

EXECUTIVE NOTE

THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED DRINKING WATER (SCOTLAND) AMENDMENT REGULATIONS 2009 (SSI 2009/273)

1. The above instrument amends the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No.2) Regulations 2007 (S.S.I. 2007/483) (“the 2007 Regulations”). It implements Directive (EC) 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (Recast) (“the Recast Directive” which repeals and re-casts Directive 80/777/EEC (as amended) on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters.

Policy Objective

2. The 2007 Regulations implemented for Scotland all existing European legislation relating to natural mineral water, spring water and bottled drinking water (namely Directive 80/777/EEC (as amended) (“the 1980 Directive”), Directive 98/83/EC and Directive 2003/40/EC). The 1980 Directive has been consolidated in the Recast Directive. This has resulted in amendments to the 2007 Regulations to replace all references to the 1980 Directive with references to the recast Directive, and some further minor amendments.
2. The Recast Directive was published on 26 June 2009 and comes into force 20 days after that date, namely on 16 July 2009. In order to give effect within this time limit to the recast Directive and to ensure that there is no gap in the enforcement of the relevant EU obligations it is necessary to bring the main provisions of these Regulations into force on **16 July 2009** without observing the usual 21 day period in article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999. The remaining provisions provide clarification of existing provisions, and come into force on 21 September 2009.

Legislative Background

4. The 2007 Regulations transposed the requirements of European Directives 80/777/EEC (as amended by 96/70/EC), 98/83/EC and 2003/40/EC. These Regulations lay down requirements for the exploitation, bottling, labelling or other marking and sale of natural mineral water, spring water and bottled drinking water. Limits are set for certain chemical and microbiological parameters in the water to ensure the quality and safety of bottled water.
5. The 1980 Directive on natural mineral water, which was amended by Directive 96/70/EC to encompass spring water, has been replaced with the Recast Directive. The Recast Directive is essentially a consolidation, although with some amendment of the procedures for developing new detailed rules for natural mineral waters in EC Committees. As a result of the adoption of the Recast Directive, references in national legislation to previous Directives need to be replaced so that the legal requirements can continue to be enforced.
6. The opportunity is also being taken in these Regulations to clarify the drafting of certain provisions of the 2007 Regulations. e.g. The 1980 Directive allowed a derogation permitting transportation of spring water from a spring to bottling facilities by tanker. The 2007 Regulations had set out 23 November 1996 as the appropriate date. In these Regulations this is now amended to 13 December 1996, following clarification in the Recast Directive.
7. The enabling powers under which the Regulations are made are sections 16(1), 17(1), 26(1)(a), 31 and 48(1) of the Food Safety Act 1990.

Policy Background

8. In 2008, bottled water accounted for 14.8% of the total UK soft drinks market (by volume) and had a retail value of £1,497 million. In 2006 the bottled water market in Scotland was estimated £169 million (retail value). In Scotland this industry is regulated by the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No.2) Regulations 2007.

Consultation

9. In August 2008, FSA Scotland consulted on a previous version of these Regulations with over 250 stakeholders across Scotland from industry, enforcement and consumer groups as well as sector specific organisations.
10. No Regulatory Impact Assessment was included as the new legislation does not impose any new burdens or requirements on producers. The consultation lasted 6 weeks and concluded on 26 September 2008. The Food Standards Agency Scotland received two responses from Scottish Local Authorities both of which were supportive of the policy changes and the proposed amending Regulations.
15. A 6-week public consultation of 300 interested parties was carried out on the draft Regulations in August 2008. No Regulatory Impact Assessment was included as the Regulations do not make any notable changes to the existing requirements applicable to producers. The consultation concluded on 26 September 2008. The Food Standards Agency Scotland received two responses from Scottish Local Authorities and both were in agreement with the Regulations.
16. A further letter highlighting changes in the draft Regulations, due to the translation corrections in the Recast Directive, was sent on 30 April 2009 to all interested parties. No feedback has been received on these changes.

Other Administrations

17. Similar Regulations will be introduced in England, Wales and Northern Ireland.

Impact

18. The Food Standards Agency Scotland consulted all stakeholders on the proposed Regulations. The Recast Directive impact on industry, enforcement authorities and consumers is expected to be negligible.

Contact

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THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED DRINKING WATER (SCOTLAND) AMENDMENT REGULATIONS 2009 (“THE REGULATIONS”)

Transposition note for

Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (“the Directive”).

1. The Regulations give effect to the Directive which is a re-cast of Council Directive 80/777 on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters (“Directive 80/777”).

2. Directive 80/777 (and other related European Directives not relevant to the Regulations) was transposed by the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) No. 2) Regulations 2007 (S.S.I. 2007/483) (“the 2007 Regulations”).

3. The following table demonstrates how the relevant provisions of the Regulations which amend the 2007 Regulations, give effect to relevant provisions of the Directive which are different to those which are provided for in Directive 80/777. Provisions of the Regulations not mentioned in this table clarify the provisions of the 2007 Regulations.

4. The table does not attempt to set out how the provisions of Directive 80/777 have been translated to the Directive. For a Correlation table see annex V to the Annex of the Directive.

<i>Implementing Provision</i>	<i>Article</i>
Regulations 3 and 4 – amend the 2007 Regulations to replace the definition of Directive 80/777 with a definition of the Directive and, to substitute references to Directive 80/777 with references to the Directive.	Article 16 – repeals Directive 80/777/EEC and provides that references to that Directive should be construed as references to the Directive and provides that such references shall be read in accordance with the correlation table in Annex V to the Directive.
Regulation 3 also amends the definition of “natural mineral water” to reflect minor changes in the Directive.	Annex 1, Part 1, paragraph 1(b).
Regulation 5 makes minor amendments to regulation 8 of the 2007 Regulations to reflect minor changes made to the provisions relating to the marking, labelling and advertisement of natural mineral water.	Article 9 – language is amended to better reflect the French version used when the Directive was originally introduced.
Regulation 6 makes minor amendments to regulation 9 of the 2007 Regulations relating to provisions for the sale of natural mineral water.	Article 5(3) – language is amended to better reflect the French version used when the Directive was originally introduced.
Regulation 8(a) – makes minor amendments to paragraph (4) of Schedule 4 of the 2007 Regulations.	Annex II, paragraph 2(c) – language is amended to better reflect the French version used when the Directive was originally introduced.
Regulation 8(b) – amends Schedule 4 of the 2007 Regulations to substitute the	Annex II to the Directive point 2(d) – applies a derogation to point (d) of the

<p>date from which the provision under which spring water may be transported from spring to bottling plant in containers not intended for distribution to the ultimate consumer, applies.</p>	<p>annex with respect to spring water exploited and marketed in a Member state, where transport of spring water from spring to bottling plants in tanks was authorised in that Member state on 13 December 1996.</p>
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