

2003 No. 139

FOOD

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Scotland) Regulations 2003

Made 6th March 2003

Laid before the Scottish Parliament 7th March 2003

Coming into force

regulations 1 to 10, 12 to 14 and 16 31st March 2003

regulations 11, 15 and 17 25th December 2003

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1), 17(1), 26(1)(a) and (3), 31 and 48(1) of the Food Safety Act 1990(a) and of all other powers enabling them in that behalf, after having regard, in accordance with section 48(4A)(b) of that Act, to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B)(c) of that Act, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Scotland) Regulations 2003.

(2) Regulations 1 to 10, 12 to 14 and 16 of these Regulations shall come into force on 31st March 2003 and regulations 11, 15 and 17 of these Regulations shall come into force on 25th December 2003.

(3) These Regulations extend to Scotland only.

Amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999

2. The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999(d) shall be amended in accordance with regulations 3 to 17 of these Regulations.

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of “bottle”, for the words “human consumption”, wherever they appear, there shall be substituted the words “drinking by humans”;

(a) 1990 c.16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c.40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 10(3). Sections 16(1), 31 and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by Schedule 5 to the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) Section 48(4A) was inserted by the Food Standards Act 1999, Schedule 5, paragraph 21.

(c) Section 48(4B) was inserted by the Food Standards Act 1999, Schedule 5, paragraph 21.

(d) S.I. 1999/1540, amended by S.S.I. 2000/62.

- (ii) after the definition of “Directive 80/778”, there shall be inserted–
 - ““Directive 98/83” means Council Directive 98/83/EC relating to the quality of water intended for human consumption(a);”; and
- (iii) for the definition of “drinking water” there shall be substituted–
 - ““drinking water” means water intended for sale for drinking by humans other than–
 - (a) natural mineral water; or
 - (b) water bottled in a bottle marked or labelled “spring water” in accordance with regulation 11;”;
- (b) for paragraph (2), there shall be substituted–
 - “(2) Other expressions used both in these Regulations and in Council Directive 80/777 or 80/778 have the same meanings in these Regulations as they bear in the Directive concerned.”; and
- (c) after paragraph (4) there shall be added–
 - “(5) Any reference in these Regulations to the marking or labelling of a bottle relates both to the case where the marking or labelling occurs before any water is bottled and also to the case where it occurs after bottling.”.
- 4.** In paragraph (c) of regulation 3 (exemptions), for “human consumption” there shall be substituted “drinking by humans”.
- 5.** In regulation 4 (recognition as natural mineral water)–
 - (a) in paragraph (2)–
 - (i) in sub-paragraph (a) the word “or” shall be deleted;
 - (ii) in sub-paragraph (b) there shall be inserted at the end the word “or”; and
 - (iii) after sub-paragraph (b) there shall be inserted–
 - “(c) that the content of the water is not in accordance with paragraph 2(c) in Part I or, as the case may be, paragraph 2(c) in Part II of Schedule 1,”;
 - (b) for paragraph (5) there shall be substituted–
 - “(5) Upon the grant or withdrawal pursuant to this regulation, by the relevant authority in Scotland, of recognition for the purposes of Article 1, the authority concerned shall immediately inform the Agency of such grant or withdrawal.”; and
 - (c) after paragraph (7) there shall be inserted–
 - “(7A) On obtaining information of any change to the trade description of a natural mineral water, or to the name of the spring from which a natural mineral water has been extracted, the relevant authority in Scotland shall immediately inform the Agency of that change.”.
- 6.** In regulation 5 (prohibition on sale) after “any water” there shall be inserted “bottled in a bottle”.
- 7.** In regulation 10 (labelling of natural mineral water)–
 - (a) in paragraph (1), after “cause a natural mineral water to be” there shall be inserted “bottled in a bottle”;
 - (b) in paragraph (3), after “Natural mineral water shall be” there shall be inserted “bottled in a bottle”; and
 - (c) for paragraph (5) there shall be substituted–
 - “(5) No person shall sell any natural mineral water which–
 - (a) is bottled in a bottle marked or labelled in contravention of paragraph (1) above;
 - (b) has undergone any of the treatments referred to in paragraph (3)(a) above, unless the bottle in which it is bottled is marked or labelled with the appropriate indication in accordance with that paragraph;
 - (c) is bottled in a bottle not marked or labelled with the mandatory information referred to in paragraph (4) above; or

- (d) is bottled in a bottle marked or labelled with a trade description which is different from the trade description with which any other natural mineral water originating from the same spring is marked or labelled.”.

