, and powers are transferred under **section 149** to a regional council, the regional council is to be treated as a territorial authority for the purposes of this Act.

151 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 149** must— 15
 - (a) keep and maintain a record of the transfer (including a record of the relevant transfer arrangement made under that section); and 20
 - (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 25
 - (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 149** must keep and maintain a record of the transfer (including a record of the relevant written agreement under that section). 30

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

152 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. 5
- (2) However, **subsection (1)** is subject to **subsections (3) and (4)**. 10
- (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: 15
 - (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, if it is so recognised under this Act: 20
 - (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 153** are satisfied and either of the following applies: 25
 - (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: 30
 - (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.

153 Transfer agreement

A transfer of functions, duties, or powers under **section 152** 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. 5

154 Effect of transfer to chief executive

- (1) If a territorial authority transfers any functions, duties, or powers under **section 152**, that territorial authority ceases to be responsible for the performance or exercise of those functions, duties, and powers. 10
- (2) If functions, duties, and powers are transferred under **section 152**,—
 - (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 15
 - (c) the chief executive may contract out, or enter into, arrangements for the carrying out of the transferred functions, duties, and powers. 20

155 Change, revocation, or relinquishment of transfer

- (1) A territorial authority that has transferred any functions, duties, and powers under **section 152** may,— 25
 - (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 152(4) and 153** 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 152(4)** must be complied with. 30
- (3) The chief executive may relinquish the transfer in accordance with the transfer agreement. 35

156 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 152** (including a record of the relevant transfer agreement required by **section 153**); and 5
 - (b) any change, revocation, or relinquishment made under **section 155**.
- (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. 10

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

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

- (1) The chief executive may— 15
 - (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 **section 17**. 20
- (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: 25
 - (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 30
 - (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. 35

- (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 5
 - (b) includes information that is kept in any form (whether in electronic form or otherwise).

Review of territorial authorities

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158 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. 15
- (2) However, the Minister must consult the Minister of Local Government before exercising the powers given to the Minister by **subsection (1)**.

159 Terms of reference

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- (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 25
 - (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: 30
 - (a) the extent to which it has exercised its powers under this Act; and 35

- (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 5
 - (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.

- 160 Minister to consult on terms of reference** 10
 - (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)**. 15
 - (2) The Minister may consult any other person, as the Minister considers appropriate, about the terms of reference.

- 161 Appointment of person to conduct review**
 - (1) The Minister may appoint the person (the **reviewer**) to conduct a review of a territorial authority. 20
 - (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)**. 25

- 162 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— 30
 - (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. 5
- (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. 10

163 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 159**. 15

164 Report of review

- (1) Once a review has been completed, the reviewer must—
 - (a) prepare a written draft report of the review that includes— 20
 - (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 25
 - (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. 30
- (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 35
 - (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.

Non-performance by territorial authority

165 Powers of Minister in relation to non-performance by territorial authority 5

- (1) If the Minister considers that either of the grounds in **subsection (2)** ~~exist~~ exists, 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. 10
- (2) ~~The grounds are that the territorial authority—~~
- ~~(a) has had a reasonable opportunity to address any concerns set out in a final report under **section 164** about the territorial authority’s performance of all or any of its functions and duties, or the exercise of all or any of its powers, under this Act; and~~ 15
 - ~~(b) has not addressed those concerns to the satisfaction of the Minister despite **paragraph (a)**; and~~ 20
 - ~~(c) 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.~~
- (2) The grounds are that— 25
- (a) the territorial authority has had a reasonable opportunity to address any concerns set out in a final report under **section 164** 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; or 30
 - (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. 35
- (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
 - (b) the chief executive, other territorial authority, regional council, or recognised agency agrees to the appointment 5
in accordance with **section 166**.
- (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 10
recognised agency.
- (5) However, the Minister may not transfer a territorial authority's function of a recognised agency, if the territorial authority is so recognised under this Act.

166 Requirements for appointment 15

An appointment under **section 165** 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 20
- (c) include any terms and conditions that are agreed, including any financial arrangements.

167 Effect of appointment

- (1) If an appointment is made under **section 165**,—
 - (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 25
 - (b) the chief executive, other territorial authority, regional council, or recognised agency is responsible for the performance or exercise of those functions, duties, and 30
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 35
extended as necessary to enable them to carry out, per-

- form, 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. 5
- (2) If appointed under **section 165**, 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 10
 - (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. 15
- (3) **Subsection (1)(d)** is subject to **section 146(5) and (6)**.

168 Duration of appointment

- (1) The Minister must specify the duration of an appointment made under **section 165**. 20
 - (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 25
 - (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. 30

169 Costs, charges, and expenses incurred

All costs, charges, and expenses incurred for the purposes of **section 165** by the chief executive, other territorial authority, regional council, or recognised agency in performing or exercising any functions, duties, and powers of a territorial author- 35

ity 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.

5

Subpart 3—Cost recovery

170 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. 10
- (2) In determining the most appropriate method of cost recovery under **section 171**, the Minister and the chief executive must take into account, as far as is reasonably practicable, the following criteria: 15
 - (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: 20
 - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost: 25
 - (c) justifiability, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) or the provision or exercise of the relevant function, power, or service: 30
 - (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. 35
- (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. 5
- (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 341 or 342**. 10
- (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. 15
- (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— 20
 - (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. 25

171 **Methods of cost recovery**

The methods by which costs may be recovered under this subpart are as follows: 30

- (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: 35
- (d) estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service

- or function, followed by reconciliation 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: 5
 - (f) fees or charges imposed on users of services or on third parties:
 - (g) levies:
 - (h) any combination of the above.
- 172 Territorial authority responsible for cost recovery** 10
- A territorial authority—
- (a) may collect an amount payable, if prescribed by regulations made under this subpart; and
 - (b) must forward the amount collected to the Ministry.
- 173 Cost recovery to relate generally to financial year** 15
- (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 20
 - (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 either— 25
 - (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 30 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 35 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). 5
- 174 Three-yearly review of cost recovery** 10
- (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. 15
- (2) The Minister must ensure that appropriate consultation in accordance with **section 341** 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). 20
- (4) **Subsection (1)** does not— 25
- (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.
- 175 Regulations may impose fees and charges** 30
- (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 171**. 35

-
- (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— 5
- (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 10 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: 15
 - (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 formula may specify the value attributed to any 20 component of that formula.
- (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 170 and 173** have been met. 25
- (7) This section does not limit or affect **section 176**.
- 176 Territorial authority to set fees**
- (1) The fees payable to a territorial authority are those reasonable fees prescribed by resolution of the territorial authority for its functions under this Act. 30
- (2) Any resolution made under **subsection (1)** may fix fees to recover the direct and indirect costs of all or any of the following functions of the territorial authority under this Act:
- (a) registration:
 - (b) verification: 35
 - (c) compliance and monitoring activities.

- (3) In prescribing fees under this section, the territorial authority must have regard to the principles of cost recovery set out in **section 170**.
- (4) The fees prescribed under **subsection (1)** must not provide for the territorial authority to recover more than the reasonable costs incurred by the territorial authority for the matter in respect of which the fee is charged. 5
- (5) The territorial authority must use the special consultative procedure as provided in section 83 of the Local Government Act 2002. 10
- (6) An increase in fees for any financial year must not come into effect other than at the commencement of that financial year.

177 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. 15
- (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— 20
 - (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. 25
- (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: 30
 - (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: 35

- (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: 5
 - (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: 10
 - (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. 15
 - (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 170 and 173** have been met.
- 178 Regulations may provide for exemptions, waivers, and refunds** 20
- (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: 25
 - (b) authorise the chief executive to grant an exemption, waiver, or refund in any particular case or class of case:
 - (c) require or authorise a territorial authority to grant an exemption, waiver, or refund in any particular case or class of case. 30
 - (2) Regulations made under this section must—
 - (a) expire within a specified period not exceeding 5 years; and
 - (b) include an explanation of the reason for granting the exemption, waiver, or refund. 35

179 Trust accounts required to be kept by persons collecting levies

- (1) If regulations made under **section 177** require the operation of a trust account for any levy money by the person responsible for collecting the levy,— 5
- (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) 10 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 15 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 20 for collecting the levy concerned.

180 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— 25
- (a) of the services the Ministry provides in relation to the administration of this Act; or 25
 - (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 30 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— 35
 - (i) according to the caller's usage; or
 - (ii) on an averaged basis:

- (b) charge persons for the cost of mailing, 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: 5
- (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: 10
- (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. 15

181 Fees, charges, and levies to constitute debt due to chief executive

- (1) Any fee, charge, or levy that has become payable is—
 - (a) a debt due to the chief executive; and 20
 - (b) recoverable as a debt by the chief executive in any court of competent jurisdiction.
- (2) Until the fee, charge, or levy is paid in full, it remains a debt due to the Crown.

182 Penalties for failure to pay fee, charge, or levy 25

- (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 185** applies to increase the amount payable; and
 - (b) **section 186** 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 30
 - (c) **section 187** 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. 35
- (2) For the purposes of **subsection (1)(c)** and **section 187**, and without limiting **section 186**, the references in those provi-

sions 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: 5
 - (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. 10 15

183 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— 20

- (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. 25

184 Levy regulations to be confirmed

- (1) **Subsection (2)** applies if, in any year, regulations imposing a levy have been made under this subpart on or after 1 January in any year and before 1 July in that year, and—
- (a) have not been revoked with effect on or before 1 July in that year; and 30
 - (b) have not ceased, and will not cease, to have effect on or before 1 July in the following year by virtue of the Regulations (Disallowance) Act 1989.
- (2) Regulations described in **subsection (1)** are to be treated as having been revoked with the close of 30 June in the year after 35

the year in which they were made unless confirmed by an Act of Parliament passed on or before that day.

- (3) **Subsection (4)** applies ~~where~~ if, in any year, regulations imposing a levy have been made under this subpart after 30 June in any year and on or before 31 December in that year, and— 5
- (a) have not been revoked with effect on or before 1 January in the year after the next year; and
 - (b) have not ceased, and will not cease, to have effect on or before 1 January in the year after the next year by virtue of the Regulations (Disallowance) Act 1989. 10
- (4) Regulations described in **subsection (3)** are to be treated as having been revoked with the close of 31 December in the year after the year in which they were made unless confirmed by an Act of Parliament passed on or before that day.

Subpart 4—Payment of statutory debt 15

185 **Penalty for failure to pay statutory fees, etc**

- (1) In this section, and in **sections 186 and 187**, **statutory debt**—
- (a) means any fee, charge, or levy required to be paid to the Ministry or the holder of any specified office by— 20
 - (i) an enactment administered by the Ministry; or
 - (ii) any direction or other instrument made or issued under an enactment administered by the Ministry, other than an enactment that provides for the payment of interest or a monetary penalty for late payment of, or failure or refusal to pay, the fee, charge, or levy; but 25
 - (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 the enactment 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)**. 30
- (3) The amount by which an unpaid statutory debt, or any unpaid part of a statutory debt, increases is the sum of— 35

- (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. 5
- (4) If a time for payment is not provided for by an enactment, 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. 10
- (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. 15

186 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 185** 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: 20
 - (a) the person's liability to pay the debt:
 - (b) the amount of the debt. 25
- (2) 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 185** 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: 30
 - (a) the person's liability to pay the debt:
 - (b) the amount of the debt.

187 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 35

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. 5
- (2) The chief executive must be satisfied that—
- (a) a statutory debt has been correctly calculated; and
 - (b) the time provided by the enactment concerned (or by **section 185(4)**) for the debt's payment has expired; 10
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 15
 - (b) the person concerned has not—
 - (i) paid the statutory debt or part of the statutory debt concerned; or 20
 - (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 25
 - (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 30

188 Proceedings for infringement notices

- (1) This section applies when a person is alleged to have committed an infringement offence.
- (2) Proceedings may be taken against a person under the Summary Proceedings Act 1957. 35
- (3) Alternatively, an infringement notice may be served on the person under **section 189**. In that case,—

- (a) proceedings for the offence may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and
- (b) section 21 of that Act applies with all necessary modifications. 5

189 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 10
 - (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— 15
 - (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 a District Court. 20
- (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. 25
- (5) Alternatively, an infringement notice or a cancellation notice may be served by post addressed to,—
 - (a) if the person is a natural person,— 30
 - (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 35
 - 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,— 5
 - (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 10
 - (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 **sub-section (5)** is treated as having been served on the person 15 when it was posted.

190 Form of infringement notice

- (1) An infringement notice must be in the form prescribed under **section 353**.
- (2) The prescribed form must contain the following details: 20
 - (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 25
 - (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; 30 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 35 cancellation of the notice; and
 - (h) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957.

191 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.

5

*Offences***192 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— 10
- (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. 15
- (2) A prosecution for an offence against this section may be proceeded with summarily or on indictment. 20
- (3) A person who commits an offence against this section is liable,—
- (a) for a body corporate, to a fine not exceeding \$500,000;
 - (b) for an individual, to— 25
 - (i) imprisonment for a term not exceeding 5 years; and
 - (ii) a fine not exceeding \$100,000.

193 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— 30
- (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 35

- (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 prosecution for an offence against this section may be proceeded with summarily or on indictment.
- (3) A person who commits an offence against this section is liable,—
 - (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.

194 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 prosecution for an offence against this section may be proceeded with summarily or on indictment.

- (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 1 year; 5
 - and
 - (ii) a fine not exceeding \$50,000.

195 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 defeat the purpose of this Act or to deceive,— 10
- (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 15
 - 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 20
 - (c) alters, conceals, or destroys a document or information, contrary to an applicable requirement of this Act.
- (2) A prosecution for an offence against this section may be proceeded with summarily or on indictment. 25
- (3) A person who commits an offence against this section is liable,—
- (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; 30
 - and
 - (ii) a fine not exceeding \$100,000.

196 Offences involving documents or information

- (1) A person commits an offence if the person—
- (a) provides a document or information to a food safety 35
 - 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 5
- (c) alters, conceals, or destroys a document or information, contrary to an applicable requirement of this Act.
- (2) A prosecution for an offence against this section may be proceeded with summarily. 10
- (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 220** contains a defence to a prosecution for an offence against this section. 15
- (5) 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 a fine not exceeding \$50,000. 20

197 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 defeat the purpose of this Act or to deceive,—
 - (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 25
 - (b) adulterates, misrepresents, or tampers with food or a food-related accessory so that it does not conform with— 30
 - (i) its label:
 - (ii) its package:
 - (iii) a statement made under **section 258**.
- (2) A prosecution for an offence against this section may be proceeded with summarily or on indictment. 35
- (3) A person who commits an offence against this section is liable,—

- (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. 5
- (4) 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, 10 and the proportion of ingredients or other constituents of the food or food-related accessory. 10
- 198 Offences involving identifying or representing food**
- (1) A person commits an offence if the person—
 - (a) alters, falsifies, misapplies, misrepresents, misuses, re- 15 moves, 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— 20
 - (i) its label:
 - (ii) its packaging:
 - (iii) a statement made under **section 258**.
- (2) A prosecution for an offence against this section may be pro- 25 ceeded with summarily. 25
- (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 220** contains a defence to a prosecution for an of- 30 fence against this section. 30
- (5) A person who commits an offence against this section is li- able,—
 - (a) for a body corporate, to a fine not exceeding \$250,000:
 - (b) for an individual, to a fine not exceeding \$50,000.
- (6) In this section, **misrepresentation**, in relation to food or a 35 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.

- 199 Offences involving intentionally defeating purpose of Act or deceiving in relation to sampling, testing, or evidence** 5
- (1) A person commits an offence if the person, with intent to defeat the purpose of this Act or to deceive,—
- (a) falsifies, suppresses, or tampers with a sample of food or an example of a food-related accessory taken, test procedures done, or test results produced by or for a person who operates under a risk management tool for the purposes of—
 - (i) the risk management tool; or
 - (ii) an applicable requirement of this Act; or
 - (b) falsifies, suppresses, or tampers with a sample of food or an example of a food-related accessory taken, test procedures done, test results produced, or evidence taken 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
 - (c) falsifies, suppresses, or tampers with a sample of food or an example of a food-related accessory taken, test procedures done, test results produced, or evidence taken by an approved laboratory or an approved person in performing a function or duty, or exercising a power, under this Act; or
 - (d) falsifies, suppresses, or tampers with a sample of food or an example of a food-related accessory taken, test procedures done, or test results produced for the purposes of the person's compliance with **section 276(2)(c)** or with any other applicable requirement of this Act.
- (2) A prosecution for an offence against this section may be proceeded with summarily or on indictment.
- (3) A person who commits an offence against this section is liable,—
- (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.

200 Offences involving sampling, testing, or evidence

- (1) A person commits an offence if the person— 5
 - (a) falsifies, suppresses, or tampers with a sample of food or an example of a food-related accessory taken, test procedures done, or test results produced by or for a person who operates under a risk management tool for the purposes of— 10
 - (i) the risk management tool; or
 - (ii) an applicable requirement of this Act; or
 - (b) falsifies, suppresses, or tampers with a sample of food or an example of a food-related accessory taken, test procedures done, test results produced, or evidence taken 15
 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
 - (c) falsifies, suppresses, or tampers with a sample of food or an example of a food-related accessory taken, test procedures done, test results produced, or evidence taken 20
 by an approved laboratory or an approved person in performing a function or duty, or exercising a power, under this Act; or
 - (d) falsifies, suppresses, or tampers with a sample of food or an example of a food-related accessory taken, test procedures done, or test results produced for the purposes of the person's compliance with **section 276(2)(c)**. 25
- (2) A prosecution for an offence against this section may be proceeded with summarily. 30
- (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 220** contains a defence to a prosecution for an offence against this section. 35
- (5) 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 a fine not exceeding \$50,000.

201 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 defeat the purpose of this Act or to deceive,— 5
- (a) makes a false or misleading statement or a material omission in a statement published under **section 254**; or
 - (b) makes a statement that appears to be a statement made under **section 258** or a statement of the New Zealand Government's assurance about food or a consignment of food; or 10
 - (c) falsifies or misuses a statement made under **section 258**.
- (2) A prosecution for an offence against this section may be proceeded with summarily or on indictment. 15
- (3) A person who commits an offence against this section is liable,—
- (a) for a body corporate, to a fine not exceeding \$500,000;
 - (b) for an individual, to— 20
 - (i) imprisonment for a term not exceeding 5 years; and
 - (ii) a fine not exceeding \$100,000.

202 Offences involving statements

- (1) A person commits an offence if the person— 25
- (a) makes a false or misleading statement or a material omission in a statement published under **section 254**; or
 - (b) makes a statement that appears to be a statement made under **section 258** or a statement of the New Zealand Government's assurance about food or a consignment of food; or 30
 - (c) falsifies or misuses a statement made under **section 258**.
- (2) A prosecution for an offence against this section may be proceeded with summarily. 35

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- (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 220** contains a defence to a prosecution for an offence against this section. 5
- (5) 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 a fine not exceeding \$50,000.
- 203 Offence involving knowingly or recklessly selling non-complying food** 10
- (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 15
- (iii) does not comply with an applicable requirement of this Act; and
- (b) the person— 20
- (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 prosecution for an offence against this section may be proceeded with summarily or on indictment. 25
- (3) A person who commits an offence against this section is liable,—
- (a) for a body corporate, to a fine not exceeding \$500,000:
- (b) for an individual, to— 30
- (i) imprisonment for a term not exceeding 2 years; and
- (ii) a fine not exceeding \$100,000.
- 204 Offences involving knowingly or recklessly importing non-complying food** 35
- (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. 5
- (2) A person commits an offence if—
 - (a) the person breaches prescribed criteria for the categorisation of imported food; and
 - (b) the person— 10
 - (i) knows that the person is breaching the criteria; or
 - (ii) is reckless as to whether the person is breaching the criteria.
- (3) A prosecution for an offence against this section may be proceeded with summarily or on indictment. 15
- (4) A person who commits an offence against this section is liable,—
 - (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; 20
 - and
 - (ii) a fine not exceeding \$100,000.

205 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 25
 - (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 any of **sections 99, 101, and 102.** 30
- (2) A prosecution for an offence against this section may be proceeded with summarily.
- (3) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence. 35
- (4) **Section 220** contains a defence to a prosecution for an offence against this section.

- (5) A person who commits an offence against this section is liable,—
- (a) for a body corporate, to a fine not exceeding \$200,000:
 - (b) for an individual, to a fine not exceeding \$50,000.

206 Offence involving intentionally hindering or obstructing official 5

- (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 10
 - (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 **sub-paragraph (i) or (ii)**; or 15
 - (iv) a person employed by a recognised agency; or
 - (v) a recognised person; or
 - (vi) a person appointed under **section 327(2)**; and
 - (b) who is performing a function or duty, or exercising a power, under— 20
 - (i) a risk management tool; 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. 25
- (3) A prosecution for an offence against this section may be proceeded with summarily or on indictment.
- (4) A person who commits an offence against this section is liable,— 30
- (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. 35

207 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 5
 - (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 **sub-paragraph (i) or (ii)**; or 10
 - (iv) a person employed by a recognised agency; or
 - (v) a recognised person; or
 - (vi) a person appointed under **section 327(2)**; and
 - (b) who is performing a function or duty, or exercising a power, under— 15
 - (i) a risk management tool; or
 - (ii) an applicable requirement of this Act.
- (2) A prosecution for an offence against this section may be proceeded with summarily or on indictment.
- (3) A person who commits an offence against this section is liable,— 20
- (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 25
 - (ii) a fine not exceeding \$50,000.

208 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— 30
- (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 35
 - (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 prosecution for an offence against this section may be proceeded with summarily or on indictment.
- (3) A person who commits an offence against this section is liable,— 5
 - (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 10
 - (ii) a fine not exceeding \$50,000.

