

2010 No. 89

FOOD

**The Natural Mineral Water, Spring Water and Bottled Drinking
Water (Scotland) Amendment Regulations 2010**

<i>Made</i>	- - - -	<i>4th March 2010</i>
<i>Laid before the Scottish Parliament</i>		<i>5th March 2010</i>
<i>Coming into force</i>	- -	<i>9th April 2010</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1), 17, 26(1)(a) and (3), 31 and 48(1) of and paragraphs 1 and 4(b) of Schedule 1 to the Food Safety Act 1990(a) and all other powers enabling them to do so.

In accordance with section 48(4A) of that Act, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency(b).

There has been consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c).

Citation and commencement

1. These Regulations may be cited as the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2010 and come into force on 9th April 2010.

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- (a) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16(1), 17, 31 and 48(1) were amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c.28) (“the 1999 Act”); section 17 was also amended by paragraph 12 of Schedule 5 to the 1999 Act; section 26(3) was amended by paragraph 1 of Schedule 6 to the 1999 Act; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990; 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) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, in so far as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred, and in so far as relating to food (including drink) including the primary production of food, relevant functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).
- (b) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.
- (c) O.J. No. L 31, 1.2.02, p.1 as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.2003, p.4), Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.2006, p.3), Commission Regulation (EC) No. 202/2008 (O.J. No. L 60, 5.3.2008, p.17) and Regulation (EC) No. 596/2009 of the European Parliament and of the Council (O.J. No. L 188, 18.7.2009, p.14).

Amendment of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007

2. The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007(a) are further amended in accordance with regulations 3 to 9.

3. In regulation 2(1) (interpretation)—

(a) after the definition of “the Agency” insert—

““authorised activated alumina treatment” means—

(a) a treatment of natural mineral water and spring water with activated alumina in order to remove fluoride, that has been authorised in accordance with Schedule 1A; or

(b) in the case of natural mineral water or spring water brought into Scotland from another part of the United Kingdom or from another EEA state, a treatment which complies with Articles 1 to 3 of Regulation 115/2010;” and

(b) after the definition of “prescribed concentration or value” insert—

““Regulation 115/2010” means Commission Regulation (EU) No. 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters(b);”.

4. For regulation 6(1) (treatments and additions for natural mineral water) substitute—

“(1) No person shall subject natural mineral water in its state at source to—

(a) any treatment other than—

(i) an authorised ozone-enriched air oxidation technique;

(ii) the separation of its unstable elements, such as iron and sulphur compounds, by filtration or decanting, whether or not preceded by oxygenation, in so far as the treatment does not alter the composition of the water as regards the essential constituents which give it its properties;

(iii) the total or partial elimination of free carbon dioxide by exclusively physical methods; or

(iv) an authorised activated alumina treatment; or

(b) any addition other than the introduction or the re-introduction of carbon dioxide to produce effervescent natural mineral water.”.

5. After regulation 10(2) (bottling of spring water and exploitation of spring water springs) insert—

“(2A) No person shall cause any water which has been treated with activated alumina for removal of fluoride to be bottled in a bottle marked or labelled “spring water”, unless that treatment is an authorised activated alumina treatment.”.

6. In regulation 16 (enforcement)—

(a) before “Each food authority shall, within its area—” insert “(1)”;

(b) for paragraph (1)(b) substitute—

“(b) carry out periodic checks on any authorised activated alumina treatment in respect of which the authorisation was granted by it in accordance with Schedule 1A, to ensure that the requirements of that Schedule continue to be satisfied;”;

(c) after paragraph (1) insert—

“(2) For the purposes of carrying out the function referred to in paragraph (1)(a) in relation to bottled drinking water and spring water each food authority shall—

(a) S.S.I. 2007/483, amended by S.S.I. 2009/273.

(b) O.J. No. L37, 10.2.2010, p.13.

