
STATUTORY RULES OF NORTHERN IRELAND

2007 No. 420

**The Natural Mineral Water, Spring Water and Bottled
Drinking Water Regulations (Northern Ireland) 2007**

PART 5

Miscellaneous and supplemental

Enforcement

16.—(1) Each district council shall, within its district, carry out periodic checks on any water which has been recognised as a natural mineral water to ensure that—

- (a) the composition, temperature and other essential characteristics of the water remain stable within the limits of natural fluctuation,
- (b) without prejudice to sub-paragraph(a) above, the composition, temperature and other essential characteristics of the water are unaffected by any variations in the rate of flow,
- (c) the viable colony count at source (before the water is subjected to any treatment) is reasonably constant, taking into account the qualitative and quantitative composition of the water considered in the recognition of the water and whether it continues to satisfy the requirements of Part 1 of Schedule 3, and
- (d) the requirements of Schedule 4 are met in relation to the water.

(2) Each district council shall, within its district, carry out periodic checks on any ozone-enriched air oxidation technique authorised by it pursuant to Schedule 1, to ensure that the requirements of that Schedule continue to be satisfied.

(3) Each district council shall, within its district—

- (a) enforce and execute these Regulations; and
- (b) for the purposes of carrying out that function, take the steps required of member States and competent authorities by Article 7.1, 7.2, 7.3, and 7.6 of Directive 98/83 in relation to products to which that Directive and these Regulations apply.

Arrangements for samples taken for analysis

17.—(1) An authorised officer of a district council who has procured a sample under Article 29 of the Order and who considers that it should be analysed for the purposes of these Regulations shall deal with the sample in accordance with this regulation and for the purposes of this regulation “sample” includes one or more bottles of any water.

(2) The authorised officer shall forthwith divide the sample into three parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall —

- (a) with respect to one part of the sample comply with paragraphs (3) to (6); and
- (b) deal with the remaining parts in accordance with paragraph (7).

(3) If the sample was purchased by the authorised officer, he shall give the part of the sample to the person from whom it was purchased.

(4) If the sample is a sample of water brought into Northern Ireland and was taken by the authorised officer before delivery to a person who intends to sell that water in Northern Ireland, the officer shall give the part of the sample to that person.

(5) If neither paragraph (3) nor paragraph (4) applies, the authorised officer shall give the part of the sample to the person appearing to be the owner of the water from which the sample was taken.

(6) In every case to which paragraph (3), (4) or (5) applies, the authorised officer shall inform the person to whom the part of the sample is given that the sample was purchased or taken, as appropriate, for the purpose of analysis by a public analyst.

(7) The authorised officer shall, unless he decides not to have an analysis made, submit one of the remaining parts of the sample for analysis in accordance with Article 30 of the Order and retain the other.

(8) Any part of a sample which under this regulation is to be given to any person may be given by delivering it to him or to his agent or by sending it to him by registered post or the recorded delivery service; but where after reasonable enquiry the authorised officer is unable to ascertain the name and address of the person to whom the part of the sample is to be given he may, in lieu of giving the part to that person, retain it.

(9) If it appears to the authorised officer that any water, of which he has procured a sample for the purpose of analysis by a public analyst, was exploited or bottled by a person (not being a person to whom one part of the sample is required to be given by this regulation) having his name and an address in the United Kingdom displayed on the bottle or any other container, the officer shall, unless he decides not to have an analysis made, within three days of procuring the sample send to that person a notice informing him —

- (a) that the sample has been procured by the officer; and
- (b) where the sample was taken or, as the case may be, from whom it was purchased.

(10) Where a sample taken or purchased by an authorised officer has been analysed by a public analyst, any person to whom a part of the sample was given under this regulation shall be entitled, upon request to the relevant district council, to be supplied with a copy of the certificate of analysis by that district council.

Secondary analysis by the Government Chemist

18.—(1) Where a part of a sample has been retained under regulation 17(7) and—

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned in regulation 17,

paragraphs (2) to (7) apply.

(2) The authorised officer—

- (a) may of his own volition;
- (b) shall if requested by the prosecutor (if a person other than the authorised officer);
- (c) shall if the court so orders; or
- (d) shall (subject to paragraph (6)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall analyse the part sent to him under paragraph (2) and send to the authorised officer a certificate of analysis.

(4) Any certificate of analysis sent by the Government Chemist shall be signed by him or on his behalf, but the analysis may be carried out by a person under the direction of the person who signs the certificate.

(5) The authorised officer shall immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the defendant with a copy of the Government Chemist's certificate of analysis.

(6) Where a request is made under paragraph (2)(d) the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the defendant to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation "defendant" includes a prospective defendant.

Methods of analysis

19. Methods of analysis which accord with Article 7.5 of Directive 98/83 shall be used for the purposes of determining whether or not water satisfies the provisions of Schedule 2.

Offences and penalties

20. A person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if he contravenes regulation 5, 6(1), 7(1), (3), or (4), 8, 9, 10, 11, 12, 13, 14, 15 or 22(3).

Defences

21.—(1) In any proceedings for an offence under these Regulations it shall be a defence for the accused to prove that —

- (a) the water was bottled and marked or bottled and labelled before these Regulations came into operation; and
- (b) under the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 1999, no offence would have been committed by him.

(2) In any proceedings for an offence under these Regulations where it is alleged that water does not meet the requirements in paragraph 1(c) of Part 1 of Schedule 2, it shall be a defence for the person accused to prove that—

- (a) the water in question was bottled or sold in an EEA State other than the United Kingdom; and
- (b) the water complied with the law in that EEA State when it was bottled or sold.

Application of other provisions

22.—(1) The following provisions of the Order shall apply for the purposes of these Regulations and, any reference in those provisions to the Order or Part thereof shall be construed for the purposes of these Regulations as a reference to these Regulations —

- (a) Articles 2(4) and 3 (extended meaning of "sale" etc.);
- (b) Article 4 (presumptions that food intended for human consumption);
- (c) Article 19 (offences due to fault of another person);

- (d) Article 20 (defence of due diligence) as it applies for the purposes of Articles 13 or 14;
- (e) Article 21 (defence of publication in the course of business);
- (f) Article 30(8) (which relates to documentary evidence);
- (g) Article 34(1) (obstruction etc. of officers);
- (h) Article 34(2), with the modification that the reference to “any such requirement as is mentioned in paragraph 1(b)” shall be deemed to be a reference to any such requirement as is mentioned in that paragraph as applied by sub-paragraph (g)
- (i) Article 36(1) (punishment of offences) in so far as it relates to offences under Article 34(1) as applied by sub-paragraph (g);
- (j) Article 36(2) and (3) insofar as they relate to offences under Article 34(2) as applied by sub-paragraph (h); and
- (k) Article 43 (protection of public analyst acting in good faith).

(2) Regulation 38 (intelligibility) of the Food Labelling Regulations (Northern Ireland) 1996 shall apply to any name, description, indication, information or other wording with which water is required or permitted by these Regulations to be marked or labelled, as it applies to particulars required to be labelled under the Food Labelling Regulations (Northern Ireland) 1996.

(3) A person shall not sell any water to which these Regulations apply if the bottle in which it is bottled is not marked or labelled in accordance with regulation 38 of the Food Labelling Regulations (Northern Ireland) 1996 as applied by paragraph (2).

Revocations

23. The following Regulations are revoked —

- (a) the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 1999;
- (b) the Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) Regulations (Northern Ireland) 2003(1); and
- (c) the Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) Regulations (Northern Ireland) 2004(2).

(1) S.R. 2003 No. 182

(2) S.R. 2004 No. 115