

EXPLANATORY MEMORANDUM TO

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2017

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2017.

Rebecca Evans AM
Minister for Social Services and Public Health

21 September 2017

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1. Description

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2017 (“the Regulations”) will make amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 (“the 2015 Regulations”), which have been in force in Wales since 28 November 2015. The 2015 Regulations provide for the enforcement of EU legislation including Council Directive 98/83/EC on the quality of water intended for human consumption as it applies to water, other than natural mineral water, supplied and sold in bottles and Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative Background

The powers enabling the Regulations to be made are conferred by sections 6(4), 16(1), 17(1), 26(1) and (3), 31 and 48(1) of the Food Safety Act 1990.

The powers given by these sections, which were vested in UK Government Ministers prior to devolution, were transferred to the National Assembly for Wales in 1999 by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and were subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations will be made by statutory instrument subject to the negative resolution procedure.

4. Purpose and Intended Effect of the Legislation

The objective of the Regulations is to make the following amendments to the 2015 Regulations

1. Transposition of Commission Directive 2015/1787 removing the requirement for check and audit monitoring for spring water and bottled drinking water
2. Amendment of regulation 2 on definitions of “fluoride removal treatment” and “ozone-enriched air treatment”

3. Amendment of regulation 13 on sale of natural mineral water
4. Clarification of regulation 15 on the disinfection of spring water
5. Amendment of regulation 17 on the advertising of spring water
6. Amendment of regulation 18 on the sale of spring water
7. Amendment of Schedule 3 to meet the requirements of Directive 2009/54
8. Amendment of parameters in Schedule 7 to match Directive 98/83
9. Amendment of Schedule 9 to clarify period of exemption from monitoring for radon, tritium and indicative dose
10. Correcting two minor errors in the Welsh language text of the 2015 Regulations

1) Transposition of Commission Directive 2015/1787

Since the coming into force of the 2015 Regulations, Commission Directive 2015/1787 has amended Annexes II and III to Directive 98/83/EC, which lay down the minimum requirements of the monitoring programmes for all water intended for human consumption, other than Natural Mineral Water, and the specifications for the method of analysis of different parameters.

The amendment to Annex II to Directive 98/83 removes the need for local authorities to carry out “check monitoring” and “audit monitoring” for water put into bottles intended for sale. The rationale is that the safety of these products is already ensured by EU Regulations 178/2002 and 852/2004.

Check monitoring is the regular monitoring that ensures the water complies with certain parameters specified in the Regulations at a frequency determined by volume of production. Audit monitoring is an annual check on all the chemical and microbiological parameters set out in the regulations. Parameters already being sampled against under check monitoring do not have to be included again in this.

Regulation 24(2)(a) of, and Schedule 8 to, the 2015 Regulations are therefore omitted to remove the requirement for check monitoring and audit monitoring.

2) Amendment of regulation 2 on definitions of “fluoride removal treatment” and “ozone-enriched air treatment”

The Regulations amend the definitions of “fluoride removal treatment” and “ozone-enriched air treatment” to make clear that any such treatment applied to Natural Mineral Water or Spring Water from outside Wales must be authorised by the competent authority in another part of the UK, another EEA state or a non-EEA state if it is to be sold in Wales. In relation to water from a non-EEA state, the FSA, or equivalent authority in another part of the UK, will need to be satisfied that an authorisation in that state is equivalent to an authorisation under EU law.

3) Amendment of regulation 13 on sale of natural mineral water

The Regulations amend regulation 13 of the 2015 Regulations to make clear that natural mineral water produced outside Wales is required to comply with the requirements as described in regulations 8, 9, 10, 11 and 12 of the 2015 Regulations if it is to be sold in Wales. This amendment is, in relation to natural mineral water, identical to the amendment detailed at 6), below, in relation to spring water.

4) Clarification of regulation 15 on the disinfection of spring water

The Regulations enhance the clarity of regulation 15 of the 2015 Regulations to make clear that the prohibition on disinfecting spring water and on adding any substance to spring water does not prevent the use of spring water in the

manufacture of soft drinks. Equivalent provision is already made in relation to natural mineral water.

5) Amendment of regulation 17 on the advertising of spring water

The Regulations amend regulation 17 of the 2015 Regulations to make clear that it is prohibited to market spring water in such a way so as to potentially cause confusion between that spring water and natural mineral water.

6) Amendment of regulation 18 on the sale of spring water

Regulation 18(1)(b) of the 2015 Regulations sets out that no person may sell 'spring water' if has been subject to a treatment (e.g. disinfectant treatment), or had anything added to it, in contravention of regulation 15. Regulation 15 applies in relation to Wales and implements Article 9(4)(d) of Council Directive 2009/54/EC.

The amendment is needed to make clear that spring water subjected to disinfectant treatment/additions elsewhere, contrary to EU law, may not be sold in Wales as spring water.

7) Amendment of Schedule 3 to meet the requirements of Directive 2009/54

Schedule 3 to the 2015 Regulations provides that no person may carry out ozone-enriched air treatment unless, prior to treatment, the water satisfies the requirements of paragraphs 3, 4 and 5 of Schedule 4. The references to paragraphs 3, 4 and 5 should, in fact, be references to paragraphs 6, 7 and 8. The regulations amend Schedule 3 to the 2015 Regulations to correct these cross-references.

8) Amendment of parameters in Schedule 7 to match Directive 98/83

Directive 98/83 sets out what the indicator parameters are for, among other things, 'odour', 'colour' and 'taste'.

The Regulations will correct discrepancies between the 2015 Regulations and Directive 98/83. The discrepancies have been present in the implementing regulations in force in Wales since Directive 98/83 was first transposed in Wales in 1999.

9) Amendment of Schedule 9 to clarify period of exemption

The Regulations amend Schedule 9 to the 2015 Regulations to clarify that if an exemption is granted from food authority monitoring of radon and/or tritium and/or indicative dose as detailed in the 2015 Regulations, this exemption lapses after a period of 5 years, beginning on the date the food authority notifies its decision to the FSA. However, the exemption period will lapse immediately if the level of radon, tritium or indicative dose exceeds the relevant parametric value.

10) Correcting two minor errors in the Welsh language text of the 2015 Regulations

The Regulations replace, in the two places that it occurs in the Schedules to the Welsh text of the 2015 Regulations, 'camau diheintio' with 'effaith ddiheintio' as the translation for 'disinfectant action'.

5. Consultation

A public consultation exercise was carried out by the FSA between 12 April 2017 and 5 July 2017

Responses were received from the following organisations:

- Natural Hydration Council
- British Soft Drinks Association*
- Welsh Heads of Trading Standards
- Powys County Council
- Montgomery Spring
- Highland Spring
- Brecon Carreg (Spadel UK)

* Communication was received separately from A.G.Barr plc (a member of BSDA) supporting this response.

A detailed summary of responses has been placed on the FSA website¹.

Comments were supportive of the required changes as many provide greater clarity for producers and enforcement officers. No comments were made that required the consultation draft of the regulations be altered.

6. Regulatory Impact Assessment

One local authority identified a potential benefit in the removal of the requirement for check and audit monitoring, but given that this is at most three hours of one officer's time per month, this is considered negligible and will to some extent be offset by the additional verification that will be required of the producers' own monitoring.

As no costs and only negligible benefits were identified, no Regulatory Impact Assessment has been prepared.

¹ <https://www.food.gov.uk/news-updates/consultations/2017/bottledwateramendswales>