- (a) subject to paragraph (3), carry out regular monitoring of the quality of any such water to check whether—
 - (i) it satisfies the requirements of Directive 98/83;
 - (ii) it contains a concentration or value for any parameter in excess of its prescribed concentration or value;
 - (iii) it contains a concentration or value for a property, element, substance or organism set out in Schedule 9 (as read with the notes to that Schedule) in excess of the concentration or value specified in relation to the property, element, substance or organism concerned in that Schedule as measured by the unit of measurement so specified;
 - (iv) in the case where, in accordance with head (iii), a food authority determines that the water concerned contains a concentration or value for *Clostridium perfringens* (including spores) in excess of the concentration or value specified in relation to it in Schedule 9 (as read with Note 2 to that Schedule) there is any potential danger to human health arising from the presence in the water of pathogenic micro-organisms; and
 - (v) in the case where disinfection forms part of the preparation or distribution of the water concerned, the disinfection treatment applied is efficient and any contamination from disinfection by-products is kept as low as is possible without compromising the disinfection;
- (b) in order to comply with sub-paragraph (a)—
 - (i) carry out regular check monitoring in relation to the parameters, properties, elements, substances and organisms set out in Schedule 10, as read with the notes to that Schedule; and
 - (ii) carry out audit monitoring in relation to any parameter and the properties, elements, substances and organisms set out in Schedule 9, as read with the notes to that Schedule;
- (c) for the purposes of sub-paragraph (b), carry out sampling and analysis in accordance with the relevant minimum frequencies set out in Schedule 11; and
- (d) carry out additional monitoring in relation to any property, element, substance or organism which is neither a parameter nor a property, element, substance or organism set out in Schedule 9 if the food authority has reason to suspect that it may be present in the water concerned in an amount or number which constitutes a potential danger to human health.

(3) The checks and monitoring referred to in paragraph (2)(a), (b) and (d) shall be carried out using samples representative of the quality of the water concerned consumed throughout the year in which the samples are taken.”.

7. For regulation 20 (offences and penalties) substitute—

“Offences and penalties

20.—(1) A person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if that person—

- (a) contravenes regulation 5, 6(1), 7(1), (3) or (4), 8, 9, 10, 11, 12, 13, 14, 15 or 22(3);
- (b) fails to comply with any provision of Regulation 115/2010 specified in paragraph (2); or
- (c) carries out an authorised activated alumina treatment that has a disinfectant action.

(2) The provisions are—

- (a) Article 1.2 (requirement that authorised activated alumina treatments be performed in accordance with the technical requirements set out in the Annex);

- (b) the first sentence of Article 2 (requirement that the release of residues into natural mineral water or spring water as a result of any authorised activated alumina treatment be as low as technically feasible according to the best practices and not pose a risk to public health);
- (c) the second sentence of Article 2 (requirement that, to ensure compliance with the first sentence of Article 2, operators implement and monitor the critical processing steps set out in the Annex);
- (d) Article 3.1 (requirement that the application of an authorised activated alumina treatment be notified to the competent authorities at least three months prior to use); and
- (e) Article 4 as read with the second paragraph of Article 5 (requirement that, subject to a transitional provision, the label on natural mineral water or spring water subjected to any authorised activated alumina treatment include specified information in proximity to the statement of the analytical composition).”.

8. After Schedule 1 (conditions for treatment of natural mineral waters and spring waters with ozone-enriched air) insert the Schedule set out in Schedule 1 to these Regulations.

9. After Schedule 8 (labelling indications for natural mineral water and criteria for use) there are added the Schedules set out in Schedule 2 to these Regulations.