8. For regulation 11 (spring water) there shall be substituted–

“Spring Water

11.—(1) No person shall cause any water to be bottled in a bottle marked or labelled with the description “spring water” unless–

- (a) that water has been extracted from a spring;
- (b) subject to paragraph (4) below, that water would, if it were a natural mineral water, meet the exploitation and bottling requirements;
- (c) that water would, if it were a natural mineral water, be capable of being bottled or sold without contravening the provisions of regulation 8;
- (d) subject to paragraph (6) below, that water satisfies the requirements of Schedule 3; and
- (e) the bottling occurs at source.

(2) No person shall cause any bottle to be marked or labelled with the description “spring water” unless the water contained in it–

- (a) subject to paragraph (6) below, is bottled as specified in paragraph (1) above;
- (b) (if it has not undergone any treatment) is intended for consumption in its natural state; and
- (c) (where the bottle is marked or labelled with any trade description) would, if it were a natural mineral water, comply with the requirements of Article 8.

(3) No person shall cause any water to be bottled in a bottle marked or labelled with the description “spring water” unless the bottle is also marked or labelled with–

- (a) the name of the place where the spring in question is exploited; and
- (b) the name of the spring.

(4) Any water bottled in a bottle marked or labelled with the description “spring water”, which is transported from the spring to the bottling plant in a container which is not for distribution to the ultimate consumer, shall not, for that reason alone, be taken to have failed to meet the exploitation and bottling requirements if, on or before 23rd November 1996, the water from that spring was so transported to the bottling plant.

(5) No person shall sell any water which–

- (a) subject to paragraph (6) below, is bottled otherwise than as specified in paragraph (1) above; or
- (b) subject to paragraph (6) below, is bottled in a bottle marked or labelled in contravention of paragraphs (2) or (3) above.

(6) For the purposes of paragraphs (2)(a) and (5) above, where the water concerned has been bottled in an EEA State other than the United Kingdom, but does not satisfy the requirements of Schedule 3, it shall be deemed to satisfy those requirements if, at the date of bottling–

- (a) it satisfies the requirements prescribed in that State corresponding to those in Schedule 3; and
- (b) those requirements are in accordance with–
 - (i) (where the bottling occurs before 25th December 2003) whichever of Directives 80/778 and 98/83 is applicable in that State; or
 - (ii) (where the bottling occurs on or after that date) Directive 98/83.”.

9. For regulation 12 (bottled drinking water), there shall be substituted–

“12.—(1) Subject to paragraph (3) below, no person shall cause any drinking water to be bottled, or sell any bottled drinking water, unless it satisfies the requirements of paragraph (2) below and Schedule 3.

(2) No person shall cause any drinking water which does not satisfy the provisions of section 1 of Annex 1 to be bottled in a bottle marked or labelled with any designation,

proprietary name, trade mark, brand name, illustration or other sign, whether emblematic or not, the use of which is forbidden by Article 9.1(b).

(3) For the purposes of paragraph (1) above, where the water concerned has been bottled in an EEA State other than the United Kingdom, but does not satisfy the requirements of Schedule 3, it shall be deemed to satisfy those requirements if, at the date of bottling—

- (a) it satisfies the requirements prescribed in that State corresponding to those in Schedule 3; and
- (b) those requirements are in accordance with—
 - (i) (where the bottling occurs before 25th December 2003) whichever of Directives 80/778 and 98/83 is applicable in that State; or
 - (ii) (where the bottling occurs on or after that date) Directive 98/83.”.