209 Offences involving publishing non-complying advertisement

- (1) A person commits an offence if both **subsections (2) and (3)** apply. 15
- (2) This subsection applies if the person publishes an advertisement that—
 - (a) does not comply with all applicable requirements of this Act relating to advertising or promoting food or food-related accessories; or 20
 - (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 25
 - (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 30
 - (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 35
 - (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 5
 - (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 10
 - (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. 15
- (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 20
 - (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) A prosecution for an offence against this section may be proceeded with summarily. 25
- (5) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (6) **Section 221** contains a defence to a prosecution for an offence against this section. 30
- (7) 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 a fine not exceeding \$50,000. 35

210 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 18**.
- (2) A person who is the operator of a food control plan commits an offence if the person breaches or fails to carry out a duty specified in **section 45(1)(a) to (g)**. 5
- (3) 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 77**.
- (4) A person who is an importer commits an offence if the person breaches or fails to carry out a duty under **section 101 or 102**. 10
- (5) A prosecution for an offence against this section may be proceeded with summarily.
- (6) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence. 15
- (7) **Section 220** contains a defence to a prosecution for an offence against this section.
- (8) A person who commits an offence against this section is liable,— 20
 - (a) for a body corporate, to a fine not exceeding \$200,000;
 - (b) for an individual, to a fine not exceeding \$50,000.

211 Offence involving breaching or failing to comply with suspension or direction, direction, or improvement notice 25

- (1) A person commits an offence if the person breaches or fails to comply with— 25
 - (a) a suspension imposed under **section 59 or 113**; or
 - (b) a direction given by the chief executive under any of **sections 246, 247, 249, and 250 to 254**; or 30
 - (c) a direction given by a food safety officer under any of **sections 266 to, 267, 268, and 269**; or
 - (ca) an improvement notice issued by a food safety officer under **section 267A**; or
 - (d) a requirement imposed by a food safety officer under any of **sections 267, 270, and 272**; or 35

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- (e) a direction given by a food safety officer executing a search warrant; or
 - (f) a requirement imposed by a food safety officer executing a search warrant.
 - (2) A prosecution for an offence against this section may be proceeded with summarily. 5
 - (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 220** contains a defence to a prosecution for an offence against this section. 10
 - (5) A person who commits an offence against this section is liable to a fine,—
 - (a) for a body corporate, not exceeding \$300,000:
 - (b) for an individual, not exceeding \$50,000. 15
- 212 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 239, 240, 305, 306, and 308**. 20
 - (2) A prosecution for an offence against this section may be proceeded with summarily.
 - (3) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence. 25
 - (4) **Section 220** contains a defence to a prosecution for an offence against this section.
 - (5) A person who commits an offence against this section is liable to a fine,—
 - (a) for a body corporate, not exceeding \$300,000: 30
 - (b) for an individual, not exceeding \$75,000.
- 213 Offence involving breaching or failing to comply with requirement**
- (1) A person commits an offence if the person breaches or fails to comply with an applicable requirement of this Act. 35

- (2) A prosecution for an offence against this section may be proceeded with summarily.
- (3) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence. 5
- (4) **Section 220** contains a defence to a prosecution for an offence against this section.
- (5) A person who commits an offence against this section is liable,—
 - (a) for a body corporate, to a fine not exceeding \$100,000: 10
 - (b) for an individual, to a fine not exceeding \$20,000.

Liability for offences

214 Liability of body corporate

- (1) This section applies when—
 - (a) a body corporate is charged with an offence against this Act; and 15
 - (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. 20

215 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: 25
 - (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. 30
- (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.

216 Liability of director or manager of body corporate

- (1) This section applies when a body corporate is convicted of 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— 5
 - (a) authorised, permitted, consented, or participated in the act or omission that constituted the offence; or
 - (b) knew, or could reasonably have expected to have known, that the offence was to be or was being committed and failed to take all practicable steps to prevent 10 or stop it.

217 Parties to offences

- (1) Section 66 of the Crimes Act 1961 applies to offences against this Act.
- (2) In addition, a person is a party to and guilty of an offence 15 against this Act who conspires with 1 or more other persons to commit an offence against this Act.
- (3) In addition, if a body corporate actually 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— 20
 - (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. 25
- (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 30
 - (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 35 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: 5
 - (c) a person who packaged the food:
 - (d) an employee or agent of a person referred to in any of **paragraphs (a) to (c)**.
 - (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. 10
- 218 Defences for liability arising under section 215, 216, or 217**
- (1) **Section 223** contains a defence to a prosecution in which liability arises under **section 215 or 216**. 15
 - (2) **Section 224** contains a defence to a prosecution in which liability arises under **section 217(6)**.

Laying information

- 219 Period within which information must be laid** 20
- (1) This section applies when an information is to be laid for an offence against this Act.
 - (2) The information must be laid within 4 years after the time when the matter of the information arose.
 - (3) Section 14 of the Summary Proceedings Act 1957 does not apply to the laying of an information for an offence against this Act. 25

Defences

- 220 Defence in prosecution for strict liability offence, except advertising offence** 30
- (1) This section applies in a prosecution for an offence against any of **sections 196, 198, 200, 202, 205, and 210 to 213**.
 - (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. 5

221 Defences in prosecution for advertising offence

- (1) This section applies in a prosecution for an offence against **section 209**. 10
- (2) The defendant has a defence if the defendant proves that—
 - (a) the advertisement was false or likely to deceive because of—
 - (i) the act or omission of another person; or
 - (ii) an accident; or 15
 - (iii) some other cause outside the defendant's control; and
 - (b) the defendant took all reasonable precautions and exercised due diligence to avoid the advertisement being false or likely to deceive. 20
- (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. 25
- (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 30
 - (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 35
 - (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.

222 Defences in prosecution for selling non-complying food

- (1) This section applies in a prosecution for an offence against any of **sections 192 to 205, 210, and 213.** 5
- (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 signed by or on behalf of the person from whom the defendant bought the food; and 10
 - (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) the defendant had no reason to suspect that the food did not conform to the statement or that the statement was not genuine; and 15
 - (d) when the defendant sold the food, it was in the same state 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 20
 - (b) the defendant could not reasonably have found out that selling the food would constitute the offence with which the defendant is charged. 25

223 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 215 or 216.**
- (2) The defendant has a defence if the defendant proves that the defendant took all reasonable steps to prevent the commission of— 30
 - (a) the particular offence; or
 - (b) all offences of the class committed.

224 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 217(4)**.
- (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. 5
- (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. 10
- (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. 15

225 Employees and agents have same defences

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The defences in **sections 220 to 224** 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. 25

226 Prosecutor to be notified of defences

- (1) The defences in **sections 220 to 224** are available only if the defendant—
 - (a) prepares a written notice for the prosecutor that complies with **subsection (2)**; and 30
 - (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. 35
- (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 224(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: 5
 - (ii) in any other case, the facts that support the defence. 10

Evidence

227 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. 15
- (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. 20
- (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.

228 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. 25
- (2) The document is one that—
 - (a) is an application, form, record, report, return, transaction, or other means of stating information; and 30
 - (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. 35

229 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 1996, Fisheries Act 1983, Fisheries Act 1996, Hazardous Substances and New Organisms Act 1996, Health Act 1956, or Wine Act 2003. 5
- (2) The evidence may be produced by way of—
 - (a) a certificate given by an employee of a recognised agency; or 10
 - (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 15
 - (e) some other means.
- (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. 20
- (4) A defendant who wants to challenge the admissibility of the evidence must do so—
 - (a) at least 15 working days before the hearing at which the prosecutor proposes to produce the evidence; or 25
 - (b) within another time that the court allows.

*Presumptions***230 Application of sections 231 to 234**

- (1) **Sections 231 to 234** apply in a prosecution for an offence against any of **sections 196, 198, 200, 202, 205, and 209 to 213**. 30
- (2) **Sections 231 and 232** do not apply in a prosecution for an offence against any of **sections 192 to 195, 197, 199, 201, 203, 204, and 206 to 208**. 35

- (3) **Sections 233 and 234** apply in a prosecution for an offence against any of **sections 192 to 195, 197, 199, 201, 203, 204, and 206 to 208**.

231 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. 5
- (2) The person who appears from a package's label to be the person who imported, produced, or processed and handled the food in the package is presumed to be the person who imported, produced, or processed and handled the food in the package until the contrary is proved. 10

232 Presumption as to possession for sale

- (1) This section applies when food is found at a place a person uses for— 15
- (a) the sale of food; or
 - (b) the holding of food for sale; or
 - (c) the storage of food for sale; or
 - (d) the display, merchandising, or transporting of food for sale. 20
- (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.

233 Presumption as to sample

- (1) This section applies to a sample of food— 25
- (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. 30
- (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.

234 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. 5
- (2) The information is presumed to have been sent by the person until the contrary is proved.

*Sentencing***235 Application of sections 236 to 240**

A court may make an order under any of **sections 236 to 240** in addition to, or instead of, a penalty that the court may impose under the relevant offence provision. 10

236 Order to pay amount because of commercial gain

- (1) This section applies to a person convicted of an offence against any of **sections 192 to 195, 198, 199, 201, 203, 204, and 209 to 213**. 15
- (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. 20
- (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. 25
- (5) The court must assess the value of a gain that is readily ascertainable. 30
- (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. 35

237 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 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. 5
- (3) An amount that the court orders to be paid under this section is recoverable in the same manner as a fine.

238 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. 10
- (2) Before making an order under this section, the court must give the following persons an opportunity to be heard: 15
 - (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— 20
 - (a) the following are forfeited to the Crown or to the territorial authority that brought the prosecution:
 - (i) all food or food-related accessories in relation to which the offence was committed that are in the possession of the person convicted: 25
 - (ii) all 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 25
 - (b) the food or food-related accessories must be disposed of as the chief executive or the territorial authority directs. 30
- (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. 35

- (6) The court may order relief from the forfeiture of all the food or food-related accessories or some of the food or food-related accessories if it is satisfied that it is in the interests of justice to do so.

239 Order to withdraw material 5

- (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. 10
- (2) The court may order the person to withdraw from use all advertisements, labels, or packages of the same kind until the problem that resulted in the conviction has been remedied.
- (3) The person must withdraw the advertisements, labels, or packages. 15

240 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. 20
- (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. 25
- (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. 30
- (4) The following provisions apply if the person wants a restriction order or prohibition order cancelled: 35
 (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
- (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. 10
- (6) The court must take into account—
 - (a) the nature of the offence of which the person was convicted; and 15
 - (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. 20
- (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. 25

241 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. 30
- (2) The Judge must apply the Sentencing Act 2002.
- (3) In addition, the Judge must have regard to the orders available under **sections 236 to 240**.
- (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: 35

- (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: 5
 - (d) whether the conduct constituting the offence did in fact harm a person:
 - (e) how serious the harm was that was done by the conduct constituting the offence: 10
 - (f) the defendant's safety and compliance record in trading in food or food-related accessories:
 - (g) whether the defendant—
 - (i) pleaded guilty:
 - (ii) apologised to those affected or to the public: 15
 - (iii) showed remorse for the offence:
 - (iv) showed remorse for any harm caused by the offence:
 - (v) co-operated in the investigation of the offence:
 - (vi) withdrew or recalled the relevant food or food-related accessory: 20
 - (vii) took remedial action to avoid committing offences against this Act in future:
 - (h) whether there were potential or actual implications for trade, including international trade. 25
- (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.
- 242 Fines or amounts to be paid to prosecuting territorial authority 30**
- (1) This section applies —
- (a) when a court imposes 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: 35

- (c) when a court orders the payment of an amount under **section 236** for an offence prosecuted by a territorial authority.
- (2) The court must order the payment of the fine or amount to the territorial authority. 5
- (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. 10
- (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 15
 - (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 20

Appointments by chief executive

243 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. 25
- (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. 30
- (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. 35

- (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 State Sector Act 1988 or the Government Superannuation Fund Act 1956 only because of the appointment. 5

244 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— 10
- (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 15
 - (d) states that the person may apply for a review of the decision under **section 325**.
- (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— 20
- (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 325**. 25
- (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 30

245 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: 35
 - (c) a recognised agency:

- (d) a recognised person:
 - (e) a territorial authority.
 - (2) The direction must be about how the person is to perform the person's functions or duties, or exercise the person's powers, under this Act. 5
 - (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. 10
- 246 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 270** or recalled under **section 252**; and 15
 - (b) carry out the disposal in the manner the chief executive specifies.
 - (2) All costs of the seizure and detention—
 - (a) must be paid by the importer before the disposal; and 20
 - (b) are recoverable from the importer as a debt due to the Crown.
 - (3) To avoid doubt, all costs of the disposal must be met by the importer at the importer's expense.
- 247 Give directions to restrict or stop movement in urgent cases** 25
- (1) The chief executive may give the directions described in **sub-section (2)** to anyone if the chief executive considers that there is an urgent need to impose controls to protect public health because he or she reasonably believes— 30
 - (a) the existence of a non-compliance with the applicable requirements of this Act that could pose a risk to public health; or
 - (b) the existence of a hazard or a source of contamination that may affect food or anything that may become food, 35 and could pose a risk to public health.

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- (2) The directions are—
- (a) to restrict or stop the movement of food:
 - (b) to restrict or stop the movement of any thing that is used, or represented for use, in or for the production, processing and handling, or sale of food: 5
 - (c) to restrict or stop the movement of anything that is enclosed with, attached to, in contact with, or contained in food.
- (3) The directions may be given in relation to all or any of the following: 10
- (a) areas:
 - (b) food-related accessories:
 - (c) food:
 - (d) anything that may become food:
 - (e) food businesses: 15
 - (f) food sectors:
 - (g) regions.
- 248 Persons to whom directions may be given under sections 249 to 254**
- (1) This section describes the persons to whom the chief executive may give directions under any of **sections 249 to 254**. 20
- (2) The chief executive may give a direction to all or any of the following persons, either individually or as a class:
- (a) a person who operates under a risk management tool:
 - (b) an exporter of food or food-related accessories: 25
 - (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.
- 249 Give general directions to operators and other persons required to comply with Act** 30
- (1) The chief executive may give a direction described in **subsection (2)** to the persons described in **section 248**.
- (2) The direction must be about the taking of preventative or corrective action in respect of food or food-related accessories 35 that the chief executive cannot be reasonably satisfied will

meet the applicable requirements of this Act if the action is not taken.

250 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 248**. 5
- (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 ~~new premises,~~ 10
~~new property,~~ 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,— 15
 - (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 20
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 25
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: 30
 - (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 35
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. 5
- (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: 10
 - (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: 15
 - (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. 20

251 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 248** if he or she reasonably suspects— 25
 - (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 be about imposing 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. 30
- (3) The controls may be imposed on all or any of the following: 35
 - (a) activities:
 - (b) areas:
 - (c) food-related accessories:

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- (d) conveyances:
 - (e) craft:
 - (f) food:
 - (g) any thing that may become food:
 - (h) food businesses: 5
 - (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. 10
- (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: 15
 - (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: 20
 - (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)**. 25
- (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— 30
- (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). 35
- (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 259** 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.
- 252 Give directions to recall food or food-related accessory**
- (1) The chief executive may give the directions described in **sub-section (3)** to the persons described in **section 248** 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 the chief executive reasonably believes is not safe or suitable;
 - (b) to recall a food-related accessory that the chief executive reasonably believes has contaminated food or caused food to be no longer safe or suitable;
 - (c) to recall a food-related accessory that the chief executive reasonably believes may contaminate food;
 - (d) to recall food or a food-related accessory that the chief executive reasonably believes 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. 5
 - (4) The directions may also specify any directions that may be given under **section 253**, 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— 10
 - (a) take any reasonable steps necessary to ensure control of the food or food-related accessory (including entry by food safety officers ~~into premises~~ 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. 15
 - (6) This section does not affect the chief executive's power to publish a statement under **section 257**.
- 253 Give directions to manage food or food-related accessory** 20
- (1) The chief executive may give the directions described in **sub-section (2)** to the persons described in **section 248** if the chief executive—
 - (a) suspends operations under a registered food control plan under **section 59**; or 25
 - (b) accepts a voluntary suspension of a registered food control plan under **section 61**; or
 - (c) cancels the registration of a food control plan under **section 64**; or
 - (d) removes a food business from the coverage of a registered food control plan under **section 67**; or 30
 - (e) accepts a surrender of registration of a registered food control plan under **section 68**; or
 - (f) suspends a registered importer's operations under **section 113**; or 35
 - (g) accepts a voluntary suspension under **section 115**; or
 - (h) reasonably believes that food or a food-related accessory that is already the subject of a direction under **sec-**

- tion 247 or 251** is not safe or suitable and further controls are required; or
- (i) recalls food or a food-related accessory under **section 252**.
- (2) The directions must be about doing any of the following to the food or food-related accessory: 5
- (a) classifying it:
 - (b) condemning it:
 - (c) destroying it:
 - (d) disposing of it: 10
 - (e) identifying it:
 - (f) processing and handling it:
 - (g) reclassifying it:
 - (h) relabelling it:
 - (i) re-exporting it: 15
 - (j) reprocessing it:
 - (k) regrading it:
 - (l) rectifying it:
 - (m) sampling it:
 - (n) storing it: 20
 - (o) transporting it:
 - (p) testing it:
 - (q) verifying it.
- 254 Give directions to publish statement**
- (1) The chief executive may give a direction described in **subsection (2)** to the persons described in **section 248**. 25
- (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: 30
- (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 all or any of the following: 35
- (a) who must publish the statement:
 - (b) where the statement must be published:
 - (c) the date on which the statement must be published.

255 Supplementary provisions about directions under sections 249 to 254

- (1) This section applies to a direction given by the chief executive under any of **sections 249 to 254**.
- (2) The direction is binding on— 5
 - (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. 10
- (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 15
 - (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. 20
- (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 25
 - (c) if the chief executive carries out the direction, the chief executive may recover the costs of carrying out the direction from the person to whom the direction was given. 30
- (6) The direction must—
 - (a) be in writing; or
 - (b) be confirmed in writing as soon as practicable after being given orally. 35
- (7) The direction continues in force until the earlier of the following occurs:
 - (a) the expiry date 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. 5
- (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 10 to whom the direction was given.

256 Service of directions under sections 249 to 254

- (1) This section also applies to a direction given by the chief executive under any of **sections 249 to 254**.
- (2) A direction addressed to a person is sufficiently served if it 15 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 20
 - (c) sent by fax or email to the person's 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 25 served if it is—
 - (a) served on each of the persons in the class in accordance with **subsection (2)**; or
 - (b) published in a daily newspaper or trade journal or in any other news media that, in the opinion of the chief 30 executive, will be most likely to bring the direction to the attention of the persons who belong to the class; or
 - (c) published 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 35 (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. 5
- (7) A direction served in accordance with **subsection (3)(b) or (c)** takes effect at the beginning of the day after the date on which the direction is published.

Statements by chief executive

257 Publish privileged statements 10

- (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: 15
 - (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 20
 - (iv) in classes of advertisements:
 - (c) about 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. 25
- (4) The chief executive must not delegate the power in this section.
- (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. 30

258 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 35

- (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 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. 5
- (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 10
 - (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— 15
 - (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 20
 - (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 25
 - (c) is safe and suitable.
- (6) The Crown, the chief executive, and the employees of the Ministry are not liable 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. 30

Approvals by chief executive

259 Approvals by chief executive

- (1) This section applies if a requirement of this Act requires any of the following to be used: 35
 - (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— 5
- (a) compounds:
 - (b) devices:
 - (c) documents:
 - (d) equipment:
 - (e) identification systems: 10
 - (f) laboratories:
 - (g) methodologies:
 - ~~(h) premises:~~
 - (h) places:
 - (i) sampling techniques: 15
 - (j) security devices:
 - (k) systems:
 - (l) techniques.
- (4) Before approving a document, material, or facility, the chief executive— 20
- (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 349**, if there are any such regulations. 25
- (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 30
 - (b) must take into account the criteria prescribed in regulations made under **section 351**, if there are any such regulations. 35
- (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 367**. 5
- (10) The notice must state—
- (a) any conditions subject to which the approval is given; and
 - (b) the date on which the approval ends. 10
- (11) Before an approval ends, the chief executive may issue a new notice under **section 367** 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 367**. 15
- (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. 20

Information collection by chief executive

260 Require production of information for purpose of determining 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. 25
- (2) The information referred to in **subsection (1)** is information about— 30
- (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.
- (3) The chief executive may— 35

-
- (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. 5
 - (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.
- 261 Require production of information if reasonable belief that requirement of this Act has been breached 10**
- (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 15
 - (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— 20
 - (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 25
 - (b) copy the information or require a food safety officer to copy the information.
 - (3) 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. 30
 - (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 35
 - had it in his or her possession when it was seized or ordered to be detained.

*Powers of verifiers***262 Verifiers' rights of access and certain verifier powers**

- (1) The operator of a food business that is operating under a risk management tool must provide a verifier with the following:
 - (a) reasonable access to the places covered by the risk management tool that is being verified; and 5
 - (b) reasonable access to the risk management tool; and
 - (c) reasonable access to information about the risk management tool; and
 - (d) reasonable access to documents that are required to be kept under the risk management tool; and 10
 - (e) reasonable access to food and to food-related accessories that are used in connection with the risk management tool or that ought to be used in connection with the risk management tool. 15
- (2) A verifier must do the following:
 - (a) give the operator reasonable notice of the verifier's intention to carry out the verification; and
 - (b) identify himself or herself on entry to the ~~premises~~ place and when asked at any time by any person at the ~~premises~~ place. 20
- (3) A verifier is not required to comply with **subsection (2)(a)** if giving notice would defeat the purpose of the particular visit.
- (4) A verifier may do 1 or both of the following if necessary for the purpose of the verification: 25
 - (a) open food-related accessories, such as containers and packages, used in connection with the risk management tool and verify their contents:
 - (b) identify or mark food and food-related accessories.
- (5) A verifier may ask an operator or another person for assistance in carrying out a verification. 30

*Powers and duties of food safety officers***263 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. 35

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- (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. 5
- (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. 10
- 264 Purposes of powers in sections 265 to 272 and 274 to 276**
- A food safety officer may exercise a power in any of **sections 265 to 272 and 274 to 276** 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: 15
 - (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: 20
 - (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.
- 265 Powers to facilitate entry, search, and seizure** 25
- (1) A food safety officer may use at a place any equipment the officer has taken into the place if the officer reasonably believes that its use is necessary.
- (2) An officer who exercises the power in **subsection (1)**—
- (a) must take all reasonable steps to ensure the equipment is— 30
 - (i) free from contamination; and
 - (ii) in good working order; and
 - (b) may extract any electricity from the place to operate the equipment that is reasonable in the circumstances for 35
 - the purpose of carrying out the entry and search.