St Andrew’s House,
Edinburgh
4th March 2010

SHONA ROBISON
Authorised to sign by the Scottish Ministers

SCHEDULE INSERTED AFTER SCHEDULE 1 TO THE NATURAL
MINERAL WATER, SPRING WATER AND BOTTLED DRINKING
WATER (SCOTLAND) (No. 2) REGULATIONS 2007

“SCHEDULE 1A Regulations 2(1) and 16(1)(b)

CONDITIONS FOR TREATMENT OF NATURAL MINERAL
WATER AND SPRING WATER WITH ACTIVATED ALUMINA
TO REMOVE FLUORIDE

1. A person seeking to have authorised a treatment of natural mineral water and spring water with activated alumina in order to remove fluoride shall—
 - (a) apply in writing to the relevant authority within whose area the water is extracted;
 - (b) permit representatives of that authority to examine the proposed method of treatment and place of treatment and take samples for analysis in accordance with regulation 17; and
 - (c) provide such information in support of the application as is requested by the relevant authority.
2. The relevant authority shall assess the application and any information in its possession and shall authorise the treatment if it is satisfied that—
 - (a) Articles 1 to 3 of Regulation 115/2010 are complied with in relation to the treatment; and
 - (b) the treatment does not have a disinfectant action.
3. Where the relevant authority decides to authorise a treatment pursuant to paragraph 2, it shall inform the applicant in writing and state the date from which the authorisation for commercial use of the treatment has effect.
4. Where the relevant authority refuses to authorise a treatment pursuant to paragraph 2, it shall inform the applicant in writing, stating its reasons.
5. Where a treatment has been authorised pursuant to paragraph 2, the person carrying out the treatment must, for the purpose of enabling the relevant authority to assess whether the conditions in paragraph 2 continue to be satisfied—
 - (a) permit representatives of the authority to examine the method of treatment and place of treatment and take samples for analysis in accordance with regulation 17; and
 - (b) provide such information related to the treatment as is requested by the authority.
6. If the relevant authority is satisfied that the conditions specified in paragraph 2 are no longer fulfilled, it may withdraw authorisation of a treatment by giving the person carrying out the treatment a written notice stating the grounds for withdrawal.
7. Where the relevant authority has informed an applicant under paragraph 4 of its refusal to authorise a treatment under paragraph 2 or withdraws authorisation of a treatment under paragraph 6, the person who wishes to carry out the treatment may apply to the Agency for a review of that decision.
8. Upon receiving the application for review, the Agency shall—

- (a) make such enquiry into the matter as may seem to the Agency to be appropriate;
and
- (b) having considered the results of that enquiry and any relevant facts elicited by it, either confirm the decision or direct the relevant authority to grant or restore, as appropriate, authorisation of the treatment in respect of which the application was made.

9. In the case of such a direction, the relevant authority shall comply with the direction.”

SCHEDULE 2

Regulation 9

SCHEDULES INSERTED AFTER SCHEDULE 8 TO THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED DRINKING WATER (SCOTLAND) (No. 2) REGULATIONS 2007

“SCHEDULE 9

Regulation 16(2)(a)(iii),
(b)(ii) and (d)

PROPERTIES, ELEMENTS, SUBSTANCES AND ORGANISMS, NOT BEING PARAMETERS, WHOSE CONCENTRATION OR VALUE IN BOTTLED DRINKING WATER AND SPRING WATER MUST BE DETERMINED BY AUDIT MONITORING

<i>Property, element, substance or organism</i>	<i>Concentration or value</i>	<i>Unit</i>	<i>Notes</i>
Ammonium	200	µg/l	
Chloride	250	mg/l	Note 1
<i>Clostridium perfringens</i> (including spores)	0	number/ 100 ml	Note 2
Conductivity	2500	µS cm ⁻¹ at 20°C	Note 1
Iron	200	µg/l	
Oxidisability	5,0	mg/ l O ₂	Note 3
Coliform bacteria	0	number/250 ml	
Total organic carbon (TOC)	No abnormal change		Note 4

Note 1: The water should not be aggressive.

Note 2: This parameter need not be measured unless the water originates from or is influenced by surface water.

Note 3: This parameter need not be measured if the parameter TOC is analysed.

Note 4: This parameter need not be applied for supplies less than 10000 m³ per day.