10. In regulation 13 (enforcement)—

(a) for paragraph (1) there shall be substituted—

“(1) Subject to paragraphs (2) and (3) below, each food authority shall—

- (a) enforce and execute these Regulations within its area; and
- (b) with effect from 25th December 2003, for the purposes of carrying out that function, take within its area, in relation to products to which these Regulations and Directive 98/83 apply, the steps required of member States and competent authorities by Article 7.1 to 7.4 and 7.6 of that Directive.”;

(b) in paragraph (2)(a)(i), for “4(b)”, there shall be substituted “4(a)”; and

(c) paragraph (3) shall be omitted.

11. For regulation 16 (analysis) there shall be substituted—

“**16.** Methods of analysis which accord with Article 7.5 of Directive 98/83 shall be used for the purposes of determining whether water satisfies the provisions of Schedule 3.”.

12. In regulation 17 (offences and penalties), for “11(1) or (3), 12” there shall be substituted “11(1), (2), (3) or (5), 12(1) or (2)”.

13. In regulation 18 (defences)—

(a) for paragraph (1)(b) there shall be substituted—

“(b) if the water was intended for export to an EEA State, that—

- (i) in the case of water bottled in a bottle marked or labelled with the term “spring water”—
 - (A) where the export was to take place before 25th December 2003, the legislation complies with the provisions of Directive 80/777 and whichever of Directives 80/778 and 98/83 is applicable in the State concerned; and
 - (B) where the export was to take place on or after that date, the legislation complies with the provisions of Directives 80/777 and 98/83; and
- (ii) in the case of bottled drinking water—
 - (A) where the export was to take place before 25th December 2003, the legislation complies with the provisions of whichever of Directives 80/778 and 98/83 is applicable in the State concerned; and
 - (B) where the export was to take place on or after that date, the legislation complies with the provisions of Directive 98/83.”;

(b) in paragraph (2)(a), after “or” there shall be inserted “the bottle in which it was bottled was marked or”; and

(c) in paragraph (3), before “marked or labelled”, wherever they appear, there shall be inserted “bottled in a bottle”.

14. In paragraph (3) of regulation 19 (application of other provisions) for “it” there shall be substituted “the bottle in which it is bottled”.

15. In paragraph 2(c) in each of Parts I and II of Schedule 1 (recognition of natural mineral waters), after “numbers 1 to 9” there shall be inserted “and 12”.

16. In Schedule 2 (particulars of anions, cations, non-ionised compounds and trace elements) in the second column opposite to the entry in the first column relating to the anion Fluoride F⁻, for “µg/l” there shall be substituted “mg/l”.

17. For Schedule 3 (requirements for spring water and drinking water including prescribed concentrations or values of parameters), there shall be substituted the Schedule set out in the Schedule to these Regulations.

St Andrew’s House,
Edinburgh
6th March 2003

MARY MULLIGAN
Authorised to sign by the Scottish Ministers

SCHEDULE

SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 3 TO THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED DRINKING WATER (SCOTLAND) REGULATIONS 1999

“Regulations 2(1), 11, 12 and 16

SCHEDULE 3

Requirements for spring water and drinking water including prescribed concentrations or values of parameters

PART I

Requirements for spring water and drinking water

1. Water satisfies the requirements of this Schedule if–
 - (a) the water does not contain–
 - (i) any micro-organism (other than a parameter) or parasite; or
 - (ii) any property, element or substance (other than a parameter), at a concentration or value which would constitute a potential danger to human health;
 - (b) the water does not contain any substance (whether or not a parameter) at a concentration or value which, in conjunction with any other property, element, substance or organism it contains (whether or not a parameter), would constitute a potential danger to human health;
 - (c) the water does not contain concentrations or values of any of the parameters listed in Tables A to D in Part II of this Schedule in excess of the prescribed concentrations or values; and
 - (c) in the case of water prepared from water which has been softened or disalinated, its hardness is not below a minimum concentration of 60mg Ca/l.

2. The concentrations or values of the parameters listed in Tables A to D in Part II of this Schedule shall be read in conjunction with the notes thereto.