266 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 5
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. 10
- (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.

267 Powers of examination ~~and~~ identification, and rectification, and associated detention powers 15

- (1) A food safety officer may examine every thing, process, or operation.
- (2) An officer may open containers, packages, and other things to inspect the contents if the officer reasonably believes that 20
they contain food or a food-related accessory, and may use any force that is reasonable for that purpose.
- (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,— 25
 - (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. 30
- (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 35
 - (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— 5
 - (a) is not safe and suitable; and
 - (b) does not comply with the applicable requirements of this Act.

267A 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. 10
- (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 15
 - (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 20
 - (d) the steps that the person could take to comply with the requirement; and
 - (e) the date by which the person must comply with the requirement; and 25
 - (f) the person's right, under **section 267B**, 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. 30
- (4) An improvement notice must be issued in accordance with **section 340**.
- (5) A person to whom an improvement notice is issued—
 - (a) may request the food safety officer to extend the date by which the person must comply with the applicable requirement of this Act; and 35
 - (b) must otherwise comply with the notice.

267B Review of improvement notice

- (1) A person to whom an improvement notice is issued under **section 267A** may apply to have it reviewed.
- (2) For the purposes of **subsection (1), sections 325(2) to (4), 326(1) and (3), 328, and 329** 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 324(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 328 and 329** 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 324(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 5
 - (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 10
 - (ii) the Ministry, if the issuing officer is employed or engaged by the chief executive.
- (5) Nothing in **section 328(4)** (as applied by **subsection (2) or (4)**) limits or affects the privilege against self-incrimination. 15

268 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. 20
- (2) An officer may buy food.
- (3) An officer who exercises the power in **subsection (2)** by buying food kept for retail sale in an unopened package must buy the whole package.
- (4) An officer may take a sample of food. 25
- (5) An officer who wants to exercise the power in **subsection (4)** by taking a sample of food that is in an unopened package must 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. 30
- (6) An officer may buy a food-related accessory.
- (7) An officer may take an example of a food-related accessory.
- (8) An officer may take a swab of a food-related accessory.
- (9) 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. 35

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- (10) 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. 5
- (11) An officer who exercises the powers in any of **subsections (2), (4), and (6) to (10)** 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 276**. 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 276**, the officer is not required to exercise the power. 10
- 269 Power to interrupt operations and give certain directions** 15
- (1) A food safety officer may interrupt, restrict, or prohibit the use of food or any 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. 20
- 270 Powers to seize, condemn, and require disposal or rectification**
- (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. 25
- (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. 30
- (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— 35
- (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. 5
- (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. 10
- (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 **subsec-** 15
tions (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— 20
- (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.
- 271 Power to restrict use of or close place** 25
- 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.
- 272 Other powers** 30
- (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 35
- (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.
- (3) An officer may exclude a particular person from all or part of a place. 5

273 Means of exercising powers in sections 265 to 272

- (1) This section applies to the powers in **sections 265 to 272**.
- (2) A food safety officer may exercise any of the powers if the officer enters a place, as described in **section 274**. 10
- (3) An officer may exercise any of the powers if the officer does not enter a place but is at a place.
- (4) An officer who intends to exercise a power at a place under **subsection (3)** must, unless **subsection (5)** applies,—
- (a) give the place's owner or occupier reasonable oral or written notice of the officer's intention; and 15
 - (b) be at the place at a reasonable time.
- (5) An officer is not required to comply with **subsection (4)**—
- (a) if the place is an authorised place that is owned or occupied by the Crown; or 20
 - (b) if giving notice, or being at the place at a reasonable time, would defeat the purpose of the exercise of the power.
- (6) An officer who intends to exercise a power at a place under **subsection (3)** must produce evidence of the officer's appointment— 25
- (a) to the first person who appears to be in charge of the place or part of the place; and
 - (b) subsequently, whenever the person who appears to be in charge of the place or part of the place reasonably requires the officer to do so. 30
- (7) An officer may exercise any of the powers by a telecommunication means if doing so is reasonable in the circumstances.
- (8) An officer who intends to exercise a power under **subsection (7)** must— 35
- (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. 5
 - (9) An officer may exercise any of the powers by an electronic means if doing so is reasonable in the circumstances.
 - (10) An officer who intends to exercise a power under **subsection (9)** must— 10
 - (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. 15
- 274 Powers to enter**
- (1) A food safety officer may enter a place without a search warrant or with a search warrant. 20
 - (2) An officer's power to enter without a search warrant is described in **section 275**.
 - (3) An officer's power to enter with a search warrant is described in **sections 289 to 298**. 25
- 275 Power to enter without search warrant**
- (1) A food safety officer may enter a place described in **subsection (2)** without a search warrant and may use any force that is reasonable for the purposes of entry and search.
 - (2) The places are— 30
 - (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: 35

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- (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: 5
 - (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: 10
 - (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: 15
 - (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 20
 - (iii) a food-related accessory is being traded in.
 - (3) An officer who intends to enter a place without a warrant must give the place's owner or occupier reasonable oral or written notice of the officer's intention, unless **subsection (6)** applies. 25
 - (4) The officer must enter at a reasonable time.
 - (5) The officer must produce evidence of the officer's appointment—
 - (a) to the first person who appears to be in charge of the place or part of the place when the officer enters the place; and 30
 - (b) subsequently, whenever the person who appears to be in charge of the place or part of the place reasonably requires the officer to do so.
 - (6) An officer is not required to give reasonable oral or written notice of the officer's intention to enter a place— 35
 - (a) if the place is an authorised place that is owned or occupied by the Crown; or

- (b) if giving notice would defeat the purpose of the exercise of the power.
 - (7) If the officer does not give notice because of **subsection (6)** and if the owner or occupier is not present when the food safety officer enters the place, the officer must put a written statement in a prominent location at the place. 5
 - (8) The statement must state—
 - (a) the officer's name; and
 - (b) the date and time of the entry; and
 - (c) the fact that the entry took place under this section; and 10
 - (d) the powers that were exercised while the officer was present at the place; and
 - (e) the address of the office where inquiries can be made.
- 276 Power to test samples of food or examples of food-related accessories** 15
- (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 268**; or
 - (b) from a member of the public who has complained about the food or food-related accessory. 20
 - (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— 25
 - (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,— 30
 - (a) must pay the costs of 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. 35

- 277 Duty to give notice of seizure and detention to owner or owner's agent if known and present**
- (1) **Subsection (2)** applies when—
- (a) a food safety officer intends to seize and detain food or a food-related accessory under **section 270**; and 5
 - (b) the food or food-related accessory is in the possession or use of the owner or the owner's agent at the time.
- (2) The officer must—
- (a) tell the owner or the owner's agent of the officer's intention before the seizure and detention; and 10
 - (b) give the owner or owner's agent an inventory of the food or food-related accessories seized and detained as soon as is reasonably practicable and within 7 working days after the seizure and detention.
- 278 Duty to give notice of seizure and detention to owner or owner's agent if known but not present** 15
- (1) **Subsection (2)** applies when—
- (a) a food safety officer seizes and detains food or a food-related accessory under **section 270**; and
 - (b) the owner of the food or food-related accessory or the owner's agent is not present at the time; and 20
 - (c) the name and address of the owner or the owner's agent are—
 - (i) on or attached to the food or food-related accessory; or 25
 - (ii) otherwise known to the officer; and
 - (d) the address is a place in New Zealand.
- (2) The officer must as soon as is reasonably practicable and within 7 working days after the seizure and detention—
- (a) give written notice of the seizure and detention to the owner or the owner's agent; and 30
 - (b) give the owner or owner's agent an inventory of the food or food-related accessories seized and detained.
- 279 Duty to give notice of seizure and detention if owner or owner's agent not known** 35
- (1) **Subsection (2)** applies when—

- (a) a food safety officer seizes and detains food or a food-related accessory under **section 270**; and
 - (b) the name and address of the owner or the owner's agent are not known to the officer.
- (2) The officer must leave at the place at which the seizure occurred— 5
 - (a) a written notice of the seizure and detention; and
 - (b) an inventory of the food or food-related accessories seized and detained.

280 Duties relating to imported consignments 10

- (1) If food or a food-related accessory seized and detained under **section 270** is still under the control of the Customs, the Ministry of Agriculture and Forestry, or the Ministry, the food safety officer must give written notice to the Customs, the Ministry of Agriculture and Forestry, or the Ministry. 15
- (2) The Customs, the Ministry of Agriculture and Forestry, or the Ministry must ensure that the food or food-related accessory is not released from the control of the Customs, or destroyed by the Customs, the Ministry of Agriculture and Forestry, or the Ministry, until the food safety officer has given his or her written consent. 20

281 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 270**.
- (2) The officer may decide that the food or food-related accessory must be detained at the place where the officer seized it. 25
- (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. 30
- (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. 35

- (6) The chief executive may waive the payment of all or any of the cost referred to in **subsection (4)** 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.

282 Exporting or returning imported food or food-related accessory that has been detained 5

- (1) If the chief executive does not give directions under **section 246** about imported food or an imported food-related accessory that a food safety officer seized and detained under **section 270**, the officer must offer the importer, subject to any conditions that the chief executive may impose (if any), the options of— 10
- (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: 15
- (a) the requirements of the place of origin or the destination markets of the imported food or imported food-related accessory: 20
 - (b) the reason for the seizure of the imported food or imported food-related accessory:
 - (c) New Zealand's international obligations.
- (3) All costs of the seizure, detention, and disposal— 25
- (a) must be paid by the importer before the disposal; and
 - (b) are recoverable from the importer as a debt due to the Crown.

283 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 270** when satisfied that— 30
- (a) the applicable requirements of this Act have been complied with; and
 - (b) the food or food-related accessory is safe and suitable; 35
- 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.

284 Application to District Court for return of seized food or food-related accessory 5

- (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 a District Court for an order described in **section 285**. 10
- (3) The application must—
 - (a) be made as an originating application; and
 - (b) be made within—
 - (i) 5 working days of the seizure and detention; or
 - (ii) 10 working days if **section 279** applies; and 15
 - (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 20
 - (e) be dealt with as an originating application; and
 - (f) be dealt with under the rules of procedure under the District Courts Act 1947, as modified by **paragraphs (a) to (e)**.

285 District Court may order return of seized food or food-related accessory 25

- (1) This section applies when a person applies to a District Court under **section 284**.
- (2) The court may order that—
 - (a) the seizure of the food or food-related accessory be dis- 30
allowed 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 35
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.

286 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 270**; and
 - (b) the officer cannot release the food or food-related accessory under **section 283**; 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 deten-

- tion, 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 of the seizure, detention, and disposal— 5
- (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. 10
- (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. 15
- 287 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. 20
- 288 Matters may be completed by different food safety officer**
- (1) An action initiated or taken under this Act by a food safety officer may be completed by another food safety officer. 25
- (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 30
- (b) revoke or withdraw it; or
- (c) vary it; or
- (d) revoke or vary any condition on or subject to which it was given.
- (3) This section does not apply to an infringement notice. 35

*Search warrants***289 What must be in application for search warrant**

- (1) An application for a search warrant must contain, in reasonable detail, the following information:
- (a) the applicant's name: 5
 - (b) a reference to this section:
 - (c) the grounds on which the application is made:
 - (d) the address or other description of the place proposed to be searched, which may be a dwellinghouse or marae:
 - (e) a description of the item or items believed to be at the place that are sought by the applicant: 10
 - (f) the period for which the warrant is sought:
 - (g) if the applicant wants to enter, inspect, and search the place on more than 1 occasion, the applicant's reasons:
 - (h) details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place or thing proposed to be searched and the result of the application. 15
- (2) The applicant must make reasonable inquiries within the agency in which the applicant is employed or engaged for the purpose of complying with **subsection (1)(h)**. 20

290 How application is made

- (1) An application for a search warrant is made to a District Court Judge, Community Magistrate, Justice of the Peace, or Registrar. 25
- (2) The application may be made in writing or orally.
- (3) If the application is made in writing,—
- (a) it may be sent to the issuing officer electronically; and
 - (b) the applicant must appear in person before the issuing officer; and 30
 - (c) the issuing officer may require the applicant to supply more information about the grounds on which the warrant is sought.
- (4) If the application is made orally, the applicant need not appear in person before the issuing officer. 35
- (5) An application may be made orally only if the issuing officer is satisfied that—

- (a) the delay that would be caused by requiring the applicant to appear in person would compromise the effectiveness of the search; and
- (b) the question of whether the warrant should be issued can be determined properly on the basis of a communication by the applicant orally of—
 - (i) the information required by **section 289(1)**; and
 - (ii) any further information about the grounds on which the warrant is sought that the issuing officer requires.
- (6) An issuing officer who allows an application to be made orally must record the grounds for the application as soon as practicable.

291 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) If the issuing officer is satisfied that more than 1 entry, inspection, and search is reasonably required for the purposes for which the warrant is issued, the issuing officer may allow more than 1 entry, inspection, and search.
- (4) The issuing officer may impose conditions on the exercise of the powers under the warrant. The conditions may include specifying the powers of a food safety officer that may be exercised in the execution of the warrant.

292 Form of search warrant

- (1) A search warrant must be directed to—
 - (a) a constable by name; or
 - (b) every constable; or

- (c) a food safety officer by name; or
- (d) every food safety officer.
- (2) Whomever the warrant is directed to, it may be executed by—
 - (a) any constable; or
 - (b) any food safety officer. 5
- (3) If the issuing officer allows more than 1 entry, inspection, and search under the warrant, the warrant must state that fact.
- (4) If the issuing officer imposes conditions on the exercise of the powers under the warrant, the warrant must state the conditions. 10
- (5) The warrant must be in the prescribed form.

293 Use of copy of search warrant

- (1) This section applies if it is not practicable for the person executing the warrant to have it in his or her possession when executing it. 15
- (2) The person may execute 1 of the following documents:
 - (a) an electronic copy of the warrant; or
 - (b) a copy of the warrant—
 - (i) made by the person at the direction of the issuing officer; and 20
 - (ii) endorsed to that effect by the issuing officer.
- (3) The document that the person executes under **subsection (2)** is deemed for all legal purposes to be the warrant.

294 Powers under search warrant

- (1) A search warrant authorises the constable or the food safety officer executing it to exercise all or any of the powers described in **subsections (2) to (8)**, subject to the following:
 - (a) the powers must be exercised in accordance with conditions imposed on them in the warrant, if there are any: 25
 - (b) a power exercised at a marae or a building associated with a marae must be exercised in a way that takes account of the kawa of the marae so far as practicable in the circumstances. 30
- (2) The constable or officer may enter, inspect, and search the place within 14 days after the date of the issue of the warrant at any time that is reasonable in the circumstances. The 35

place may be entered, inspected, and searched on more than 1 occasion, if the warrant states that more than 1 entry, inspection, and search is allowed, until the execution of the warrant is completed.

- (3) The constable or officer may use the force that is reasonable 5
in the circumstances for—
 - (a) entering the place; and
 - (b) breaking open anything at the place.
- (4) The constable or officer may search for, inspect, and seize food 10
or a food-related accessory that the constable or officer reasonably suspects—
 - (a) has been used in the commission of an offence against this Act; or
 - (b) is being used in the commission of an offence against this Act; or 15
 - (c) is to be used in the commission of an offence against this Act; or
 - (d) is evidence of the commission of an offence against this Act; or
 - (e) has been the subject of a direction to recall food or 20
a food-related accessory given by the chief executive under **section 252** that has not been complied with.
- (5) The constable or officer may search for, inspect, and seize 25
or make electronic copies of documents or information at the place that the constable or officer reasonably suspects may provide evidence of the commission of an offence against this Act.
- (6) The constable or officer may make a photographic or an electronic record of food or a food-related accessory or the place 30
that the constable or officer reasonably suspects may provide evidence of the commission of an offence against this Act.
- (7) The constable or officer may exercise—
 - (a) all the powers of a food safety officer under any of **sections 265 to 272 and 276**; or
 - (b) the powers of a food safety officer specified in the warrant. 35
- (8) The constable or officer may—
 - (a) take equipment into the place and use it there;
 - (b) use equipment found at the place:

- (c) use the place's electricity supply to operate equipment.

295 Persons assisting execution of search warrant

- (1) A constable or a food safety officer executing a search warrant may request assistance from any person.
- (2) The person— 5
 - (a) has the powers described in **section 294**; and
 - (b) must exercise them under the supervision of, and as instructed by, the constable or food safety officer.
- (3) The person is protected from civil and criminal liability for an act that the person does or omits to do— 10
 - (a) under the supervision of, and as instructed by the constable or food safety officer; and
 - (b) in good faith.

296 Duty to produce information when executing search warrant

- (1) A constable or food safety officer executing a search warrant must comply with the duties described in **subsection (2)** at the times described in **subsection (3)**, unless **subsection (4)** applies. 15
- (2) The duties are to produce the following documents: 20
 - (a) the warrant; and
 - (b) evidence of his or her identity.
- (3) The constable or officer must produce the documents—
 - (a) to the first person who appears to be in charge of the place or part of the place when the constable or officer enters the place; and 25
 - (b) subsequently, whenever the person who appears to be in charge of the place or part of the place reasonably requires the constable or officer to do so.
- (4) A constable or officer executing a warrant is not required to comply with **subsections (2) and (3)** if the constable or officer reasonably believes— 30
 - (a) that no one is lawfully present in the place to be searched; or
 - (b) that compliance would prejudice the successful execution of the warrant. 35

297 When execution of search warrant completed

The execution of a search warrant is completed when the constable or food safety officer executing the warrant—

- (a) has seized all the items specified in the warrant; or
- (b) leaves the place being searched and does not return within 4 hours. 5

298 Duty to leave information after executing search warrant

- (1) **Subsection (2)** applies if the occupier of a place specified in a search warrant is not present when the warrant is executed.
- (2) The constable or the food safety officer executing the warrant must— 10
 - (a) make a written statement that states—
 - (i) the time and date of the execution of the warrant; and
 - (ii) the name of the constable or the food safety officer; and 15
 - (iii) the address of the office at which enquiries may be made; and
 - (b) put the statement in a prominent location at the place.
- (3) **Subsection (4)** applies if the constable or the food safety officer executing a search warrant seizes anything. 20
- (4) The constable or food safety officer executing the warrant must—
 - (a) make a written statement that lists all things seized; and
 - (b) include information in the statement on whether the person from whom a thing was seized or the owner of the thing may— 25
 - (i) have access to the thing; or
 - (ii) have access to the information that led to the seizure; and 30
 - (c) include information in the statement on how to claim that privileged or confidential information has been seized; and
 - (d) do 1 of the following with the statement:
 - (i) if the constable or officer is satisfied that none of the items seized are owned by the occupier, put the statement in a prominent location at the place: 35

- (ii) if the constable or officer is not satisfied that none of the items seized are owned by the occupier, ensure that the occupier receives the statement within 10 working days after the completion of the execution of the warrant.

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299 Disposal of property seized under search warrant

- (1) Section 199 of the Summary Proceedings Act 1957 applies with any necessary modifications to property seized under a search warrant—

- (a) by a constable; or

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- (b) by a food safety officer.

- (2) **Subsection (1)** is modified by **subsections (3) to (8)**.

- (3) If a constable seized the property, the Commissioner of Police may retain the property pending the prosecution of the person for the offence in relation to which it was seized or may deliver it into the custody of the chief executive or the territorial authority.

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- (4) If a food safety officer seized the property, the chief executive or territorial authority may retain it pending the prosecution of the person for the offence in relation to which it was seized.

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- (5) If a person is convicted of an offence to which the property relates, the court may exercise the power in **section 238**.

- (6) If the property is unsafe, perishable, or of low value, the chief executive or the territorial authority may dispose of it.

- (7) The property must be returned to the person from whom it was seized if—

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- (a) the prosecution and any appeals for the offence to which it relates are completed; and

- (b) the court does not make an order under **section 238**; and

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- (c) the property has not been disposed of under **subsection (6)**.

- (8) If a person applies to the court under section 199 of the Summary Proceedings Act 1957, the court must take into account whether or not the property is safe or suitable.

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300 Retention of documents

- (1) A copy of every written application for a search warrant or the issuing officer's written record of an oral application for a search warrant must be retained at the District Court at which the application was made or at the District Court closest to the place at which the application was made. 5
- (2) **Subsection (1)** applies until,—
 - (a) if a warrant was issued, the completion of any proceedings in which the validity of the warrant may be in issue:
 - (b) if a warrant was not issued, the end of 2 years from the date on which the application was made. 10
- (3) An applicant to whom a search warrant is issued must retain the warrant, a copy of the application if it was in writing, and all written information tendered by the applicant in support of the application. 15
- (4) **Subsection (3)** applies until,—
 - (a) if the warrant was executed, the completion of any proceedings in which the validity of the warrant may be in issue:
 - (b) if the warrant was not issued, the destruction or transfer of the documents is required by the Public Records Act 2005 or any other enactment or rule of law. 20

*Compliance orders***301 Meaning of compliance order**

- (1) In **sections 302 to 313**, **compliance order**— 25
 - (a) means an order made by a 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 308**. 30
- (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— 35
 - (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 5
 - (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. 10
- (6) For the purposes of **subsection (5)**, actual and reasonable costs and expenses include— 15
 - (a) the costs of investigation, supervision, and monitoring; and
 - (b) the costs of actions required to avoid, remedy, or mitigate the adverse effect.
- 302 Application for compliance order** 20
 - (1) The following may apply to a District Court for a compliance order:
 - (a) the chief executive; or
 - (b) a territorial authority, if authorised to do so by the chief executive. 25
 - (2) An application under this section—
 - (a) must be made by originating application; and
 - (b) is subject to the District Courts Rules 2009, as modified by—
 - (i) **sections 304 to 307**; and 30
 - (ii) rules made under **section 313**.
- 303 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. 35
 - (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 306**. 5

304 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. 10
- (2) Nothing in this section applies to an interim compliance order made under **section 306**.

305 Decision on application

- (1) The court may—
 - (a) make a compliance order; or 15
 - (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. 20
- (4) A compliance order takes effect when the later of the following occurs: 25
 - (a) the order is served; or
 - (b) a date stated in the order is reached.

