

EXPLANATORY MEMORANDUM TO
The Natural Mineral Water, Spring Water and Bottled Drinking Water
(Amendment) Regulations (Northern Ireland) 2017

SR 2017 No 201

1. Introduction

- 1.1. This explanatory memorandum has been prepared by the Food Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 15(1), 16(1), 25(1) and (3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991.
- 1.3. The rule is due to come into operation on 27th October 2017.

2. Purpose

- 2.1. The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) Regulations (Northern Ireland) 2017 (“the Regulations”) will make amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015 (“the 2015 Regulations”). 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.
- 2.2. The proposed amendments to the 2015 Regulations include the following:
 - Transposition of Commission Directive 2015/1787 removing the requirement for check and audit monitoring for spring water and bottled drinking water;
 - Amendment of regulation 2 on definitions of fluoride removal treatment and ozone-enriched air treatment;
 - Amendment of regulation 13 on the sale of natural mineral water;
 - Clarification of regulation 15 on the disinfection of spring water;
 - Clarification of regulation 17 on the advertising of spring water;
 - Amendment of regulation 18 on the sale of spring water;
 - Amendment of Schedule 3 to meet the requirements of Directive 2009/54
 - Amendment of “odour” and “taste” parameters in Schedule 7; and
 - Amendment of Schedule 9 to clarify the period of exemption from monitoring for radon, tritium and indicative dose.

3. Background

- 3.1. In 2015, all regulation on bottled water was consolidated into a single statutory rule, the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations

(Northern Ireland) 2015 (“the 2015 Regulations”). **Transposition of Commission Directive 2015/1787**

Since the coming into operation 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 district councils 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.

3.3. 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 Northern Ireland 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 Northern Ireland. 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.

3.4. 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 Northern Ireland 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 Northern Ireland. This amendment is, in relation to natural mineral water, identical to the amendment detailed, below, in relation to spring water.

3.5. 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.

3.6. 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 of spring water and natural mineral water.

3.7. Amendment of regulation 18 on the sale of spring water

Regulation 18(1)(b) of the 2015 Regulations sets out that a person may not 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 Northern Ireland 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 Northern Ireland as spring water.

3.8. Amendment of Schedule 3 to meet the requirements of Directive 2009/54

Schedule 3 to the 2015 Regulations provides that a person may not 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.

3.9. 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 operation in Northern Ireland since Directive 98/83 was first transposed in Northern Ireland in 1999.

3.10. 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 district council 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 district council 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.

4. Matters of Special Interest to the Health Committee

N/A

5. Consultation

5.1. A twelve week consultation was conducted in Northern Ireland from 12th April to 5th July 2017. A wide range of enforcement authorities and businesses were consulted and the consultation was available on the FSA website. One response was received. Comments were supportive of the required changes to the SR as many provide greater clarity for producers and enforcement officers.

6. Position in Great Britain

- 6.1. In Wales, where the FSA also has responsibility for bottled water regulation, similar Regulations will be brought forward to amend the equivalent 2015 Regulations.
- 6.2. In Scotland, Food Standards Scotland plans to transpose Directive 2015/1787 in the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (Amendment) Regulations 2017.
- 6.3. In England, Regulations drafted and consulted on in England concurrently with the 2015 Regulations in Northern Ireland have not yet been made.

7. Equality Impact

- 7.1. These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the section 75 groups.

8. Regulatory Impact

- 8.1. A Regulatory Impact Assessment has not been prepared to accompany these Regulations as there are no changes to the current controls and therefore no identified costs to consumers, businesses or enforcement authorities associated with implementation of the amending Regulations.

9. Financial Implications

- 9.1. N/A

10. Section 24 of the Northern Ireland Act 1998

- 10.1. These regulations will apply in equal measure to all groups. It is not expected that any of these changes will impact differentially across any as determined by Section 24.

11. EU Implications

- 11.1. N/A