PART II

Prescribed concentrations or values

TABLE A

<i>Column 1</i> Item	<i>Column 2</i> Parameters	<i>Column 3</i> Units of Measurement	<i>Column 4</i> Concentration or Value (maximum unless otherwise stated)
1.	Colour	mg/l Pt/Co scale	20
2.	Turbidity	NTU	4
3.	Odour	Dilution number	3 at 25°C
4.	Taste	Dilution number	3 at 25°C
5.	Sulphate	mg So ₄ /l	250
6.	Sodium	mg Na/l	200
7.	Nitrate	mg/N0 ₃ /l	50
			(note 1)
8.	Nitrite	mg NO ₂ /l	0.5
			(note 1)
9.	Aluminium	µg Al/l	200
10.	Copper	mg Cu/l	2
11.	Fluoride	mg F/l	1.5

<i>Column 1</i> Item	<i>Column 2</i> Parameters	<i>Column 3</i> Units of Measurement	<i>Column 4</i> Concentration or Value (maximum unless otherwise stated)
12.	Hydrogen ion concentration	pH units	6.5 (minimum) 9.5 (maximum)
13.	Tritium (for radioactivity)	Bq/l	100
14.	Total indicative dose	mSv/year	0.10 (note 2)
15.	Manganese	µg Mn/l	50

NOTES

Note 1: The concentration (mg/l) of nitrate divided by 50 added to the concentration (mg/l) of nitrite divided by 3 must not exceed 1.

Note 2: Excluding tritium, potassium-40, radon and radon decay products.

TABLE B

<i>Column 1</i> Item	<i>Column 2</i> Parameters	<i>Column 3</i> Units of Measurement	<i>Column 4</i> Maximum Concentration
1.	Arsenic	µg As/l	10
2.	Cadmium	µg Cd/l	5
3.	Cyanide	µg Cn/l	50
4.	Chromium	µg Cr/l	50
5.	Mercury	µg Hg/l	1
6.	Nickel	µg Ni/l	20
7.	Selenium	µg Se/l	10
8.	Antimony	µg Sb/l	5
9.	Lead	µg Pb/l	10
10.	Pesticides and related products:		
	(a) individual substances	µg/l	0.10 (notes 1 and 2)
	(b) total substances	µg/l	0.50 (notes 1 and 3)
11.	Polycyclic aromatic hydrocarbons	µg/l	0.1 sum of concentrations of specified compounds (note 4)
12.	Bromate	µg BrO ₃ /l	10

NOTES

Note 1: "Pesticides" means:

- organic insecticides,
- organic herbicides,
- organic fungicides,
- organic nematocides,
- organic acaricides,
- organic algicides,
- organic rodenticides,
- organic slimicides,

related products (inter alia, growth regulators) and their relevant metabolites, degradation and reaction products.

Only those pesticides which are likely to be present in a given water need to be monitored.

Note 2: The maximum concentration applies to each individual pesticide. In the case of aldrin, dieldrin, heptachlor and heptachlor epoxide the maximum concentration is 0.030 µg/l.

Note 3: The maximum concentration for “total substances” refers to the sum of the concentrations of all individual pesticides detected and quantified in the monitoring procedure.

Note 4: The specified compounds are benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, indeno(1,2,3-cd) pyrene.

TABLE C

<i>Column 1</i> Item	<i>Column 2</i> Parameters	<i>Column 3</i> Units of Measurement	<i>Column 4</i> Maximum Concentration
1.	Escherichia coli (E.coli)	number/250 ml	0/250 ml
2.	Enterococci	number/250 ml	0/250 ml
3.	Colony count 22°C	number/ml	100 ml (notes 1 and 2)
4.	Colony count 37°C	number/ml	20 ml (notes 1 and 3)
5.	Pseudomonas aeruginosa	number/250 ml	0/250 ml

NOTES

Note 1: The total viable colony count should be measured within 12 hours of bottling, with the sample water being kept at a constant temperature during that 12 hour period. Any increase in total viable colony count of the water between 12 hours after bottling and the time of the sale should not be greater than that normally expected.

Note 2: In 72 hours on agar-agar or an agar-gelatine mixture.

Note 3: In 24 hours on agar-agar.