306 Interim compliance orders

- (1) A District Court may make an interim compliance order without— 30
 - (a) requiring service under **section 303**; 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 258** is likely to be prejudiced if the order is not made; and 5
- (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. 10
- (4) The interim compliance order—
 - (a) takes effect when the later of the following occurs: 15
 - (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 308**. 20

307 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 25
- (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 30
- (e) the consequences of not complying with the order or lodging an appeal against the order; and
- (f) the right to apply under **section 308** for the order to be changed or cancelled, and the right to appeal against the order under **section 310**; and 35
- (g) the name and office address of the applicant.

308 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 a District Court to change or cancel the order. 5
- (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. 10
- (3) A person directly affected by a compliance order may apply to a 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 15
 - (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. 20
- (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 25
 - (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. 30
- (7) The court hearing an application under this section has the same powers under **section 305** as the court that heard the original compliance order had under that section.

309 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— 35

- (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. 5
- (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— 10
 - (a) exercise, or direct the exercise of, any of the powers of a food safety officer; and
 - (b) recover the costs and expenses of complying with the order as a debt due from the person against whom the order was made. 15

310 Appeals to High Court

- (1) This section applies to a decision of a District Court under **section 305, 306, or 308**.
- (2) The following persons may appeal to the High Court against the decision: 20
 - (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 and sections 74 to 78 of the District Courts Act 1947 apply to an appeal under **subsection (2)**— 25
 - (a) as if it were an appeal under section 72 of the District Courts Act 1947; and
 - (b) with all necessary modifications.

311 Appeals to Court of Appeal or Supreme Court

- (1) A party to an appeal under **section 310** 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. 30

- (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 14 of the Supreme Court Act 2003. 5

312 Effect of appeal

- (1) The operation of an order that is the subject of an appeal under **section 310 or 311** is not suspended by the appeal.
- (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. 10
- (3) **Subsections (1) and (2)** apply unless the court making the order appealed from directs otherwise.

313 Rules of court

- (1) The Governor-General may, by Order in Council, make rules— 15
 - (a) regulating the practice and procedure of District Courts in proceedings under this Act that relate to orders under **sections 305 to 308**;
 - (b) providing for matters contemplated by, or necessary for giving full effect to, the provisions of this Act that relate to orders under **sections 305 to 308**. 20
- (2) The power in **subsection (1)** is additional to all other powers conferred on the Governor-General by the District Courts Act 1947.

Part 5

25

Miscellaneous provisions

Subpart 1—Exemptions

Exemption from application of this Act generally

314 Exemption by Order in Council from application of this Act generally

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- (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 provisions re-
quirements 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: 5
 - (d) any combination of the things referred to in **paragraphs (a) to (c)**.
- (2) An exemption under this section may have retrospective effect. 10
- (3) This section is not limited by **section 95**.
Compare: 1999 No 93 s 9(1), (5)

315 When Minister may recommend exemption under section 314

Before recommending the making of regulations under **section 314**, the Minister must— 15

- (a) be satisfied that, taking into account the matter to be exempted, ~~either~~ 1 or more of the following applies:
 - (i) the risk to public health of providing the exemption is negligible; or 20
 - (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 25
- (b) take into account the following matters:
 - (i) the need to protect public health: 30
 - (ii) the desirability of maintaining consistency between food standards in regulations made under **section 346** and any relevant standards, requirements, or recommended practices that apply or are accepted internationally: 35
 - (iii) the relative costs of the exemption, who bears those costs, and the positive and negative effects on New Zealand consumers and food businesses:

- (iv) the most effective way of achieving the safety and suitability of food:
 - (v) 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 341**. 5
- Compare: 1999 No 93 s 9(2), (4)

Exemptions for certain exports

316 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: 10
 - (a) adopted joint food standards or domestic food standards for food intended for export to a destination other than Australia: 15
 - (b) regulations made under **section 346** for food intended for export to any destination:
 - (c) notices made under **section 367** for food intended for export to any destination. 20
- (2) An exemption under **subsection (1)** may be subject to any conditions specified in the regulations.
- (3) 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. 25

317 When Minister may recommend exemption under section 316

- Before recommending the making of regulations under **section 316**, the Minister must be satisfied that— 30
- (a) the exemption is necessary or desirable to facilitate access to an overseas market or to overseas markets; and
 - (b) if appropriate, the risks in relation to the safety and suitability of the food are managed by an applicable risk management programme under the Animal Prod- 35

ucts Act 1999 or any other applicable risk-based measure; and

- (c) there has been appropriate consultation on the regulations in accordance with **section 341**.

318 Exemption by chief executive 5

- (1) The chief executive may, by notice under **section 367**, 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 for food intended for export to a destination other than Australia: 10
 - (b) regulations made under **section 346** for food intended for export to any destination:
 - (c) notices made under **section 367** for food intended for export to any destination. 15
- (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) take into account the requirements of the overseas market or overseas markets to which the food is to be exported. 20
- (3) An exemption under **subsection (1)**—
 - (a) must be specific to a particular market or markets and to a particular food; and 25
 - (b) may be subject to any conditions that the chief executive may specify in the notice.

319 Relationship between section 318 and Animal Products Act 1999

- (1) **Section 318** cannot be used to exempt food that is also an animal material or animal product under the Animal Products Act 1999. 30
- (2) Nothing in **section 318** limits or affects the application of section 60B of the Animal Products Act 1999 to an animal material or animal product that is also a food. 35

*Other exemptions***320 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 5
 - (b) is covered by a regulated control scheme under that Act for the production and processing of an animal material or animal product that is also a food; or
 - (c) is exempt under section 9 or 14 of that Act from the need requirement to have a risk management programme for an animal material or animal product that is also a food unless the exemption is provided on the ground that the person is operating, or is required to operate, under a risk-based measure. 10 15
- (2) A person to whom this section applies is exempt from the requirement to operate under ~~a registered food control plan or a national programme~~ an applicable risk-based measure for the activities to which the risk management programme, regulated control scheme, or exemption relates. 20

321 Exemption for certain persons covered by Wine Act 2003

- (1) This section 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 25
 - (b) is exempt under section 6 or 11 of that Act or under regulations made under that Act from the need requirement to have a wine standards management plan for a wine that is also food unless the exemption is provided on the ground that the person is operating, or is required to operate, under a risk-based measure; or 30
 - (c) is in 1 or more classes of the following categories of persons:
 - (i) transporters of commodities or wine;
 - (ii) producers of commodities; 35
 - (iii) persons manufacturing wine products.
- (2) A person to whom this section applies is exempt from the requirement to operate under ~~a registered food control plan or a~~

~~national programme~~ the applicable risk-based measure for the activities to which the wine standards management plan or exemption relates.

Subpart 2—Immunity, delegation, and review provisions 5

Protection from civil and criminal liability

322 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: 10
 - (c) a member, an employee, or an agent of a territorial authority:
 - (d) a recognised agency:
 - (e) an employee or agent of a recognised agency:
 - (f) a recognised person: 15
 - (g) an employee or agent of a recognised person:
 - (h) a food safety officer:
 - (i) a person appointed to carry out a review under **section 325**.
- (2) The person is protected from civil and criminal liability for 20
 - any act that the person does or omits to do—
 - (a) under a requirement of this Act; or
 - (b) in the performance of the person's functions or duties, or the exercise of the person's powers, under a requirement of this Act— 25
 - (i) in good faith; and
 - (ii) with reasonable cause; or
 - (c) in the performance of the person's functions or duties, or the exercise of the person's powers, under this Act— 30
 - (i) in good faith; and
 - (ii) with reasonable cause.

Delegation

323 Chief executive may delegate

- (1) The chief executive may delegate under section 41 of the State Sector Act 1988 all or any of his or her functions, duties, and 35 powers under this Act.

- (2) **Subsection (1)** does not apply to the chief executive's powers in **sections 257 and 370**.

Review of decisions

324 Application of sections 325 to 330

- (1) **Sections 325(1), 326(1) and (2), 327, and 329** apply to 5
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 10
the chief executive.
- (2) The decisions are a decision to—
- (aa) refuse, under **section 24A**, to include a person's wine-
making operations under the person's registered food
control plan or under a national programme; or 15
 - (a) refuse to register an amendment to a food control plan
under **section 39**; or
 - (b) ~~refuse to include a person's secondary processing op-~~
~~erations under the person's registered food control plan~~
~~under **section 42**; or~~ 20
 - (c) ~~refuse to include a person's winemaking operations~~
~~under the person's registered food control plan under~~
~~**section 43**; or~~
 - (d) refuse to register a food control plan under **section 53**;
or 25
 - (e) impose conditions on the registration of a food control
plan under **section 56**; or
 - (ea) refuse to renew the registration of a food control plan in
accordance with **Part 2 of Schedule 4**; or
 - (f) suspend operations under a registered food control plan 30
under **section 59**; or
 - (g) extend, under **section 60**, the period of suspension of
operations under a registered food control plan; or
 - (h) cancel the registration of a food control plan under **sec-**
tion 64; or 35
 - (i) remove a food business from the coverage of a regis-
tered food control plan under **section 67**; or

-
- (ia) refuse to register a person as operating under a national programme in accordance with regulations made under **section 73**; or
 - (ib) refuse to renew the registration of a person operating under a national programme in accordance with regulations made under **section 73**; or 5
 - (ic) suspend operations under a national programme in accordance with regulations made under **section 73**; or
 - (id) cancel the registration of a person operating under a national programme in accordance with regulations made under **section 73**; or 10
 - (j) refuse to register a person as an importer under **section 108**; or
 - (k) suspend all or any specified part of a registered importer's operations under **section 113**; or 15
 - (l) cancel the registration of an importer under **section 118**; or
 - (m) refuse to grant recognition to an agency or a person under **section 132**; or
 - (n) suspend the recognition of a recognised agency or a recognised person under **section 138**; or 20
 - (o) withdraw the recognition of a recognised agency or a recognised person under **section 142**; or
 - (p) suspend or cancel a person's appointment as a food safety officer under **section 244**; or 25
 - (q) refuse to approve a document, material, or facility or a person or class of persons, or suspend or withdraw the approval under **section 259**.
 - (3) **Sections 325(2) to (4), 326(1) and (3), 328, 329, and 330** apply to decisions that— 30
 - (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 to register a food control plan under **section 53**; 35
 - or
 - (b) impose conditions on the registration of a food control plan under **section 56**; or

- (c) suspend operations under a registered food control plan under **section 59**; or
- (d) extend the period of suspension of operations under a registered food control plan under **section 60**; or
- (e) cancel the registration of a food control plan under **section 64**; or 5
- (f) remove a food business from the coverage of a registered food control plan under **section 67**; or
- (g) refuse to register a person as operating under a national programme in accordance with regulations made under **section 73**; or 10
- (h) refuse to renew the registration of a person operating under a national programme in accordance with regulations made under **section 73**; or
- (i) suspend operations under a national programme in accordance with regulations made under **section 73**; or 15
- (j) cancel the registration of a person operating under a national programme in accordance with regulations made under **section 73**.

325 Application for review 20

- (1) A person dissatisfied with a decision described in **section 324(2)** may apply to have it reviewed.
- (2) A person dissatisfied with a decision described in **section 324(4)** may apply to have it reviewed if— 25
 - (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 30
 - (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. 35
- (3) A request for the reconsideration of a decision described in **section 324(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. 5

326 Requirements for application for review

- (1) An application for a review must—
 - (a) be written; and 10
 - (b) state the grounds on which it is made.
- (2) For an application for a review in respect of a decision described in **section 324(2)**, the application must be provided to the chief executive within 20 working days after the applicant is notified of the decision. 15
- (3) For an application for a review in respect of a decision described in **section 324(4)**, the application must—
 - (a) state whether the applicant has requested the relevant territorial authority under **section 325(3)** to reconsider the decision and the outcome of that request; and 20
 - (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. 25

327 Procedure for review of decision by chief executive or chief executive's delegate

- (1) The reviewer of a decision described in **section 324(2)** must be,— 30
 - (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,— 35

- (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). 5
- (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 10
 - (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 15
 - (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. 20
- (5) The time limits specified in **subsection (3)** do not include—
 - (a) the time the applicant takes to supply information under **subsection (4)**; or 25
 - (b) the time allowed for the applicant to supply the information, if the applicant does not supply it.
- (6) The review is by way of a rehearing.
- (7) The reviewer may confirm, modify, or reverse all or some of the decision. 30
- (8) 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.

328 Procedure for review of decision by relevant territorial authority

- (1) The reviewer of a decision described in **section 324(4)** must be—
 - (a) the chief executive; or 5
 - (b) an employee of the Ministry who was not involved in making the decision 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 10
 - (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. 15
- (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. 20
- (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. 25
- (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. 30
- (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— 35
 - (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 325(3)**, to reconsider the decision of which a review is sought; and 5
 - (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 325(4)**; or
 - (ii) the relevant territorial authority had completed 10 the reconsideration of the decision within that time, but the applicant continued to be dissatisfied with the decision after the reconsideration.

329 Effect of review

- (1) The original decision described in **section 324(2) or (4)** is 15 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.
- ~~(3) The decision on the review is final until a court of law of competent jurisdiction determines otherwise.~~ 20

330 Reviewer may require payment of costs in review of decision by relevant territorial authority

- (1) The reviewer of a decision described in **section 324(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— 25
 - (a) the decision on the review is fully or partly against that party; and
 - (b) the reviewer considers that those costs and expenses 30 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 35 given may enforce that direction by filing it in the prescribed form (if any) in a 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. 5

330A 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 324(2) or (4)** in the relevant public register. 10

Appeals against review decisions

330B Appeal to District Court against review decision

- (1) A person may appeal to a District Court against—
 - (a) the outcome of a review of a decision described in **section 324(2) or (4)**; 15
 - (b) a requirement to pay costs and expenses under **section 330**.
- (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. 20
- (3) In considering an appeal,—
 - (a) a 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 25
 - (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 30
 - (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. 35

330C Procedure for appeal

- (1) An appeal under **section 330B** must, subject to that section, be made and determined in accordance with the District Courts Act 1947 and the District Courts Rules 2009.
- (2) The decision of the District Court on an appeal under **section 330B** is final unless **section 330D or 330E** applies. 5

*Further appeals***330D Appeal to High Court on question of law**

- (1) A party to an appeal under **section 330B** 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. 10
- (2) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under **subsection (1)** as if it were an appeal under section 72 of that Act. 15

330E 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 330B** may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court in the appeal. 20
- (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 14 of the Supreme Court Act 2003 (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). 25 30

330F Review decision to continue in force pending appeal

- (1) A review decision continues in force until an appeal under **section 330B, 330D, or 330E** 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 5

Collecting, keeping, and disclosing information

331 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. 10
- (2) The person must—
- (a) collect the information that regulations under **section 352** or notices under **section 367** require the person to collect; and
 - (b) keep the information for the period or periods that regulations under **section 352** prescribe or notices under **section 367** provide for; and 15
 - (c) keep the information in a secure place; and
 - (d) report on the information as required by regulations under **section 352**. 20

332 Disclosing information inside New Zealand: application of section 333

- (1) **Section 333** applies to—
- (a) the information described in **subsection (2)**; and
 - (b) the agencies described in **subsection (3)**; and 25
 - (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 1993; and 30
 - (b) information about a food business that includes, to avoid doubt, confidential information or commercially sensitive information, or both.

- (3) The agencies are those ~~administering~~ 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 5
 - (d) the Medicines Act 1981; or
 - (e) the Fisheries Act 1983; or
 - (f) the Fair Trading Act 1986; or
 - (g) the Immigration Act 1987; or
 - (ga) the New Zealand Horticulture Export Authority Act 1987; or 10
 - (h) the Education Act 1989; or
 - (i) the Sale of Liquor Act 1989; or
 - (ia) the Commodity Levies Act 1990; or
 - (j) the Resource Management Act 1991; or 15
 - (k) the Animal Identification Act 1993; or
 - (l) the Biosecurity Act 1993; or
 - (m) the Consumer Guarantees Act 1993; or
 - (n) the Customs and Excise Act 1996; or
 - (o) the Fisheries Act 1996; or 20
 - (p) the Hazardous Substances and New Organisms Act 1996; or
 - (q) the Agricultural Compounds and Veterinary Medicines Act 1997; or
 - (r) the Animal Products Act 1999; or 25
 - (s) the Animal Welfare Act 1999; or
 - (t) the Dairy Industry Restructuring Act 2001; or
 - (u) the Local Government Act 2002; or
 - (v) the Wine Act 2003; or
 - (w) any other Act enacted in substitution for any of the Acts 30
specified in **paragraphs (a) to (v)**; or
 - (x) any other Act that is declared by the Governor-General,
by Order in Council made under **section 356**, to be an
Act for the purposes of this subsection.
- (4) The persons are— 35
- (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: 5
- (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 strategies under the Biosecurity Act 1993: 10
- (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: 15
- (k) any other person who is declared by the Governor-General, by Order in Council made under **section 356**, to be a person for the purposes of this subsection.

333 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— 20
 - (a) **subsections (2) to (4)** are satisfied; and
 - (b) **subsection (5) or (6)** is satisfied, if it applies. 25
- (2) The disclosure must be of information supplied or obtained under or for the purposes of an enactment referred to in **section 332(3)**.
- (3) The disclosure must be necessary or desirable to promote any of the following: 30
 - (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 35
 - (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
 - (5) If the disclosure is to a person referred to in **section 332(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. 10
 - (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 15
 - (c) any conditions subject to which it was disclosed.
- 334 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— 20
 - (a) personal information, as defined in the Privacy Act 1993, 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. 25
 - (3) The disclosure may be made only if—
 - (a) **section 335** is satisfied; or
 - (b) **section 337** is satisfied.
- 335 Disclosing information outside New Zealand: under agreement** 30
- (1) The chief executive may disclose information under **section 334** under an agreement that is made between the chief executive and the overseas person.
 - (2) Before making an agreement, the chief executive— 35
 - (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. 5
- (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 10
 - (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 15
 - (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 20
 - (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 25
 - (ii) the method by which the information may be disclosed.

336 Variation and review of agreement

- (1) The chief executive may vary an agreement made under **section 335**. 30
- (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. 35

- (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. 5

337 Disclosing information outside New Zealand: urgent action required

- (1) The chief executive may disclose information under **section 334** if— 10
 - (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 15
 - (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— 20
 - (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 25
 - (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 30
 - (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— 35
 - (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.

*Notifying persons of information***338 Notification to Minister, chief executive, territorial authority, or food safety officer**

- (1) **Subsection (2)** applies when this Act requires information to be notified to— 5
 - (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— 10
 - (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— 15
 - (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— 20
 - (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. 25
- (6) The information may be notified to the food safety officer personally, by post, or by an electronic means.

339 Notification to other persons who assist in administration of Act 30

- (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— 35

-
- (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. 5
- (3) The office may notify the information—
- (a) to the person directly; or
- (b) to the person's employer.
- (4) If the office notifies the information to the person directly, it must also notify the information to the person's employer— 10
- (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. 15
- (5) 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 20
- (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 25
- (c) the person, or all the persons in the class, are treated as having received the information if the office gives it to the employer—
- (i) within 10 working days before the person, or persons, are required to act on it; or 30
- (ii) 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) For the purposes of this section, an employer includes— 35
- (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.

340 Notification to other persons 5

- (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 does not have 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. 15
- (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 or an operator subject to a national programme; or 20
 - (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 7 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.25
- (5) If a lawyer represents that he or she is authorised to accept a notice on behalf of a person, the person is treated as having been notified if—
 - (a) the notice is delivered to the lawyer; and
 - (b) the lawyer signs a statement that he or she accepts the notice on the person's behalf. 3035

*Consultation***341 Consultation: Minister's powers**

- (1) This section applies to—
- (aa) the Minister's power under **section 21** (power to amend Schedules 1 to 3 by Order in Council) to recommend the making of regulations: 5
 - (a) the Minister's power under **section 73** (regulations about national programmes) to recommend the making of regulations:
 - (b) the Minister's power under **section 88** (how monitoring programme may be imposed) to recommend the making of regulations: 10
 - (c) the Minister's power under **section 148** (Minister may issue national outcomes for territorial authorities) to issue national outcomes: 15
 - (d) the Minister's power under **section 174** (three-yearly review of cost recovery) to review cost recovery:
 - (e) the Minister's power under **section 175** (regulations may impose fees and changes) to recommend the making of regulations: 20
 - (f) the Minister's power under **section 177** (regulations may impose levies) to recommend the making of regulations:
 - (g) the Minister's power under **section 178** (regulations may provide for exemptions, waivers, and refunds) to recommend the making of regulations: 25
 - (h) the Minister's power under **section 315** (when Minister may recommend exemption under **section 314**) to recommend the making of an Order in Council:
 - (ha) the Minister's power under **section 346** (regulations about standards in relation to food) to recommend the making of regulations: 30
 - (hb) the Minister's power under **section 347A** (regulations relating to requirements for food control plans) to recommend the making of regulations: 35
 - (i) the Minister's power under **section 355(1)(a)** (regulations about definitions) to recommend the making of an Order in Council declaring anything to be food:

- (j) the Minister's power under **section 355(1)(b)** (regulations about definitions) to recommend the making of an Order in Council declaring a business to be or not to be a food business:
- (k) the Minister's power under **section 366(1)** (Minister may issue domestic food standards) to issue domestic food standards. 5
- (2) The chief executive must consult about a proposal to exercise the power.
- (3) The chief executive must adopt a consultation procedure that 10
 - (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 15
 - 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. 20
- (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 25
 - 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. 30
- (6A) 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.
- (7) A failure to comply with this section does not affect the validity of the document resulting from the Minister's exercise of the power. 35

- (8) This section does not apply to the Minister's power to issue an emergency notice under **section 370**.

342 Consultation: chief executive's powers

- (1) This section applies to the chief executive's power to issue notices under **section 367**. 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 10
 - (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 15
 - (c) giving interested persons a reasonable opportunity to make submissions; and
 - (d) considering the submissions adequately and appropriately. 20
- (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. 25
- (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. 25
- (6) A failure to comply with this section does not affect the validity of specifications or requirements set in the notice.
- (7) This section does not apply to the chief executive's power to issue emergency notices under **section 370**.

343 Consultation with Environmental Risk Management Authority 30

- (1) This section applies to—
- (a) the Minister's powers to recommend the making of regulations under any of **sections 346 to 357**;
 - (b) the chief executive's power to issue notices under **section 367**. 35

- (2) The person who proposes to exercise the power, whether the Minister or the chief executive, must, before exercising it, consult the Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996 about the content of a regulation or notice that relates to the appearance in food of a substance with toxic properties. 5

Subpart 4—Regulations

Regulations about core provisions

344 Regulations: what they can apply to and what they can do

- (1) This section applies to the powers to make regulations in **sections 346 to 354**. 10
- (2) The regulations may apply to all or any of the following:
- (a) actions:
 - (b) areas:
 - (c) food-related accessories: 15
 - (d) foods:
 - (e) food businesses:
 - (f) operations:
 - (g) persons:
 - (h) places: 20
 - (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: 25
- (a) impose conditions:
 - (b) impose prohibitions:
 - (c) impose requirements:
 - (d) impose restrictions. 30
- (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: 35
 - (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: 5
- (a) impose conditions:
 - (b) issue directions:
 - (c) issue instructions:
 - (d) impose prohibitions:
 - (e) impose requirements: 10
 - (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: 15
 - (c) food-related accessories:
 - (d) foods:
 - (e) food businesses:
 - (f) operations:
 - (g) persons: 20
 - (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: 25
- (a) actions:
 - (b) areas:
 - (c) food-related accessories:
 - (d) foods: 30
 - (e) food businesses:
 - (f) operations:
 - (g) persons:
 - (h) places:
 - (i) procedures. 35
- (8) The regulations may authorise the Minister, the chief executive, or a food safety officer to decide a matter.
- (9) The regulations may confer a discretion on the Minister, the chief executive, or a food safety officer.

~~(10) Regulations under this Act must not set a standard for food sold for export that is different from the standard set for food sold on the domestic market.~~

(10) This section must be read in conjunction with **sections 346 to 354.**

5

345 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 reason other than the fact that the regulations apply to it why the person must not sell it; and 10
- (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 15
 - (ii) the food was purchased before the commencement date for importation into New Zealand; and
- (c) since the commencement date no one has done an act that causes the food not to comply with the regulations.

346 Regulations about standards in relation to food 20

- (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. 25
- (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— 30
 - (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 35

- 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: 5
 - (b) the production of food: 5
 - (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: 10
 - (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: 15
 - (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. 20
- (4) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting food standards that specify the criteria that food-related accessories must meet to ensure that food is safe and suitable. 25
- (5) 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 30
 - (c) the desirability of maintaining consistency between the regulations 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 35
 - (e) any other matters that the Minister considers relevant.

- (6) Regulations made under this section must not set a standard for food sold for export that is different from the standard set for food sold on the domestic market.

347 Regulations about risk management tools and related matters

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- (1) ~~The Governor-General may, by Order in Council, make regulations relating to all or any of the following:~~

- (a) ~~food control plans;~~
 (b) ~~national programmes;~~
 (c) ~~monitoring programmes.~~

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- (2) 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: 15
 (b) the territorial authorities' role in registering food control plans:
 (c) the chief executive's role in registering food control plans:
 (d) the registration of food businesses operating under national programmes, including specifying who will be responsible for registering them. 20

348 Regulations about grading schemes

- (1) The Governor-General may, by Order in Council, make regulations setting up a grading scheme that— 25

- (a) has the purpose of improving, promoting, or protecting the safety or suitability of food; and
 (b) provides consumers with information about the level of a food business's compliance with the food safety regime. 30

- (2) The regulations may provide for all or any of the following matters:

- (a) the operation and administration of the grading scheme:
 (b) which food businesses are subject to the grading scheme: 35
 (c) how a food business subject to the grading scheme is assessed under it:

- (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: 5
- (fa) the review of a food business's assessment under the grading scheme, including the procedure to be followed in conducting the review:
- (g) the relationship between— 10
 - (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:
- (h) any other matters necessary to give full effect to the grading scheme. 15

349 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 259**. 20
- (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. 25
- (3) Before the Minister recommends that the Governor-General makes regulations under **subsection (2)**, the Minister must take the following matters into account: 30
 - (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: 35

- (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 build confidence in the food supply:
- (d) 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 avoid unacceptable adverse effects of free choice: 5
- (e) 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: 10
- (f) 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 provide for transparency and accountability: 15
- (g) 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. 20

350 Regulations about imported food

The Governor-General may, by Order in Council, make regulations setting out all or any of the following for imported food:

- (a) different categories based on criteria, descriptions, food groups, import passages, origins, risks, or types: 25
- (b) different treatment for different categories:
- (c) ~~criteria~~ requirements that the categories must comply with:
- (d) how the ~~criteria~~ requirements may or must be met:
- (e) when the ~~criteria~~ requirements must be met: 30
- (f) who is responsible for ensuring that the ~~criteria~~ requirements are met:
- (g) other matters related to ~~criteria~~ requirements:
- (h) sampling and testing requirements that must be complied with: 35
- (i) record-keeping requirements that must be complied with.

350A Regulations about verification functions in relation to importers

The Governor-General may, by Order in Council, make regulations prescribing verification requirements in relation to the operations of registered importers, including provisions that deal with the frequency, intensity, and cost of verification and that require a person to allow verifiers to a place for the purpose of carrying out verification functions. 5

351 Regulations about recognised agencies and recognised persons 10

(1) The Governor-General may, by Order in Council, make regulations setting out all or any of the following for recognised agencies:

- (a) standards that must be met by agencies wanting to become recognised agencies: 15
- (b) standards that must be met by recognised agencies wanting to continue to be recognised agencies:
- (c) requirements for the performance of recognised agencies:
- (d) requirements for the performance assessment of recognised agencies: 20
- (e) requirements for managing recognised agencies that are not properly carrying out the functions and activities they are recognised for:
- (f) kinds of processes, systems, and policies that recognised agencies must have: 25
- (g) operational requirements for recognised agencies on—
 - (i) record-keeping:
 - (ii) reporting (including the use of certain forms for reporting): 30
 - (iii) training:
 - (iv) verification methods:
 - (v) on-site visits:
 - (vi) the content and form of evaluation reports:
 - (vii) handling non-compliance: 35
 - (viii) documentation:
 - (ix) any other operational matter.

- (2) The Governor-General may, by Order in Council, make regulations setting out all or any of the following for recognised persons:
- (a) competencies, experience, and qualifications that persons wanting to become recognised persons must have: 5
 - (b) competencies, experience, and qualifications that persons wanting to continue to be recognised persons must continue to have:
 - (c) requirements for the performance of recognised persons: 10
 - (d) requirements for the performance assessment of recognised persons:
 - (e) requirements for managing recognised persons who are not properly carrying out the functions and activities they are recognised for: 15
 - (f) operational requirements for recognised persons on—
 - (i) record-keeping:
 - (ii) reporting (including the use of certain forms for reporting):
 - (iii) training: 20
 - (iv) verification methods:
 - (v) on-site visits:
 - (vi) the content and form of evaluation reports:
 - (vii) handling non-compliance:
 - (viii) documentation: 25
 - (ix) any other operational matter.

352 Regulations about information

- (1) The Governor-General may, by Order in Council, make regulations setting requirements for all or any of the following for a person or a class of persons: 30
- (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. 35
- (2) The Governor-General may, by Order in Council, 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.

353 Regulations about offences

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 5

- (a) stating which offences in this Act are infringement offences: 5
- (b) prescribing infringement notices, infringement reminder notices, and infringement forms of any other kind: 10
- (c) prescribing the amount, up to \$1,000, of an infringement fee that is payable for an infringement offence. 10

354 Regulations about administrative matters

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 15

- (a) prescribing forms, procedures, and certificates for the purpose of any applicable requirements of this Act: 15
- (b) imposing and setting fees, charges, levies, and other cost recovery mechanisms for the purposes of this Act. 20

Regulations about other matters

355 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 food for the purposes of this Act: 25
- (b) declaring a business to be or not to be a food business for the purposes of this Act. 20

- (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 341**. 30

356 Regulations for purposes of section 332

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 332(3)**: 5
- (b) declaring any person to be a person for the purposes of **section 332(4)**.

357 Regulations about other matters

The Governor-General may, by Order in Council, make regulations providing for any matters that are— 10

- (a) not covered by **sections 346 to 356**; and
- (b) contemplated by this Act, necessary for its administration, or necessary to give it full effect.

Subpart 5—Food standards

Adopted joint food standards 15**358 Purpose of sections 359 to 364**

The purpose of **sections 359 to 364** 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. 20

359 Minister may adopt joint food standards

- (1) The Minister may, by notice, adopt a joint food standard (**adopted joint food standard**) for food manufactured or prepared for sale or sold in New Zealand, or imported into New Zealand, if **subsections (2) and (3)** are complied with. 25
- (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: 30
 - (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 **sub-section (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). 5

360 Issue, notification, and availability of adopted joint food standards 10

- (1) A notice adopting a joint food standard under **section 359** must—
 - (a) be signed by the Minister; and
 - (b) show the date of its commencement.
- (2) If a notice adopting a joint food standard is issued,— 15
 - (a) the Minister must ensure that, as soon as practicable after the notice is issued, another notice is published in the *Gazette*—
 - (i) indicating that the joint food standard has been adopted; and 20
 - (ii) showing the place or places at which copies of the adopted joint food standard are available for inspection free of charge, or for buying, or both; and
 - (b) the chief executive must ensure that so long as the adopted joint food standard remains in force, the adopted joint food standard is available— 25
 - (i) for reading, free of charge, in a hard copy or in an electronic form; and
 - (ii) for buying by members of the public at a reasonable price; and 30
 - (iii) at the head office of the Ministry; and
 - (iv) at any other places that the chief executive decides.

361 Adopted joint food standard subject to disallowance

- (1) An adopted joint food standard is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989 but not for the Acts and Regulations Publication Act 1989.
- (2) An adopted joint food standard must be presented to the House of Representatives not later than 16 sitting days after the day on which the notice adopting the standard is issued. 5

362 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) **Sections 360 and 361** apply, subject to any necessary modifications, in respect of any amendment or revocation of an adopted joint food standard. 15

363 Minister must not delegate power to adopt joint food standards

Despite section 28 of the State Sector Act 1988, the Minister must not delegate to any other person the power under **section 359** to adopt joint food standards. 20

364 Proof of adopted joint food standards

- (1) A copy of any joint food standards that the Minister is purported to have adopted by notice under **section 359**, if produced in any proceedings, is sufficient evidence that those standards have been adopted under that section on the date shown in the copy. 25
- (2) In any proceedings,—
 - (a) any material incorporated in an adopted joint food standard by reference under **section 403** may be proved by production of a copy of that material certified as correct by the chief executive; and
 - (b) judicial notice must be taken of the chief executive's signature. 30 35

- (3) **Subsections (1) and (2)** do not affect any other method of proof.

Domestic food standards

365 Purpose of section 366

The purpose of **section 366** 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 Joint Food Standards Code and to be given the force of law in New Zealand only.

366 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 New Zealand, if—
- (a) the standards were 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 developing a joint standard; 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.
- (2A) 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 341**.

- (3) **Sections 360 to 364** apply, subject to any necessary modifications, in respect of a domestic food standard issued under **subsection (1)**.

Subpart 6—Notices

Notices

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367 Notices: content

- (1) The chief executive may issue notices setting specifications or requirements for the following general matters:
- (a) the form or manner of applications for registration as an importer: 10
 - (b) ~~matters that must be taken into account in developing food control plans:~~
 - (c) the information and other material to be included with an application for registration of a food control plan that is not, or is not fully, based on a an official template or model: 15
 - (d) waivers by the chief executive of the requirement for an independent evaluation report on the validity of food control plans:
 - (e) functions and activities that must be managed or performed by recognised agencies or recognised persons: 20
 - (f) the exercise and carrying out and managing of verification powers and functions:
 - (g) ~~the carrying out and managing of other specialist functions and activities:~~ 25
 - (h) the value to be attributed to a component of a formula that determines fees or charges.
- (2) The chief executive may issue notices setting specifications or requirements for the following specific matters:
- (a) the development of food control plans, for the purposes of **section 29**: 30
 - (b) food control plan templates or models, for the purposes of **section 32 or 33**:
 - (c) the contents of food control plans, for the purposes of **section 35**: 35
 - (d) ~~a period of time, for the purposes of **section 36(2)**:~~

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- (d) a period of time within which requirements specified in **section 36(2)** must be complied with:
 - (e) significant amendments to food control plans, for the purposes of **section 38**:
 - (f) a period of time, for the purposes of **section 46(1)**: 5
 - (g) a significant change in circumstances, for the purposes of **section 46(2)(b)(i)**:
 - (h) applications for the registration of food control plans, for the purposes of **section 49**:
 - (i) a significant change in circumstances, for the purposes of **section 54(2)(b)(i)**: 10
 - (j) circumstances that will not be treated as involving a change in operator, for the purposes of **section 58**:
 - (k) the imposition of national programmes, for the purposes of **section 72**: 15
 - (l) a significant change of circumstances, for the purposes of **section 78(2)(b)(i)**:
 - ~~(m) the scope of monitoring programmes, for the purposes of **section 87**:~~
 - (m) technical matters and specifications and matters of detail in relation to monitoring programmes, for the purposes of **section 87(e)**: 20
 - (n) the imposition of monitoring programmes, for the purposes of **section 88**:
 - (o) exemptions from the requirement to operate under a registered food control plan or national programme, for the purposes of **section 95**: 25
 - (p) a significant change in circumstances, for the purposes of **section 112(2)(b)**:
 - (q) specialist functions and activities, for the purposes of **section 126**: 30
 - (r) specialist functions and activities, for the purposes of **section 128(2)(d)**:
 - (s) performance criteria, for the purposes of **section 142(1)(c)**: 35
 - (t) the intervals between written reports and the details to be included in the reports, for the purposes of **section 147(f)**:

- (u) approving documents, materials, or facilities or persons or classes of persons, and suspending or withdrawing the approval of documents, materials, or facilities or persons or classes of persons, for the purposes of **section 259**: 5
- (v) exemptions for food that is to be exported, for the purposes of **section 318**:
- (w) collecting information, for the purposes of **section 331(2)(a)**:
- (x) keeping information, for the purposes of **section 331(2)(b)**: 10
- (y) particulars of the contents of the public registers, for the purposes of **clauses 4, 7, 10, and 13 of Schedule 5**.
- (3) The chief executive may issue a notice that requires an approved document, material, or facility to be used. Before doing so, the chief executive must take the following matters into account: 15
 - (a) whether it is necessary to require the use of an approved document, material, or facility to manage a risk to the safety or suitability of food: 20
 - (b) whether it is desirable to require the use of an approved document, material, or facility to maintain consistency in approaches, methodology, and technology:
 - (c) whether it is desirable to require the use of an approved document, material, or facility to build confidence in the food supply: 25
 - (d) whether it is desirable to require the use of an approved document, material, or facility to avoid unacceptable adverse effects of free choice:
 - (e) whether it is desirable to require the use of an approved document, material, or facility to make cost and efficiency gains: 30
 - (f) whether it is desirable to require the use of an approved document, material, or facility to provide for transparency and accountability: 35
 - (g) any other matters that the chief executive considers relevant to the question of whether an approved document, material, or facility must be used.

- (4) The chief executive may issue notices setting specifications or requirements for individual exemptions to be given from adopted joint food standards, domestic food standards, or regulations under any of **sections 346 to 357**, or notices under this section. The exemptions may be given to food intended for export from New Zealand to anywhere except Australia. The exemptions may be given on conditions, if necessary. 5
- (4) The chief executive may issue notices setting specifications or requirements for individual exemptions to be given from— 10
- (a) any regulations made under **section 314 or 316**; or
 - (b) any adopted joint food standards referred to in **section 359**; or
 - (c) any domestic food standards issued under **section 366**; or 15
 - (d) any regulations made under any of **sections 346 to 357**; or
 - (e) any notices issued under this section.
- (5) The chief executive may issue notices specifying— 20
- (a) which imported food category a particular food fits into for the purposes of regulations made under **section 350**; 25
 - (b) conditions and criteria that attach to a particular food fitting within or continuing to fit within a particular category: 25
 - (c) conditions and criteria that determine the basis for movement between particular categories: 25
 - (d) requirements for providing information about and monitoring imported food that will assist in determining the risk of an imported food or determining an imported food's categorisation. 30
- (6) The chief executive may issue notices setting specifications or requirements—
- (a) that are contemplated by this Act or its regulations; or
 - (b) that are necessary or desirable to give effect to this Act or its regulations; or 35
 - (c) that are necessary to amplify the manner in which the requirements of regulations under this Act must be met; or

- (d) that are desirable to amplify the manner in which the requirements of regulations under this Act may be met.

368 Notices: consultation

The chief executive must consult under ~~section 341~~ **section 342** before issuing a notice under **section 367**.

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369 Notices: publication

- (1) A notice under **section 367** must be published under this section.

- (2) **Subsection (3)** applies when—

- (a) a notice affects only 1 person or a small number of persons; and
- (b) the chief executive knows who the person or persons are.

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- (3) The chief executive must—

- (a) apply the relevant one of **sections 338 to 340** 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 website; or
 - (iii) tell them where they may buy a copy.

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- (4) **Subsections (5) to (7)** apply if **subsections (2) and (3)** do not apply.

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- (5) The chief executive must—

- (a) publish the notice in the *Gazette*; or
- (b) notify the making of the notice in the *Gazette*.

- (6) If the chief executive applies **subsection (5)(b)**, the chief executive must—

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- (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.

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- (7) In addition to applying **subsection (5)**, the chief executive may try to bring the notice to the attention of persons likely to be affected by it 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.
- (8) The chief executive must set a reasonable price for a notice sold under this section.

369A Certain notices subject to disallowance

- (1) A notice issued under **section 367(1)(e) or (f), (2)(w), (5), or (6)** is deemed to be a regulation for the purpose of the Regulations (Disallowance) Act 1989 but not for the Acts and Regulations Publication Act 1989. 10
- (2) A notice referred to in **subsection (1)** must be presented to the House of Representatives not later than 16 sitting days after the day on which the notice is issued. 15

370 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 367**.
- (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.

371 Notification and duration of emergency notice

- (1) This section applies when the Minister or chief executive issues an emergency notice under **section 370**. 5
- (2) As soon as practicable after issuing the notice, the Minister or chief executive must notify or publish the notice in the *Gazette*.
- (3) If the notice is only notified, not published, in the *Gazette*, the following provisions apply:
- (a) the chief executive must make copies of the notice available— 10
 - (i) for reading free of charge; and
 - (ii) for buying at a reasonable cost; and
 - (b) the chief executive must make the copies available— 15
 - (i) at the head office of the Ministry; and
 - (ii) at any other places that the chief executive determines necessary or appropriate; and
 - (c) the *Gazette* notice must specify where the copies of the notice may be read or bought.
- (4) In addition to notifying or publishing the notice in the *Gazette*, 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. 20
- (5) The notice takes effect on— 25
- (a) a day that—
 - (i) is later than the day it is notified or published in the *Gazette*; 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 30
 - (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 or notification in the *Gazette*, unless— 35
- (a) the Minister or chief executive revokes it earlier; or

- (b) the Minister or chief executive extends it by notice in the *Gazette* for 1 further period of up to 6 months.

372 Emergency notice prevails

- (1) If there is an inconsistency between an emergency notice under **section 370** and regulations under this Act, the emergency notice prevails. 5
- (2) If there is an inconsistency between an emergency notice under **section 370** and a notice under **section 369**, the emergency notice prevails.

Subpart 7—Transitional provisions

10

Preliminary

373 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. 15
- (2) On **1 July 2011**, this Act comes into force and the Food Act 1981 is repealed.
- (3) However, despite the repeal of the Food Act 1981, the Food Hygiene Regulations 1974 and the Food (Safety) Regulations 2002 continue in force until the end of this Act's introductory period, unless they are sooner revoked by regulations made under this Act. 20
- (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 **1 July 2011** 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. 25 30
- (5) A food business that is, or ought to have been, subject to the Food Hygiene Regulations 1974 immediately before **1 July** 35

2011 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 5
 - (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.
- (6) A food safety programme under the Food Act 1981 that is current immediately before **1 July 2011** 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. 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. 10 15
- (7) A food business that is not in existence immediately before **1 July 2011** and that only starts to operate on or after that date must operate under the applicable risk-based measure 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. 20 25
- (8) On **30 June 2016**, 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, unless an exemption under this Act applies to the food business. 30

374 Interpretation

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 35

deemed food control plan means a registered food safety programme that **section 389 or 390** deems to be a registered food control plan

occupier has the meaning given to it by regulation 2 of the Food Hygiene Regulations 1974

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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 Food Act 1981: 10
- (b) the Food Hygiene Regulations 1974:
- (c) 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 15
- (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. 20

375 Meaning of Act's introductory period

In this subpart, **Act's introductory period** means the period that—

- (a) starts on **1 July 2011**; and
- (b) ends on— 25
 - (i) **30 June 2016**; or
 - (ii) a later date specified in regulations made under **section 377**.

376 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. 30 35

- (2) An authorised transition period starts on **1 July 2011**.
- (3) An authorised transition period ends on the date specified for the food sector in regulations made under **section 378(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 **1 July 2011** and ends at the end of this Act's introductory period. 5

377 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. 10
- (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. 15

378 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: 20
 - (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: 25
 - (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: 30
 - (d) specifying any other steps that may be necessary.
- (2) Every food business in a food sector must comply with regulations made under this section or stop operating as a food business. 35

*Pre-commencement***379 Pre-commencement legislative requirements**

- (1) On **1 July 2011**, the Food Act 1981 is repealed and is replaced by this Act.
- (2) Despite **subsection (1)**, the Food Hygiene Regulations 1974 5 and the Food (Safety) Regulations 2002 continue in force until the end of this Act's introductory period, or until earlier revoked by regulations made under this Act.