TABLE D

<i>Column 1</i> Item	<i>Column 2</i> Parameters	<i>Column 3</i> Units of Measurement	<i>Column 4</i> Maximum Concentration
1.	Boron	mg B/l	1.0
2.	Benzo (a) pyrene	µg/l	0.010
3.	Tetrachloroethene and Trichloroethene	µg/l	10 (note 1)
4.	Tetrachloromethane	µg/l	3
5.	Benzene	µg/l	1.0
6.	1,2 dichloroethane	µg/l	3.0
7.	Trichloromethane, Dichlorobromomethane, Dibromochloromethane and Tribromomethane	µg/l	100 (note 1)
8.	Epichlorohydrin	µg/l	0.10 (note 2)
9.	Vinyl chloride	µg/l	0.50 (note 2)
10.	Acrylamide	µg/l	0.10 (note 2)

NOTES

Note 1: The maximum concentration specified applies to the sum of the concentrations of the specified parameters.

Note 2: The parametric value refers to the residual monomer concentration in the water as calculated according to specifications of the maximum release from the corresponding polymer in contact with the water.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, amend the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999 (S.I. 1999/1540, as already amended) (“the 1999 Regulations”). Regulations 1 to 10, 12 to 14 and 16 of these Regulations come into force on 31st March 2003 and regulations 11, 15 and 17 come into force on 25th December 2003.

These Regulations implement Council Directive 98/83/EC on the quality of water intended for human consumption (O.J. No. L 330, 5.12.98, p.32) in so far as it applies to spring water and bottled drinking water. They also further implement Council Directive 80/777/EEC on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters (O.J. No. L 229, 30.8.80, p.1) as amended by Directive 96/70/EC of the European Parliament and of the Council (O.J. No. L 229, 23.11.96, p.26).

These Regulations amend the 1999 Regulations by–

- (a) inserting into regulation 2 a definition of Directive 98/83/EC and amending the definition of “drinking water” (regulation 3(a)(ii) and (iii));
- (b) modifying the conditions for withdrawal of recognition of a natural mineral water under regulation 4(2) in order to allow withdrawal of recognition if the content of the water no longer meets prescribed requirements in relation to toxic limits (regulation 5(a));
- (c) imposing requirements on food authorities to inform the Food Standards Agency when natural mineral water recognitions are granted or withdrawn or when the trade description or name of a spring is changed (regulation 5(b) and (c));
- (d) amending the labelling requirements for natural mineral water to clarify that the bottle must be labelled (regulation 7(c));
- (e) amending the provisions on spring water to clarify the labelling requirements and water content requirements (regulation 8);
- (f) amending the provisions on bottled drinking water to clarify the labelling and bottling requirements (regulation 9);
- (g) imposing on food authorities the requirement to comply with the monitoring provisions in article 7 of Directive 98/83/EC (regulation 10(a));
- (h) introducing new methods of analysis in accordance with article 7.5 of Directive 98/83/EC (regulation 11);
- (i) making provision for offences in relation to contravention of requirements referred to in paragraphs (e) and (f) above (regulation 12);
- (j) adding a defence in relation to exports to EEA states if the export complies with Directive 98/83/EC (regulation 13(a));
- (k) amending the requirements for recognition of natural mineral waters in Schedule 1 (regulation 15);
- (l) amending the requirements for spring water and drinking water including the setting of new prescribed concentrations or values of parameters in accordance with Directive 98/83/EC by inserting a new Schedule 3 into the 1997 Regulations (regulation 17 and Schedule);
- (m) making amendments to correct minor errors (regulations 3(b), 10(b) and 16); and
- (n) making other minor consequential amendments (regulations 3(a)(i) and (c), 4, 6, 7(a) and (b), 10(c), 13(b) and (c) and 14).

The provisions in Table A of the new Schedule 3 have been notified in draft to the European Commission under Directive 98/34/EC of the European Parliament and the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services.

A Regulatory Impact Assessment, which includes a compliance cost assessment of the effect which these Regulations have on business costs, has been prepared and has been placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency, 6th Floor, St. Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

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