380 Pre-commencement standards

- (1) A food standard that is issued under section 11C of the Food Act 1981, is not a prescribed food standard of the kind referred to in section 11P of the Food Act 1981, incorporates aspects of the Australia New Zealand Food Standards Code, and is in force on **1 July 2011** is treated as if it had been issued as an adopted joint food standard under this Act. 10 15
- (2) A food standard that is issued under section 11C of the Food Act 1981, is not a prescribed food standard of the kind referred to in section 11P of the Food Act 1981, does not incorporate aspects of the Australia New Zealand Food Standards Code, and is in force on **1 July 2011** is treated as if it had been issued as a domestic food standard under this Act. 20
- (3) A food standard that is issued under section 11C of the Food Act 1981, is a prescribed food standard of the kind referred to in section 11P of the Food Act 1981, and is in force on **1 July 2011** continues in force until the earlier of the following: 25
 - (a) the date on which it is revoked by regulations made under this Act:
 - (b) the date on which this Act's introductory period ends.
- (4) A food standard that is issued under section 11M of the Food Act 1981 and is in force on **1 July 2011** is treated as if it had been issued as an emergency notice under this Act. 30

381 Pre-commencement food

Food produced or processed and handled under the Food Act 1981 and in existence on **1 July 2011** is treated as equivalent to food at the comparable stage of production or processing and handling under this Act. 35

382 Pre-commencement consultation

Consultation carried out before **1 July 2011** about a matter requiring consultation under this Act is treated as consultation for the purposes of this Act.

383 Pre-commencement food safety officers

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- (1) This section applies to a person who, on **1 July 2011**, is entitled to perform all or any of the functions and duties, and is entitled to exercise all or any of the powers, that a person appointed as a food safety officer under this Act may perform or exercise.

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- (2) The person is a food safety officer for the purposes of this Act until the later of the following dates:

- (a) the end date of the appointment he or she held on **1 July 2011**;
(b) **30 December 2011**.

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384 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

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385 New legislative requirements

- (1) ~~On and after **1 July 2011**, a food business must comply with the applicable requirements of this Act unless it is otherwise exempt under a requirement of this Act.~~

- (1) A food business that is not in existence immediately before **1 July 2011**, and that only starts to operate on or after that date, must operate under the applicable risk-based measure 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.

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- (2) ~~Despite **subsection (1)**, a~~ A food business that is, or ought to have been, subject to the Food Hygiene Regulations 1974

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immediately before 1 July 2011 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 5
 - (c) choose to operate under a food control plan, if a food control plan is not the applicable risk-based measure.
- (3) **Sections 22 and 23** apply, as appropriate, for the purpose of determining the applicable risk-based measure under **subsection (2)(b)**. 10

386 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. 15
- (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. 20
- (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. 25
- (5) The chief executive may issue a notice specifying how inspections of food businesses in a territorial authority's district are to be carried out. 30
- (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 342** before issuing a notice under this section. 35

387 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. 5

388 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 on **30 June 2011** while it continues to operate. 10

Deemed food control plans

389 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 **1 July 2011**. 15
- (2) The registered food safety programme is deemed to be a registered food control plan until the date specified in **section 392**.
- (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 under **section 385**. 20
- (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 **1 July 2011** by the Food Act 1981 or by its food safety programme. 25
- (5) On and after **1 July 2011**, a food business may be exempted from the application of this Act by a requirement of this Act.

390 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, on **30 June 2011**, is waiting for the chief executive to determine it. 30

- (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 379** 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. 5
- (4) On and after **1 July 2011**, a food business may be exempted from the application of this Act by a requirement of this Act. 10

391 Deemed food control plans under sections 389 and 390

- (1) The chief executive is the appropriate registration authority for a deemed food control plan.
- (2) The chief executive may issue a notice imposing conditions on a deemed food control plan. If the chief executive does so, **section 56(2) and (3)** apply to the conditions as if they had been imposed under **section 56(1)**. 15
- (3) **Sections 36 to 40 and 58 to 69** apply to a deemed food control plan.

392 Duration of deemed food control plans under sections 389 and 390 20

- (1) A food control plan that is a deemed food control plan under **sections 389 and 390** 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 ~~and the food business concerned is operating under the applicable risk-based measure~~; 25
 - (b) the date on which the food business concerned starts to operate under a registered food control plan. 30
- (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 under **section 385**.

*Post-commencement status of food businesses
not previously covered by food legislation*

393 Food business now covered

- (1) This section applies to a food business that, on **30 June 2011**, is not covered by the Food Hygiene Regulations 1974 or the Food Act 1981 but, on **1 July 2011**, is covered by this Act. 5
- (2) The food business must operate under the applicable risk-based measure by the end of the authorised transition period for the food sector that the food business is in.
- (3) On and after **1 July 2011**, a food business may be exempted from the application of this Act by a requirement of this Act. 10

Post-commencement status of persons

394 Approved auditors under Food Act 1981

- (1) This section applies to a person who, on **30 June 2011**, has an approval under section 8ZV of the Food Act 1981. 15
- (2) The person is deemed to be a recognised person on and after **1 July 2011** until a date specified by the chief executive in a notice.
- (3) The chief executive may issue a subsequent notice extending the date. 20
- (4) A person to whom ~~a notice under~~ this section applies who wishes to be a recognised person must apply under **section 128**.

395 Agencies managing approved auditors under Food Act 1981

- (1) This section applies to an agency that, on **30 June 2011**, manages an approved auditor under the Food Act 1981. 25
- (2) The agency is deemed to be a recognised agency on and after **1 July 2011** until a date specified by the chief executive in a notice. 30
- (3) The chief executive may issue a subsequent notice extending the date.
- (4) ~~An agency to which a notice under this section applies that wishes to be a recognised agency must apply under section 126.~~ 35

- (4) The agency must apply under **section 126** if it wishes to be a recognised agency, unless **section 127** applies.

396 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. 5
- (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. 10
- (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. 15
- (4) A person to whom, or agency to which, a notice under this section applies must comply with it.

396A Importers listed for purposes of Food Act 1981 20

- (1) This section applies to a person who, on **30 June 2011**, 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 **1 July 2011** until a date specified by the chief executive in a notice. 25
- (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 104**. 30

Transitional regulations

397 Regulations about transitional matters

- (1) The Governor-General may, by Order in Council, make regulations providing for transitional matters to facilitate the coming into force of this Act. 35

- (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

398 Regulations about cost recovery

- (1) The Governor-General may, by Order in Council, make regulations setting charges for actions by the chief executive under this subpart. 10
- (2) The Governor-General may, by Order in Council, make regulations setting charges for other actions ~~by territorial authorities~~ under this subpart. 15
- (3) The Minister must consider the principles in **section 399** before recommending to the Governor-General the making of regulations under this section.

399 Principles for purposes of section 398(3)

- (1) The first principle is that the reasonable direct and indirect costs of administering this subpart, to the extent to which they are not met by the Crown, should be recovered. 20
- (2) The second principle is that those who benefit from the taking of an action under this subpart should pay a charge equivalent to the amount of benefit, but this principle must be modified by the principles in the following subsections. 25
- (3) The third principle is that a charge may be set at a level not determined by a strict apportionment of the direct and indirect costs of a particular action based on usage.
- (4) The fourth principle is that a charge may be set at a level that takes into account the direct and indirect costs of an action done for other persons as well as the person paying the charge. 30
- (5) The fifth principle is that a charge may be set at a level determined by calculations involving an averaging of potential direct and indirect costs. 35

- (6) The sixth principle is that direct and indirect costs should be allocated and recovered in such a way as to ensure that maximum benefits are delivered at minimum cost.
- (7) The seventh principle is that direct and indirect costs should be allocated as closely as is practicable to the period in which an action was taken. 5
- (8) The eighth principle is that no costs should be recovered unless there has been consultation with persons likely to be substantially affected. This principle does not apply if the content of the proposed regulations is substantially similar to the content of regulations in force under the Food Act 1981 on **30 June 2011**. 10

400 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. 15
- (2) **Section 341(2) to (7)** apply to the consultation.

Notice requirements

- 401 Requirements for notices issued by chief executive**
Sections 368 to 372 apply to the issuing of notices by the chief executive under this subpart. 20

Subpart 8—Miscellaneous

Public registers

- 402 Further provisions for public registers are in Schedule 5**
Further provisions relating to the public registers are in **Schedule 5**. 25

Incorporation by reference

- 403 Material incorporated by reference**
The following documents may incorporate material by reference under **Schedule 6**: 30
 - (a) regulations; and
 - (b) Orders in Council; and
 - (c) notices adopting joint food standards; and

- (d) notices approving domestic food standards; and
- (e) any other notices.

404 References to standard works

- (1) This section applies to the following documents under this Act: 5
 - (a) adopted joint food standards; and
 - (b) domestic food standards; and
 - (c) regulations; and
 - (d) Orders in Council; and
 - (e) notices. 10
- (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. 15
- (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 consult on its subject matter. Examples are the *Food Chemicals Codex* and the *Pharmaceutical Codex*. 20

Other enactments

405 Relationship with local authority bylaws

- (1) This section applies to the following documents: 25
 - (a) regulations; and
 - (b) Orders in Council; and
 - (c) notices.
- (2) If there is an inconsistency between a document specified in **subsection (1)** and a bylaw made under the Local Government Act 2002, the document prevails. 30
- (3) A council may not make a bylaw under the Local Government Act 2002 that purports to have the effect of imposing duties that are inconsistent with or stricter than or more lenient than those imposed by any of the documents specified in **subsection (1)**. 35

Consequential provisions

406 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 ss 3(7), 19 to 23, 25

Food sectors subject to food control plans

Part 1

Overview

Details of the food sectors subject to food control plans are provided 5
in **Part 2** of this schedule. **Sections 320 and 321** exempt certain
persons covered by the Animal Products Act 1999 and the Wine Act
2003 from the requirement to operate under a food control plan or a
national programme.

Examples are provided in **Part 2** of this schedule for the purpose of 10
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 15
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 **Part 4** of **Schedule 2**.

The following provides a summary of food sectors that are subject to 20
food control plans under this schedule:

- (a) food retail sector where food businesses prepare or manufac-
ture and sell food:
- (b) food service sector (except for those categories of food service
listed below as subject to other risk-based measures): 25
- (c) manufacturers of commercially sterilised food products:
- (d) manufacturers of dairy products:
- (e) manufacturers of dry mix powders:
- (f) manufacturers of food for vulnerable populations:
- (g) manufacturers of fresh ready-to-eat salads: 30
- (h) manufacturers of meals or meal components:
- (i) manufacturers of meat, poultry, or fish products:
- (j) manufacturers of non-shelf-stable sauces, spreads, dips, soups,
broths, gravies, or dressings:
- (k) manufacturers of perishable grain-based products: 35
- (l) manufacturers of processed egg products:
- (m) manufacturers of vegetable proteins or other protein products:
- (n) processors of herbs or spices:

- (o) processors of nuts or seeds.

Part 2

Food sectors subject to food control plans

Food retail sector where food businesses prepare or manufacture and sell food

5

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).

Products sold can be consumed immediately, but do not need to be. 10

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: 15
- 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. 20

What is excluded

This food sector excludes—

- bakeries that prepare or manufacture bread and bread-derived products only (subject to national programme level 2): 25
- food businesses covered by the food service sector (subject to food control plans):
- 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): 30
- other categories of retailers listed in **Schedules 2 and 3**:

Part 2—*continued*

- persons that are exempt from the requirement to have a food control plan under **sections 320 and 321**.

Food service sector*General description*

This food sector covers food businesses that prepare or manufacture 5
and serve meals, snacks, or beverages for consumers' immediate consumption—

- ~~on premises~~ at the place (for example, a restaurant or a hospital):
- on home delivery: 10
- 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 food businesses, 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. 15

Distinguishing features of food businesses in this food sector are that they— 20

- prepare or manufacture and serve food that is ready to eat ~~on the premises~~ 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. 25

Examples

Examples include but are not limited to—

- accommodation providers with a capacity for more than 10 guests:
- bars, cafes, and restaurants: 30
- food businesses that prepare or prepare and deliver pizza or other takeaway meals:
- corporate or commercial catering, including on a marae:

Part 2—*continued*

- hospitals, hospices, and other residential care facilities such as rest homes:
- providers of catering services, including at defence, prison, and educational facilities.

What is excluded

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This food sector excludes—

- childcare providers that undertake minimal food handling only (subject to food handler guidance):
- food provided to children as part of in-home childcare (included in the childcare providers—in-home sector and subject to food handler guidance): 10
- food service catering of a specified nature (subject to food handler guidance):
- food service provided to children under 5 years of age in a non-residential (day) care setting (subject to national programme level 2): 15
- food service provided by clubs (infrequent) (subject to food handler guidance):
- food service provided by small accommodation providers able to accommodate a maximum of 10 guests only (subject to food handler guidance): 20
- food service provided at annual events (subject to food handler guidance):
- retailers of food that do not have a service focus and are listed elsewhere in this schedule and in **Schedules 2 and 3**. 25

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. 30

Part 2—*continued**Examples*

Examples include but are not limited to food businesses that prepare or manufacture—

- commercially sterilised soups and stocks:
- low-acid canned foods. 5

What is excluded

This food sector excludes—

- food businesses that prepare or manufacture jams (included in the manufacturers of shelf-stable condiments sector and subject to national programme level 2): 10
- 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 320 and 321**. 15

Manufacturers of dairy products*General description*

This food sector covers food businesses that prepare or manufacture dairy products. It includes manufacturers of soft-serve powders.

Examples

20

Examples include but are not limited to food businesses that prepare or manufacture—

- cottage cheese:
- cream:
- ice cream: 25
- milk (pasteurised or ultra-heat-treated).

What is excluded

This food sector excludes—

- food businesses that prepare or manufacture dips (included in the manufacturers of non-shelf-stable sauces, spreads, dips, 30

Part 2—*continued*

soups, broths, gravies, or dressings sector and 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 have a food control plan under **sections 320 and 321**: 5
- retailers of soft-serve ice creams (included in the food service sector and subject to food control plans).

Manufacturers of dry mix powders

General description 10

This food sector covers food businesses that prepare or manufacture dry mix powder products, including powdered desserts, drinks, flavourings, food additives, soups, or sauces. Blending and packing that are incidental to other activities undertaken by these businesses must be covered in the food control plan. 15

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- cake mix:
- drinking chocolate: 20
- powdered soup:
- tea bags.

What is excluded

This food sector excludes—

- food businesses that prepare or manufacture dried egg powder (included in the manufacturers of processed egg products sector and subject to food control plans): 25
- food businesses that prepare or manufacture dry mix powders 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): 30

Part 2—*continued*

- food businesses that prepare or manufacture milk powder and milk powder-based products such as whey powder (included in the manufacturers of dairy products sector and subject to food control plans):
- persons that are exempt from the requirement to have a food control plan under **sections 320 and 321**: 5
- processors of herbs or spices (subject to food control plans).

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. 10

Vulnerable populations are—

- children under 5 years of age:
- people over 65 years of age: 15
- pregnant women:
- people with compromised immune systems.

Examples

Examples include but are not limited to food businesses that prepare or manufacture— 20

- baby foods:
- food for infants, for example, puree, rusks, baby cereals:
- infant formula products.

What is excluded

This food sector excludes— 25

- 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 30

Part 2—*continued*

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 320 and 321**.

Manufacturers of fresh ready-to-eat salads 5

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. 10

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- fruit salads: 15
- green salads:
- rice salads.

What is excluded

This food sector excludes food businesses that prepare and serve fresh salads for immediate consumption (included in the food service sector and subject to food control plans). 20

Manufacturers of meals or meal components

General description

This food sector covers food businesses that prepare or manufacture chilled or frozen meals or meal components that may or may not require reheating before consumption. A meal component is intended to cover a large array of frozen and chilled food products. 25

Part 2—*continued**Examples*

Examples include but are not limited to food businesses that prepare or manufacture—

- frozen or chilled ready meals or TV dinners:
- frozen or chilled pies: 5
- frozen chips and hash browns.

What is excluded

This food sector excludes—

- 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): 10
 - 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): 15
 - frozen fruit or vegetables (subject to national programme level 1):
 - ice or iced confectionery and desserts (included in the manufacturers of water-based products sector and subject to national programme level 2): 20
 - 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): 25
 - perishable grain-based products (subject to food control plans):
- persons that are exempt from the requirement to have a food control plan under **sections 320 and 321**. 30

Part 2—*continued***Manufacturers of meat, poultry, or fish products***General description*

This food sector covers food businesses that prepare or manufacture meat, poultry, or fish products that have been the subject of additional processing, such as smoking or fermentation after slaughter and dressing (poultry, pork, and red meat), or harvesting (fish). Products may be ready to eat or may require cooking before consumption. 5

Examples

Examples include but are not limited to food businesses that prepare or manufacture— 10

- bacon:
- formed products (for example, nuggets, fish fingers):
- salami:
- smoked fish or chicken.

What is excluded 15

This food sector excludes—

- persons that are exempt from the requirement to have a food control plan under **sections 320 and 321**:
- retail butchers and fishmongers (included in the food retail sector and subject to food control plans). 20

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. 25

Part 2—*continued**Examples*

Examples include but are not limited to food businesses that prepare or manufacture—

- hummus:
- mayonnaise: 5
- ready-to-eat custard sauce.

What is excluded

This food sector excludes—

- food businesses that prepare or manufacture—
 - dairy products (subject to food control plans): 10
 - 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): 15
- persons that are exempt from the requirement to have a food control plan under **sections 320 and 321**.

Manufacturers of perishable grain-based products*General description*

This food sector covers food businesses that prepare or manufacture 20
perishable (fresh and not shelf-stable) grain-based products.

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- cakes: 25
- pastry:
- pizza bases.

Part 2—*continued**What is excluded*

This food sector excludes—

- bakeries that prepare or manufacture bread or bread-derived 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): 5
- retail bakeries or on-site bakeries in supermarkets that prepare or manufacture a variety of perishable grain-based products (included in the food retail sector and subject to food control plans). 10

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. 15

Examples

Examples include but are not limited to food businesses that prepare or manufacture— 20

- dried egg:
- pasteurised egg pulp:
- frozen egg products.

What is excluded

This food sector excludes— 25

- 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:
- persons that are exempt from the requirement to have a food control plan under **sections 320 and 321**. 30

Part 2—*continued***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). 5

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- rice milk: 10
- soy milk:
- tofu:
- ultra-heat-treated products made from soybean proteins, such as ultra-heat-treated soy milk.

What is excluded 15

This food sector excludes 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): 20
- 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). 25

Processors of herbs or spices*General description*

This food sector covers food businesses that prepare, manufacture, or pack dried herbs or spices (whether ground or whole). The preparation or manufacture may involve taking steps such as grinding, blending, or drying. 30

Part 2—*continued**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 ~~repacked~~ repack them, for example, for retail sale. 5

What is excluded

This food sector excludes producers of fresh herbs or spices (included in the producers of horticultural food sector and subject to national programme level 1). 10

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— 15

- coating:
- roasting:
- salting:
- mixing with other foods commonly combined with nuts or seeds, such as raisins: 20
- forming into nut or seed bars.

Examples

Examples include but are not limited to food businesses that process and handle—

- salted peanuts: 25
- pumpkin, sesame, or sunflower seed products:
- roasted or ground coffee beans.

Part 2—*continued**What is excluded*

This food sector excludes—

- food businesses that grow and harvest and undertake only minimal processing of nuts or seeds (included in the producers of horticultural food sector and subject to national programme level 1): 5
 - 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): 10
 - 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):
 - producers of sprouted seeds (included in the producers of horticultural food sector and subject to national programme level 1). 15
-

Schedule 2 **ss 3(8), 19 to 23, 25**
**Food sectors subject to national
programmes**

Part 1

Overview 5

Details of the food sectors subject to national programmes are provided in **Parts 2 to 4** of this schedule. **Sections 320 and 321** exempt certain persons covered by the Animal Products Act 1999 and the Wine Act 2003 from the requirement to operate under a food control plan or a national programme. 10

Examples are provided in **Parts 2 to 4** 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. 15
20

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, or manufacturers of vinegar or alcoholic beverages Manufacturers of carbonated or uncarbonated 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 Manufacturers of fruit or vegetable beverages Processors of grain Retailers that handle food (but do not prepare or manufacture food)
National programme level 2	Bakeries that prepare or manufacture bread or bread-derived products only

National programme level	Food sector
	Food service: non-residential (day) care for children under 5 years
	Manufacturers of confectionery
	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, or preserves)
	Manufacturers of shelf-stable grain-based products
	Manufacturers of water-based products including ice, iced confectionery, and iced desserts
	Retailers of manufacturer-packaged chilled or frozen food (excluding ice cream and iced confectionery)
National programme level 1	Extractors and packers of honey
	Horticultural packing operations (packhouses)
	Manufacturers of frozen fruit or vegetables
	Manufacturers of sugar or related products
	Producers of horticultural food
	Retailers of hot beverages and shelf-stable manufacturer-packaged foods only
	Retailers of manufacturer-packaged ice cream or iced confectionery
	Transporters or distributors of food products

Part 2

Food sectors subject to national programme level 3

Brewers, distillers, and manufacturers of vinegar and alcoholic beverages

5

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.

Part 2—*continued**Examples*

Examples include but are not limited to brewers, distillers, or fermenters of—

- alcohol mixes:
- beer: 5
- grain vinegar:
- spirits.

What is excluded

This food sector excludes—

- manufacturers of shelf-stable condiments (subject to national programme level 2): 10
- persons that are exempt from the requirement to have a national programme under **sections 320 and 321**.

Manufacturers of carbonated or uncarbonated beverages

General description 15

This food sector covers food businesses that prepare or manufacture carbonated or non-carbonated beverages.

Examples

Examples include but are not limited to food businesses that prepare or manufacture— 20

- bottled water:
- cola beverages:
- energy drinks:
- sports beverages.

What is excluded 25

This food sector excludes—

- 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):

Part 2—*continued*

- 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):
- manufacturers of fruit or vegetable beverages (subject to national programme level 3). 5

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). 10

Examples

Examples include but are not limited to food businesses that prepare or manufacture— 15

- margarine:
- olive oil.

What is excluded

This food sector excludes—

- manufacturers of dairy products (subject to food control plans): 20
- 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): 25
- persons that are exempt from the requirement to have a national programme under **sections 320 and 321**.

Part 2—*continued***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 as ingredients. 5

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- food colourings: 10
- food processing aids:
- non-powdered vitamins or minerals intended to be added to food.

What is excluded

This food sector excludes— 15

- food businesses that prepare or manufacture food additives, processing aids, or vitamins, minerals, or other nutrients in powdered form (included in the manufacturers of dry mix powders sector and subject to food control plans):
- persons that are exempt from the requirement to operate under a national programme under **sections 320 and 321**. 20

Manufacturers of fruit or vegetable beverages*General description*

Covers food businesses that prepare or manufacture fruit or vegetable juices, nectars, concentrates, smoothies, or other fruit or vegetable beverages. Products may or may not be shelf-stable. 25

Examples

Examples include but are not limited to food businesses that prepare or manufacture—

- 100% orange juice (chilled): 30

Part 2—*continued*

- apple drink (shelf-stable):
- berry juice smoothie drink:
- tomato juice.

What is excluded

This food sector excludes food businesses that squeeze juice and serve this to consumers for immediate consumption, for example, at a juice bar (included in the food service sector and subject to food control plans). 5

Processors of grain

General description 10

This food sector covers food businesses that process grains for consumption or for inclusion in other food products (for example, as flour).

Examples

Examples include but are not limited to processors of— 15

- wheat:
- corn:
- rice.

Retailers that handle food (but do not prepare or manufacture food) 20

General description

This food sector covers retailers that handle food, for example, by defrosting or reheating food, rolling ice cream, or offering a pick-and-mix confectionery selection.

Distinguishing features of this food sector are that— 25

- no preparation or manufacturing of food is undertaken; but
- handling occurs, for example, defrosting, heating, or repackaging.

Part 2—*continued**Examples*

Examples include but are not limited to food businesses that meet the above general description and that may include—

- dairies:
- service stations. 5

What is excluded

This food sector excludes other categories of retailers listed in this schedule and in **Schedules 1 and 3**.

Part 3

Food sectors subject to national programme level 2 10

Bakeries that prepare or manufacture bread or bread-derived products only*General description*

This food sector covers food businesses that prepare or manufacture bread or bread-derived products for wholesale or direct retail sale to consumers. 15

Examples

Examples include but are not limited to food businesses that prepare or manufacture— 20

- bagels:
- pita bread:
- specialty breads (for example, white, raisin, rye, or soda).

What is excluded

This food sector excludes— 25

- 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):

Part 3—*continued*

- manufacturers of perishable grain-based products, other than bread (included in the manufacturers of perishable grain-based products sector and subject to food control plans).

Food service: non-residential (day) care for children under 5 years 5

General description

This food sector covers food businesses that prepare or manufacture and serve meals, snacks, or beverages for immediate consumption by children under 5 years of age in non-residential (day) care settings.

Examples 10

Examples include but are not limited to food businesses that prepare or manufacture and serve meals, snacks, or beverages to children under 5 years of age attending—

- crèches:
- kindergartens. 15

What is excluded

This food sector excludes—

- childcare providers that undertake minimal food handling only (subject to food handler guidance):
- 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): 20
- food provided to children as part of in-home childcare (included in the childcare providers—in-home sector and subject to food handler guidance): 25
- 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). 30

Part 3—*continued***Manufacturers of confectionery***General description*

This food sector covers food businesses that prepare or manufacture confectionery.

Examples

5

Examples include but are not limited to food businesses that prepare or manufacture—

- candy:
- carob:
- chocolate.

10

What is excluded

This food sector excludes food businesses that prepare or manufacture water-based or iced confectionery (included in the manufacturers of water-based products including ice, ice confectionery, and iced desserts sector and subject to national programme level 2).

15

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.

20

Examples

Examples include but are not limited to—

- cassava chips:
- curried peas:
- salted potato chips.

25

What is excluded

This food sector excludes—

- manufacturers of vegetable proteins or other protein products sector (subject to food control plans):

Part 3—*continued*

- processors of nuts or seeds (subject to food control plans).

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 is excluded

This food sector excludes—

- processors of herbs or spices (subject to food control plans):
- producers of horticultural food (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.

Part 3—*continued**Examples*

Examples include but are not limited to food businesses that prepare or manufacture—

- jams or preserves:
- nut butters (for example, peanut butter): 5
- pickles or relishes.

What is excluded

This food sector excludes—

- extractors and packers of honey (subject to national programme level 1): 10
- 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): 15
- persons that are exempt from the requirement to operate under a national programme under **sections 320 and 321**.

Manufacturers of shelf-stable grain-based products*General description* 20

This food sector covers food businesses that prepare or manufacture shelf-stable (including long shelf-life) grain-based products.

Examples

Examples include but are not limited to food businesses that prepare or manufacture— 25

- breakfast cereals:
- savoury or sweet biscuits.

Part 3—*continued**What is excluded*

This food sector excludes—

- manufacturers of perishable grain-based products (subject to food control plans):
- processors of grain, whether or not the end-product is a shelf-stable grain-based product (subject to national programme level 3): 5
- 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). 10

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 frozen or chilled desserts, iced confectionery, or novelties. 15

Examples

Examples include but are not limited to food businesses that prepare or manufacture— 20

- chilled jelly desserts:
- ice blocks:
- water-based sorbets.

What is excluded

This food sector excludes— 25

- manufacturers of confectionery (subject to national programme level 2):
- manufacturers of dairy-based desserts, for example, cheese-cake or custard (included in the manufacturers of dairy products sector and subject to food control plans): 30

Part 3—*continued*

- manufacturers of chilled or frozen desserts that are not ice or water-based or dairy-based (included in the manufacturers of meals or meal components sector and subject to food control plans).

**Retailers of manufacturer-packaged chilled or frozen food
(excluding ice cream and iced confectionery)** 5

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. 10

Examples

Examples include but are not limited to retailers that meet the above general description and sell products including— 15

- manufacturer-packaged milk or cheese:
- manufacturer-packaged frozen meals.

What is excluded

This food sector excludes other categories of retailers listed in this schedule and in **Schedules 1 and 3**. 20

Part 4

Food sectors subject to national programme
level 1

Extractors and packers of honey

General description 25

This food sector covers food businesses that extract and pack various honey and honey-based products.

Part 4—*continued**Examples*

Examples include but are not limited to food businesses that extract and pack—

- comb honey:
- honey with added fruit: 5
- honey with added pollen.

What is excluded

This food sector excludes—

- manufacturers of shelf-stable condiments (including spreads, sauces, or preserves) (subject to national programme level 2): 10
- 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 320 and 321**.

Horticultural packing operations (packhouses) 15*General description*

This food sector covers food businesses that pack horticultural food produce. It includes food businesses that sort, grade, and undertake pre-market preparation of horticultural produce. Produce in this context includes fruit, vegetables, herbs, spices, nuts, cereal grains, 20 seeds, fungi, grasses, or any components extracted or gathered from horticultural produce.

Example

An example includes but is not limited to apple packhouses.

What is excluded 25

This food sector excludes manufacturers of fresh ready-to-eat salads (subject to food control plans).

Part 4—*continued***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.

5

Examples

Examples include but are not limited to food businesses that process—

- free-flow frozen mixed berries:
- snap-frozen peas:
- stir-fry mixes.

10

What is excluded

This food sector excludes manufacturers of meals or meal components (subject to food control plans).

Manufacturers of sugar or related products

15

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—

- malt or molasses:
- raw sugar:
- syrups (glucose, flavoured).

20

What is excluded

25

This food sector excludes—

- extractors and packers of honey (subject to national programme level 1):

Part 4—*continued*

- 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).

Producers of horticultural food*General description* 5

This food sector covers food businesses that are horticultural producers (farmers or growers) of fruit, vegetables, herbs, spices, nuts, cereal grains, seeds, fungi, grasses, or any components extracted or gathered from horticultural produce. It includes food businesses that—

- grow, harvest, and minimally process (for example, rinse or wash produce following harvest):
- wholesale this produce.

Examples

Examples include but are not limited to producers of— 15

- kiwifruit:
- carrots:
- maize:
- legumes.

What is excluded 20

This food sector excludes—

- horticultural packing operations (subject to national programme level 1):
- horticultural producers that sell produce they have grown themselves directly to consumers (subject to food handler guidance): 25
- 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 1): 30

Part 4—*continued*

- manufacturers of fruit or vegetable beverages (subject to national programme level 3):
- processors of herbs or spices (subject to food control plans).

**Retailers of hot beverages and shelf-stable
manufacturer-packaged foods only** 5

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. 10

Examples

Examples include but are not limited to mobile or vehicle-based food businesses selling tea, coffee, or hot chocolate. 15

What is excluded

This food sector excludes—

- 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): 20
- other categories of retailers included in this schedule, and in **Schedules 1 and 3.**

**Retailers of manufacturer-packaged ice cream or iced
confectionery** 25

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. 30

Part 4—*continued*

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—

5

- manufacturer-packaged ice creams:
- manufacturer-packaged ice blocks:
- manufacturer-packaged frozen yoghurt.

What is excluded

This food sector excludes other categories of retailers in this schedule and in **Schedules 1 and 3**.

10

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.

15

Included in this food sector are businesses whose primary activities involve—

20

- 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.

25

Examples

Examples include but are not limited to—

- temperature-controlled transport:
- ambient transport (of shelf-stable food):
- cold storage:

30

Part 4—*continued*

- warehouses.

What is excluded

This food sector excludes—

- food businesses that undertake distribution, transportation, or storage of food that is incidental to an alternative primary activity: 5
 - persons that are exempt from the requirement to operate under a national programme under **sections 320 and 321**.
-

Schedule 3 **ss 3(9), 19 to 23, 25**
Food sectors subject to food handler
guidance

Part 1

Overview 5

Details of the food sectors subject to food handler guidance are provided in **Part 2** of this schedule.

Examples are provided in **Part 2** 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. 10

The following provides a summary of the food sectors that are subject to food handler guidance under this schedule:

- (a) childcare providers: in-home:
- (b) childcare providers that undertake minimal food handling only: 15
- ~~(c) food: other:~~
- (c) fishing vessel operators who supply food to crew:
- (d) ~~food service sector: trading: annual events only:~~
- (e) food service sector: catering of specified nature: 20
- (f) food service sector: clubs (infrequent), organisations, and societies (internal):
- (fa) food service sector: clubs, organisations, and societies (external):
- (g) food service sector: small accommodation providers: 25
- (h) horticultural producers: direct sales of own produce to consumers only:
- (i) retailers or direct sellers of shelf-stable, manufacturer-packaged food only.

Part 2

Food sectors subject to food handler
guidance**Childcare providers: in-home***General description*

5

This food sector covers food businesses and persons that care for children in residential or home settings and prepare or prepare and serve food to these children.

Example

An example includes but is not limited to persons who provide care or education services in their own homes.

10

What is excluded

This food sector excludes—

- childcare providers that undertake minimal food handling only (subject to food handler guidance): 15
- 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): 20
- 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): 25
- 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). 30

Part 2—*continued***Childcare providers that undertake minimal food handling only***General description*

This food sector covers providers and facilities that offer care to children where—

- only very limited food involving minimal handling (for example, biscuits or cut fruit), is served to children: 5
- the children eat food and beverages brought from their homes.

Examples

Examples include but are not limited to crèches where children eat food brought from home and very limited food provided by the crèche, for example, crackers, cut fruit, or biscuits. 10

What is excluded

This food sector excludes—

- 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): 15
- 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 of age sector and subject to national programme level 2): 20
- 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): 25
- childcare providers in residential or home settings (subject to food handler guidance). 30

Part 2—*continued***Food: other***General description*

This food sector covers organisers of any event involving the sale of food who are not, in any way, directly preparing, manufacturing or handling food themselves.

5

Examples

Examples include but are not limited to persons who—

- organise exhibitions, shows or festivals;
- run farmers' markets.

Fishing vessel operators who supply food to crew

10

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

15

An example includes but is not limited to food provided to the crew members of a fishing vessel.

Food service sector: trading: annual events ~~only~~*General description*

This food sector is limited to businesses or persons preparing, manufacturing, or serving food ~~only once a year~~ at an annual event.

20

Example

An example includes but is not limited to a family with a food stall at an annual cultural festival.

Food service sector: catering of specified nature

25

General description

This food sector covers very small-scale food catering and service activities in people's homes or in places where verification or en-

Part 2—*continued*

forcement 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.

5

Food service sector: clubs (infrequent), organisations, and societies (internal)

General description

This food sector covers limited food activities provided for members of clubs and visitors to clubs on special days (for example, match days), or otherwise infrequently.

10

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.

15

Examples

Examples include but are not limited to—

- a cricket club match tea:
- ~~a sausage sizzle outside a football club:~~
- a church or religious congregation preparing food and selling it to its members.

20

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.

25

Part 2—*continued*Example

An example includes but is not limited to a sausage sizzle at a match day.

What is excluded

This food sector excludes the provision of—

5

- 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.

10

Food service sector: small accommodation providers*General description*

~~This food sector covers accommodation providers that have the capacity to accommodate a maximum of only 10 guests per night and prepare or serve food to these guests only.~~

15

This food sector covers persons who manage or own a private dwelling, building, or facility and within that dwelling, building, or facility provide paid accommodation for up to 10 persons per night and prepare or serve food to those persons.

Example

20

An example includes but is not limited to small bed and breakfasts that accommodate 10 or fewer guests.

Horticultural producers: direct sales of own produce to consumers only*General description*

25

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.

30

Part 2—continued

Examples

Examples include but are not limited to—

- roadside stalls or ~~farmers' market stalls with~~ markets where food is sold by horticultural producers selling their own horticultural produce only: 5
- 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 is excluded

This food sector excludes 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 3~~ national programme level 1). 10

Retailers or direct sellers of shelf-stable, manufacturer pre-packaged food 15

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 20

Examples include but are not limited to retailers that meet the above general description and may include—

- convenience food stores:
- food stalls:
- video shops: 25
- businesses with vending machines.

What is excluded

This food sector excludes other categories of retailers listed in **Schedules 1 and 2.**

Schedule 4

**ss 3(10), 7(1), 57, 59
to 61, 64, 65, 67, 113
to 115, 118, 119, 138,
139, 142**

**Miscellaneous provisions relating to
registrations and recognition**

Part 1**Preliminary**

5

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— 10
 - (a) food control plans; and
 - (ab) persons operating under national programmes; and
 - (b) importers.
- (3) **Part 3** of this schedule contains provisions (including notice requirements) relating to the suspension of— 15
 - (a) the operations of—
 - (i) operators of registered food control plans; and
 - (ii) persons registered as operating under national programmes; and
 - (ii) registered importers; and 20
 - (b) the recognition of—
 - (i) recognised agencies; and
 - (ii) recognised persons.
- (4) **Part 4** of this schedule sets out the procedure for— 25
 - (a) the cancellation of the registration of—
 - (i) registered food control plans; and
 - (ia) persons registered as operating under national programmes; and
 - (ii) registered importers; and
 - (b) the withdrawal of the recognition of— 30
 - (i) recognised agencies; and
 - (ii) recognised persons.

2 Interpretation

In this schedule, unless the context otherwise requires,—

Part 1—*continued*

affected person means any of the following, as the case may require:

- (a) an operator of a registered food control plan:
- (ab) a person registered as operating under a national programme: 5
- (b) a registered importer:
- (c) a recognised agency:
- (d) a recognised person

proper authority means,—

- (a) for a food control plan, the registration authority (as defined in **section 7**); or 10
- (ab) for a national programme, the registration authority (as so defined); or
- (b) for an importer, the chief executive; or
- (c) for a recognised agency or recognised person, the chief executive 15

recognition means the recognition of an agency or a person under **subpart 1 of Part 4** of this Act

registration means either of the following, as the case may require: 20

- (a) the registration of a food control plan under **subpart 2 of Part 2** of this Act; or
- (b) the registration of an importer under **Part 3** of this Act.

Part 2

Renewal of registration 25

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 30
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 52** or in regulations made under **section 73** or, as the case may be, **section 107** are no longer being met. 35

Part 3

Suspension of operations or recognition

*Mandatory suspension***4 Notice requirements for mandatory suspension**

- (1) Before exercising the power to suspend all or any operations under **section 59 or 113** or in regulations made under **section 73** or, as the case may be, all or part of a recognition under **section 138**, 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 59 or 113** or in regulations made under **section 73** or, as the case may be, all or part of a recognition under **section 138**, the proper authority must give written notice of the suspension to the affected person and, as the case may be, the operator of any food business affected.
- (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) either of the following:
 - (i) for a suspension under **section 59 or 113** or in regulations made under **section 73**, the operations to which the suspension applies; or
 - (ii) for a suspension under **section 138**, the functions and activities that the suspension relates to; 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 325**.

Part 3—*continued***5 Notice requirements for extension of mandatory suspension**

- (1) Before exercising the power under **section 60 or 114** or in regulations made under **section 73** or, as the case may be, **section 139** 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 325**.

6 Additional requirements relating to mandatory suspension of operations under registered food control plan

- (1) This clause sets out additional requirements relating to the mandatory suspension of operations under a registered food control plan under **section 59**.
- (2) If the registration authority decides to suspend operations under a registered food control plan, the registration authority must, as soon as practicable, give written notice of the suspension to—
 - (a) the appropriate verifying agency; and
 - (b) if the registration 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 61 or 115** or under regulations made under **section 73**, the affected person must give written notice of the suspension to the proper authority.
- (2) The notice must specify—

Part 3—*continued*

- (a) the period of the suspension; and
- (b) the date on which or time at which the suspension commences.

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. 5
- (2) Without limiting **subclause (1)**, the information to be supplied may include information about any food held by the affected person. 10

*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 59, 61, 113, 115, and 138** or under regulations made under **section 73**. 15
- (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 59 or 61** may include conditions relating to the requirement for verification, including its frequency, duration, focus, and scope. 20
- (3) The proper authority may give any directions under **section 253** 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. 25
- (4) A condition or direction given under this clause takes effect on and from a date that the proper authority specifies.
- (5) The affected person must comply with a condition or direction given under this clause. 30

Part 4
Cancellation of registration or withdrawal
of recognition

- 10 Procedure for cancellation of registration or withdrawal of recognition** 5
- (1) The procedure for the cancellation of registration or the withdrawal of recognition is as follows:
- (a) the proper authority must give the affected person written notice of the proposal to cancel the registration or, as the case may be, withdraw the recognition; and 10
 - (b) the notice must—
 - (i) contain or be accompanied by a statement of the proper authority's reason for proposing the cancellation or, as the case may be, the withdrawal (including the facts and assumptions on which the proposal is based); and 15
 - (ii) state the date on which the proposed cancellation or withdrawal is to take effect; and
 - (c) the proper authority must give the affected person a reasonable opportunity to make written submissions; and 20
 - (d) the proper authority must then give the affected person written notice of—
 - (i) the decision on the proposal to cancel the registration or, as the case may be, withdraw the recognition; and 25
 - (ii) the reason for the decision on that proposal; and
 - (iii) if the decision is to cancel the registration or, as the case may be, withdraw the recognition, the date on which the cancellation or withdrawal takes effect. 30
- (2) The notice under **subclause (1)(d)** must also specify the affected person's right to seek a review under **section 325**.
- (3) The proper authority must record the cancellation of registration on the relevant public register as soon as practicable.

Part 4—*continued***11 Additional requirements relating to cancellation of registration of food control plan**

- (1) This clause sets out additional requirements relating to the cancellation of the registration of a food control plan.
 - (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 verifying agency; and
 - (ii) if the registration authority is the relevant territorial authority, the chief executive; and
 - (b) may notify the cancellation in the *Gazette*.
-

Schedule 5

ss 3(11), 7(1),
367(2)(y), 402

Public registers

Part 1

Preliminary

1	Overview	5
(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 and recognised persons.	10
(4)	Part 5 of this schedule contains provisions relating to the public register of importers.	
(4A)	<u>Part 5A of this schedule contains provisions relating to the public register of review decisions.</u>	15
(5)	Part 6 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	20
(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 sub-part 2 of Part 2 .	25
(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	30

Part 2—*continued*

- (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. 5

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 10
- (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 15

A public register of food control plans must contain all of the following information in relation to each registered food control plan:

- (a) the full name and business address (including the electronic address, if available) of— 20
 - (i) the owner of the food business; or
 - (ii) the person in control of the food business; or
 - (iii) the operator of the food control plan:
- (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 plan, as nominated by the person in control of the food business: 25
- (d) the date on which the plan was first registered, and the registration number or other unique identifier allocated to it: 30
- (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 current status of the plan:
- (h) the name of the registration authority: 35

Part 2—*continued*

- (i) any other particulars that may be prescribed in regulations or a notice under **section 367**.

Part 3

Public register of food businesses subject to national programme

5

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**.

10

- (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

15

- (b) to facilitate the ability of the chief executive and territorial authorities to achieve the safety and suitability of food; and

20

- (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

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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

30

- (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.

Part 3—*continued***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) any other particulars that may be prescribed in regulations or a notice under **section 367**.

Part 4

Public register of recognised agencies and
recognised persons

8 Requirement for, and purpose of, public register of recognised agencies and recognised persons

- (1) The chief executive must keep and maintain a public register of each agency or person recognised under **subpart 1 of Part 4** of this Act.
- (2) The purpose of the public register is to—
 - (a) enable members of the public, and particularly the operators of food control plans, to know who is recognised

Part 4—*continued*

to carry out particular functions and activities under this Act:

- (b) facilitate the compliance, audit, and other supporting and administrative functions of the Ministry under this Act. 5

9 Inspection of public register of recognised agencies and recognised persons

The chief executive must—

- (a) make the public register of recognised agencies and recognised persons available for public inspection, free of charge, at reasonable hours at the head office of the Ministry; and 10
- (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. 15

10 Contents of public register of recognised agencies and recognised persons

The public register of recognised agencies and recognised persons must contain all of the following information in relation to each recognised agency or recognised person: 20

- (a) the full name and business address (including the electronic address, if available) of the agency or, as the case may be, the person: 20
- (b) the functions and activities for which each recognition was granted or deemed to be granted: 25
- (c) the date recognition was granted and the date of its expiry (if applicable):
- (d) any other particulars that may be prescribed in regulations or a notice under **section 367**.

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. 5
- (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. 10

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 15
- (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. 20

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: 25
- (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: 30
- (d) any other particulars that may be prescribed in regulations or a notice under **section 367**.

Part 5A

Public register of review decisions

13A 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 324(2) or (4)**. 5
- (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. 10

13B 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 15
- (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.

13C Contents of public register of review decisions

The public register of review decisions— 20

- (a) may contain any details about a review decision that the chief executive considers appropriate;
- (b) must not contain information that might identify any individual who applied for a review;
- (c) must not specify the outcome of a review until— 25
- (i) the period specified in **section 330B(2)** for bringing an appeal has expired; or
- (ii) if an appeal under **section 330B, 330D, or 330E** is pending, the appeal has been determined. 30

Part 6

Supplementary provisions common to all
public registers**14 Form of, and access to, public registers**

- (1) A public register required to be kept under **clause 2, 5, 8, or 11** may be— 5
- (a) an electronic register; or
 - (b) kept in any other manner that the chief executive thinks fit.
- (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)**. 10
- (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. 15

15 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, or 11** if they are necessary to— 20
- (a) reflect any changes in the information referred to in **clause 4, 7, 10, or 13**; or
 - (b) correct a mistake caused by any error or omission on the part of the chief executive. 25

16 Certain personal information may be excluded from public registers

- Despite **clause 4, 7, 10, or 13**, the chief executive may omit or remove information about the business address of a person from a public register if— 30
- (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

Part 6—*continued*

unreasonable interference with the privacy of any individual.

Schedule 6**ss 3(12), 403****Material incorporated by reference****1 Interpretation**

In this schedule, —

material means written material that—

5

(a) is specified in this Act as being material that may be incorporated by reference; and

(b) is 1 or more of the following:

(i) a standard, requirement, or recommended practice of an international or a national organisation:

10

(ii) a standard, requirement, or recommended practice prescribed in any country or jurisdiction, or by any group of countries:

(iii) 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

15

specified document means any of the documents specified in **section 403**.**2 Incorporation of material by reference in specified documents**

20

(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.

25

(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 referenceAn amendment to, or a replacement of, material 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.

30

35

4 Amendments to, or replacement of, material incorporated by reference to be of same general character as original material

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.

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.

6 Effect of expiry of material incorporated by reference

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.

7 Requirement to consult on proposal to incorporate material by reference

(1) This section 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 5
 - (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 10
 - (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 15
 - (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— 20
 - (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 25
 - (ii) copies of the proposed material can be purchased and the places at which they can be purchased; and 30
 - (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 35
 - (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. 5
 - (4) The chief executive may comply with **subclause (2)(c)** by providing a hypertext 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. 10
 - (5) The references in **subclauses (2) and (3)** to the proposed material includes, 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. 15
 - (6) A failure to comply with this clause does not invalidate the specified document that incorporates material by reference.
- 8 Access to material incorporated by reference** 20
- (1) The chief executive must— 20
 - (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 25
 - (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 30
 - (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— 35

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- (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 5
 - (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. 10
 - (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 15
 - (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. 20
 - (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 proposed material that is available, free of charge, on an Internet site that is maintained by or on behalf of someone else. 25
 - (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: 30
 - (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. 35
 - (5) A failure to comply with this clause does not invalidate the specified document that incorporates material by reference.

9 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in a specified document or to an amendment to, or replacement of, that material.

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10 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

(1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in a specified document to be laid before the House of Representatives.

10

(2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of that Act made by **subclause (1)**, applies to regulations that incorporate material by reference.

15

Schedule 7**ss 3(13), 406****Consequential amendments and repeals,
repeals, and revocations****Part 1****Amendments to Acts and repeal of Acts** 5**Agricultural Compounds and Veterinary Medicines Act 1997
(1997 No 87)**

Section 55(3): omit “Food Act 1981” and substitute “Food Act **2010**”.

Section 79: omit and substitute: 10

“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: 15

“(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: 20

“(g) Animal Welfare Act 1999:

“(h) Food Act **2010**.”

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 **2010**”. 25

Definition of **Food Act regime** in section 4(1): repeal and substitute:

“**Food Act regime** means the regime under the Food Act **2010**”.

Definition of **food safety programme** in section 4(1): repeal. 30

Definition of **Food Standards Code** in section 4(1): repeal and substitute:

“**Food Standards Code** has the same meaning as joint food standard under the Food Act **2010**”.

Part 1—*continued***Animal Products Act 1999 (1999 No 93)**—*continued*

Section 4 (1): insert in ~~its~~ their appropriate alphabetical order:

“**monitoring programme** has the meaning given to it in the Food Act **2010**”

“**national programme** has the meaning given to it in the Food Act **2010**”.

5

Definition of **regulated animal product** in section 4(1): omit “Food Act 1981” and substitute “Food Act **2010**”.

Section 4(1): insert in its appropriate alphabetical order:

“**risk-based measure** has the meaning given to it in the Food Act **2010**.”

10

Section 7(3): omit “Food Act 1981” and substitute “Food Act **2010**”.

Section 12(5): omit “safety programme” and substitute “control plan”.

Section 13(2)(b): omit “safety programme” and substitute “control plan”.

15

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 **2010** or components of a national programme”.

20

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)”.

25

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.”

30

Part 1—*continued***Animal Products Act 1999 (1999 No 93)**—*continued*

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 5
- “(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.” 10

“(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 15
- “(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.” 20

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— 25
 - “(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 30
 - “(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 35

Part 1—*continued***Animal Products Act 1999 (1999 No 93)**—*continued*

“(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”. 5

Section 32(1): omit “Food Act 1981” and substitute “Food Act **2010**”. 10

Section 32(1): omit “a food safety programme or under the Food Hygiene Regulations 1974” and substitute “~~control plan~~ the applicable risk-based measure under the Food Act **2010**”.

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 **2010** and any relevant territorial authority (as defined in **section 7(1)** of the Food Act **2010**)”. 15

Section 33(2): omit “safety programme” and substitute “control plan”. 20

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”. 25

Section 34(3): omit “safety programme” and substitute “control plan”. 30

Section 34(3)(b): omit “the programme” and substitute “the plan”.

Section 34(3)(d): omit “Food Act 1981” and substitute “Food Act **2010**”. 35

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 **2010**”.

Section 34(4)(b): omit “audit or”. 35

Part 1—*continued***Animal Products Act 1999 (1999 No 93)**—*continued*

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 **2010**”. 5

Section 34(6)(d): omit “approved auditor under the Food Act 1981” and substitute “recognised person under the Food Act **2010**”.

Section 34(7): omit “safety programmes” and substitute “control plans”. 10

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 **2010**”.

Section 60B(1)(a): omit “Part 2A of the Food Act 1981” and substitute “the Food Act **2010**”. 15

Section 87(1)(a): omit “safety programme” and substitute “control plan”.

Section 100(4): omit “the Ministry, or any group of persons within the Ministry designated by the Director-General for the purpose,” and substitute “any department listed in Schedule 1 of the State Sector Act 1988 designated by the Director-General for the purpose”. 20

Section 101(4): omit “the Ministry” and substitute “any department listed in Schedule 1 of the State Sector Act 1988”.

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 **2010**”. 25

Section 133(3): repeal and substitute:

“(3) A person who commits an offence against this section is liable,— 30

“(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

Part 1—*continued***Animal Products Act 1999 (1999 No 93)**—*continued*

“(ii) a fine not exceeding \$50,000.”

Section 134(2)(a): repeal.

Section 134(2)(3): repeal.

Section 140(1)(a)(vii): omit “safety programme” and substitute “control plan”. 5

Section 148(1): omit “temporary” and substitute “interim”.

Section 161(1): omit “food safety programmes” and substitute “regulated control schemes, food control plans, ~~or national programmes~~ national programmes, or monitoring programmes”. 10

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 **2010**:”.

Section 161(5)(e): omit “safety programmes” and substitute “control plans”. 15

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”. 20

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 7(1)** of the Food Act **2010**:”.

Customs and Excise Act 1996 (1996 No 27)

Schedule 1: omit “Food Act 1981 or the Food (Safety) Regulations 2002” and substitute “Food Act **2010**”.

Part 1—*continued***Fisheries Act 1996 (1996 No 88)**

Section 89(2)(g): omit “section 20 of the Food Act 1981 by an officer” and substitute “**sections 268 and 276** of the Food Act **2010** by a food safety officer”.

Geographical Indications (Wine and Spirits) Registration Act 2006 (2006 No 60) 5

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 adopted joint food standard issued under the Food Act **2010**”. 10

Local Government Act 2002 (2002 No 84)

Section 93: insert after subsection (7):

“(7A) In preparing a long-term council community plan, a local authority must have regard to any national outcomes issued under **section 148** of the Food Act **2010**.” 15

New section 152A: insert after section 152:

“152A Effect of Food Act 2010 on bylaws

“(1) This section applies to the following documents: 20

“(a) the Food Act **2010**; and

“(b) the following documents under the Food Act **2010**:

“(i) regulations:

“(ii) an adopted joint food standard:

“(iii) a domestic food standard: 25

“(iv) an Order in Council:

“(v) a notice.”

“(2) If there is an inconsistency between any of the documents and a bylaw made under this Act, the document prevails.

“(3) A council may not make a bylaw under this Act that purports to have the effect of imposing duties that are inconsistent with or stricter than or more lenient than those imposed by any of the documents.” 30

Part 1—*continued***Misuse of Drugs Amendment Act 2005 (2005 No 81)**

Paragraph (b)(iv) of the definition of **substance** in section 31: omit “section 2 of the Food Act 1981” and substitute “**section 7(1)** of the Food Act **2010**”.

Privacy Act 1993 (1993 No 28)

5

Part 1 of Schedule 2: insert the following item after the item relating to the Fisheries Act 1996:

Food Act **2010****Clauses 2, 5, 8, and 11 of Schedule 5****Sale of Liquor Act 1989 (1989 No 63)**

Section 37(3): repeal and substitute:

“(3) It is a condition of every off-licence granted in respect of premises described in section 36(1)(d) that any wine, sparkling wine, fruit wine, sparkling fruit wine, and mead sold in the premises must not contain more than 15% alcohol by volume at 20°C.”

Section 37: add:

15

“(7) In this section,—

“**fruit wine** means the product of the alcoholic fermentation of the juice, or of the juice and other portions, of any fruit except grapes

“**sparkling fruit wine** means fruit wine that is surcharged with carbon dioxide

“**sparkling wine** means wine that is surcharged with carbon dioxide

“~~wine~~ means the product of the partial or complete alcoholic fermentation of any or all of the following:—

25

“(a) ~~grape juice:~~

“(b) ~~grape juice and other portions of grapes:~~

“(c) ~~the reconstituted product of concentrated grape juice and water.~~

“**wine** means the product prepared by the complete or partial fermentation of any or all of the following:

30

“(a) fruit:

Part 1—*continued***Sale of Liquor Act 1989 (1989 No 63)**—*continued*

- “(b) vegetables:
- “(c) grains:
- “(d) cereals:
- “(e) preparations of fruit, vegetables, grains, or cereals.”

Summary Proceedings Act 1957 (1957 No 87)

5

Item relating to the Food Act 1981: omit.

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:

10

“(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

15

“(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”.

20

Section 4(1): insert in its appropriate alphabetical order:

“**food control plan** has the meaning given to it in the Food Act **2010**

“**national programme** has the meaning given to it in the Food Act **2010**”.

25

Definition of **Food Act regime** in section 4(1): repeal and substitute:

“**Food Act regime** means the regime under the Food Act **2010**”.

Definition of **food safety programme** in section 4(1): repeal.

30

Definition of **New Zealand food standard** in section 4(1): omit “Part 2A of the Food Act 1981” and substitute “the Food Act **2010**”.

Part 1—*continued***Wine Act 2003 (2003 No 114)**—*continued*

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 5
their undergoing fermentation; and
- “(c) it is made by a winemaker; and
- “(d) it is made at the place or area covered by the wine-
maker’s wine standards management plan or subject to
an exemption under section 6 or 11 from the require- 10
ment to have such a plan”.

Definition of **wine product** in section 4(1): omit “Food Act 1981” and substitute “Food Act **2010**”.

Section 4(4): omit “Food Act 1981” and substitute “Food Act **2010**”.

Section 10: repeal. 15

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 prod- 20
ucts, 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 25
Food Act **2010**, 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 manage-
ment plans. This Act, and its provisions on verification, apply 30
to their products as if they were wine.
- “(5) Winemakers who also make food, or sell it at retail, must, sub-
ject to section 24A of the Food Act 2010, do both the follow-
ing:

Part 1—*continued***Wine Act 2003 (2003 No 114)**—*continued*

- “(a) comply with the Food Act regime for their food operations; and
 - “(b) comply with their wine standards management plans for all their winemaking operations.
- “**15B Application for intermittent use of food control plan as wine standards management plan** 5
- “(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— 10
- “(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. 15
- “(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
 - “(b) the manner in which the food plan’s operator may use the plan; and 20
 - “(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 25 subject to the verification requirements of this Act or the Food Act **2010**. In setting the condition, the Director-General must take into account—
- “(a) the desirability of continuity in verification services, functions, or requirements; and 30
 - “(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 35

Part 1—*continued***Wine Act 2003 (2003 No 114)**—*continued*

- “(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: 5
- “(a) the applicant; and
- “(b) the applicant’s verifying agency (if applicable); and
- “(c) the applicant’s recognised person under the Food Act **2010**; and
- “(d) either— 10
- “(i) the chief executive of the agency for the time being responsible for the administration of the Food Act **2010**; or
- “(ii) the relevant territorial authority.
- “Compare: 1999 No 93 s 34(1), (2), (4)–(6) 15
- “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**. 20
- “(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. 25
- “(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 30
- “(b) this Act does not apply to the operator.
- “Compare: 1999 No 93 s 34(3)”.

Part 1—*continued***Wine Act 2003 (2003 No 114)**—*continued*

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)** 5
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 10
“(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** 15

“(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 **section 15A**.

“(2) Standards and specifications set under this subpart may apply 20
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,— 25

“(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.” 30

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 **2010**: 35

Part 1—*continued***Wine Act 2003 (2003 No 114)**—*continued*

- “(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 **2010**, exempting persons from compliance with specified requirements imposed under either Act, or providing for their exemption, whether wholly, partly, or conditionally: 5
- “(bc) for the purposes of **section 15B**, prescribing any other matters relating to the registration of food control plans as wine standards management plans:”. 10

Part 2

Amendments to regulations and revocation
of regulations**Animal Products (Exemptions and Inclusions) Order 2000 (SR 2000/209)** 15

Clause 8A(1)(c): omit “food safety programme approved under the Food Act 1981” and substitute “~~registered food control plan or national programme~~ risk-based measure under the Food Act **2010**”.

Clause 10(2)(b): omit “food safety programme under the Food Act 1981” and substitute “~~registered food control plan~~ risk-based measure under the Food Act **2010**”. 20

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”. 25

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 **2010**”. 30

Part 2—*continued***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 notice under the Food Act **2010**”. 5

Dietary Supplements Regulations 1985 (SR 1985/208)

Regulation 12(2): omit “Food Regulations 1984” and substitute “Australia–New Zealand Joint Food Standards Agreement as defined by the Food Act **2010**”. 10

Fisheries (Licensed Fish Receivers) Regulations 1997 (SR 1997/291)

Regulation 5(1)(a): omit “Food Hygiene Regulations 1974” and substitute “Food Act **2010**”.

Regulation 5(1)(b): revoke. 15

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) 20

Definition of **food** in regulation 3: omit “section 2 of the Food Act 1981” and substitute “**section 8** of the Food Act **2010**”.

Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001 (SR 2001/112) 25

Definition of **food** in regulation 6(2): omit “section 2 of the Food Act 1981” and substitute “**section 8** of the Food Act **2010**”.

Part 2—*continued***Hazardous Substances (Minimum Degrees of Hazard)
Regulations 2001 (SR 2001/112)—*continued***

Definition of **food additive** in regulation 6(2): omit “section 2(1) of the Food Regulations 1984 (SR 1984/262)” and substitute “standard 1.3 of the code incorporated into New Zealand law by the New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002, issued under section 11C of the Food Act 1981 and known as the Food Standards Code”. 5

Sale of Liquor Regulations 1990 (SR 1990/61)

Condition (c) in Form 7 of Schedule 1: revoke and substitute:

- “(c) (if the licence applies to premises described in section 36(1)(d) of the Act) the only liquor that may be sold is— 10
- “(i) wine, sparkling wine, fruit wine, sparkling fruit wine, vegetable wine, sparkling vegetable wine, mead, and beer that conforms with a food standard made under the Food Act **2010**; and
 - “(ii) liquor in a food condiment if the condiment has been 15 prepared for culinary purposes and rendered unsuitable for drinking.”.

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 “standard 2.7.5 20 of the code incorporated into New Zealand law by the New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002, issued under section 11C of the Food Act 1981 and known as the Food Standards Code”.

Wine Regulations 2006 (SR 2006/147)

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Regulation 4(4): revoke and substitute:

- “(4) For wine to which regulations 7 and 8 do not apply, the name or description of the wine shown on the label of wine must not include any reference to a single variety of grape unless the wine has been manufactured from not less than 75% by 30 volume of juice derived from that variety of grape.

Part 2—*continued***Wine Regulations 2006 (SR 2006/147)—*continued***

- “(5) For wine to which regulations 7 and 8 do not apply, the name or description of the wine shown on the label of wine must not include any reference to 2 or more varieties of grape unless the wine has been manufactured from not less than 75% by volume of juice derived from those varieties of grape and the names of the varieties of grape are listed on the label in descending order of proportion.” 5

Part 3

Revocation of bylaws

Ashburton District Council Bylaw 10

Chapter 800 Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

Auckland City Council Bylaw

Consolidated Bylaw 1998: Part 15 Food Premises and Part 16 Food Stalls: revoke, except to the extent that they relate to grading schemes or awards schemes. 15

Buller District Council Bylaw

NZS 9201 Part 24: 1999: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

Central Hawke’s Bay District Council Bylaws 20

Part 24: 2008: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

Dunedin City Council Bylaw

Part 15: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes. 25

Franklin District Council Food Hygiene Bylaw 2004

Revoke, except to the extent that it relates to grading schemes or awards schemes.

Part 3—*continued***Gisborne District Council Food Hygiene Bylaw 1996**

Revoke, except to the extent that it relates to grading schemes or awards schemes.

Grey District Council Food Safety Bylaw 2007

Revoke, except to the extent that it relates to grading schemes or awards schemes. 5

Hastings District Council Food Safety Bylaw

Part 23: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

Horowhenua District Council Food Hygiene Bylaw 2004

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Revoke, except to the extent that it relates to grading schemes or awards schemes.

Hutt City Council Bylaw 1997

Part 7: Food Premises: revoke, except to the extent that it relates to grading schemes or awards schemes.

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Kapiti Coast District Council Food Safety Bylaw 2006

Revoke, except to the extent that it relates to grading schemes or awards schemes.

Kawerau District Council Food Premises Bylaw 1995

Revoke, except to the extent that it relates to grading schemes or awards schemes. 20

Manawatu District Council Bylaw 2002

Chaper 14: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

Manakau City Consolidated Bylaw 1992

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Chapter 10: Food Hygiene: revoke, except to the extent that it relates to grading schemes or awards schemes.

Part 3—*continued***Matamata-Piako District Council Food Safety Bylaw 2001**

Revoke, except to the extent that it relates to grading schemes or awards schemes.

Napier City Consolidated General Bylaw 1983

Chapter 35: Food Hygiene Bylaw: revoke, except to the extent that it relates to grading schemes or awards schemes. 5

New Plymouth District Council Consolidated Bylaws 2000

Part 7: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

North Shore City Bylaw 2000

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Part 17: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

Palmerston North City Council Safe Food Bylaw 2004

Revoke, except to the extent that it relates to grading schemes or awards schemes.

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Queenstown Lakes District Council Control of Trading, Advertising and Obstructions in Public Places By-law 1989

Provisions on food safety: revoke, except to the extent that they relate to grading schemes or awards schemes.

Rotorua District Council Food Safety Bylaw 2006

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Revoke, except to the extent that it relates to grading schemes or awards schemes.

Ruapehu District Council Public Health and Safety Bylaw 2006

Chapter 13: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

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Part 3—*continued***Stratford District Council Bylaws**

Chapter 14: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes.

Tasman District Council Consolidated Bylaw

Chapter 6 Part XV Food Hygiene Requirements for Street Traders 5
June 2005: revoke, except to the extent that it relates to grading schemes or awards schemes.

Taupo District Council Food Premises Bylaw 1995

Revoke, except to the extent that it relates to grading schemes or awards schemes. 10

Tauranga City Council Public Health Bylaw 2006

Chapters 2 and 3: revoke, except to the extent that they relate to grading schemes or awards schemes.

Thames Coromandel District Council Bylaw No 28 Food Safety 1996 and Bylaw No 23 Mobile Shops, Stalls and Hawkers 15

Parts 3.03 to 3.06: revoke, except to the extent that they relate to grading schemes or awards schemes.

Timaru District Council Bylaw

Chapter 22: Food Safety: revoke, except to the extent that it relates to grading schemes or awards schemes. 20

Waitakere City Council Food Safety Bylaw 2005

Revoke, except to the extent that it relates to grading schemes or awards schemes.

Wanganui District Council Bylaw 1996

Part 3: Food Hygiene: revoke, except to the extent that it relates to grading schemes or awards schemes. 25

Food Bill

Part 3—continued

Wellington City Council Bylaws

Part 22: Food Premises and Amendment No 5 Food Hygiene: revoke, except to the extent that they relate to grading schemes or awards schemes.

Whakatane District Council Consolidated Bylaws 1997

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Part 18: Food Administration: revoke, except to the extent that it relates to grading schemes or awards schemes.

Whangarei District Council Food Premises Grading Bylaw 2005

Revoke, except to the extent that it relates to grading schemes or awards schemes.

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Legislative history

26 May 2010
22 July 2010

Introduction (Bill 160–1)
First reading and referral to Primary Production
Committee