SCHEDULE 10

Regulation 16(2)(b)(i)

PARAMETERS , PROPERTIES, ELEMENTS, SUBSTANCES AND ORGANISMS IN RELATION TO WHICH CHECK MONITORING MUST BE CARRIED OUT

Aluminium (Note 1)

Ammonium

Colour

Conductivity

Clostridium perfringens (including spores) (Note 2)

Escherichia coli (*E. Coli*)

Hydrogen ion concentration

Iron (Note 1)

Nitrite (Note 3)

Odour

Pseudomonas aeruginosa

Taste

Colony count 22°C and 37°C

Coliform bacteria

Turbidity

Note 1: Necessary only when used as flocculant

Note 2: Necessary only if the water originates from or is influenced by surface water

Note 3: Necessary only when chloramination is used as a disinfectant

SCHEDULE 11

Regulation 16(2)(c)

MINIMUM FREQUENCIES FOR SAMPLING AND ANALYSIS
OF SPRING WATER AND BOTTLED DRINKING WATER

Minimum frequency of sampling and analysis for water put into bottles or containers intended for sale		
Volume of water produced for offering for sale in bottles or containers each day (1) m ³	Check monitoring number of samples per year	Audit monitoring number of samples per year
≤ 10	1	1
> 10 ≤ 60	12	1
> 60	1 for each 5 m ³ and part thereof of the total volume	1 for each 100 m ³ and part thereof of the total volume

(¹) The volumes are calculated as averages taken over a calendar year.”.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007 so as to—

- (a) provide for the execution and enforcement of Commission Regulation (EU) No. 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters; and
- (b) implement Article 7.1 to 3 and 6 of Council Directive 98/83/EC relating to the quality of water intended for human consumption.

These Regulations amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007 by—

- (a) inserting definitions of “authorised activated alumina treatment” and “Regulation 115/2010” into paragraph (1) of regulation 2 (interpretation) (regulation 3);
- (b) substituting a revised version of paragraph (1) of regulation 6 (treatment and additions for natural mineral water) in order to add authorised activated alumina treatments to the list of treatments to which natural mineral water in its state at source may lawfully be subjected (regulation 4);
- (c) inserting a paragraph to regulation 10 (bottling of spring water and exploitation of spring water springs) prohibiting the bottling of water which has been treated with activated alumina for removal of fluoride in a bottle marked or labelled “spring water” unless the treatment is an authorised activated alumina treatment (regulation 5);
- (d) amending regulation 16 (enforcement) in order to—
 - (i) require food authorities to carry out periodic checks on authorised activated alumina treatments which they have authorised in accordance with new Schedule 1A, to ensure that the requirements of that Schedule continue to be satisfied;
 - (ii) require food authorities to carry out regular monitoring of the quality of bottled drinking water and spring water to check specified matters;
 - (iii) in order to comply with that requirement, require food authorities to—
 - (aa) carry out regular check monitoring in relation to the parameters, properties, elements, substances and organisms set out in new Schedule 10; and
 - (bb) carry out audit monitoring in relation to any parameter and the properties, elements, substances and organisms set out in new Schedule 9;
 - (iv) for the purposes of that requirement, require food authorities to carry out sampling and analysis in accordance with the relevant minimum frequencies set out in new Schedule 11;
 - (v) require food authorities to carry out additional monitoring in relation to any property, element, substance or organism which is neither a parameter nor a property, element, substance or organism set out in new Schedule 9 if they have reason to suspect that it may be present in the water concerned in an amount or number which constitutes a potential danger to human health; and
 - (vi) require the checks and monitoring referred to in divisions (ii) to (v) of this subparagraph to be carried out using samples representative of the quality of the water concerned consumed throughout the year in which the samples are taken (regulation 6);
- (e) substituting a revised regulation 20 (offences and penalties) in order to make it an offence to fail to comply with specified provisions of Commission Regulation (EU) No. 115/2010 or to carry out an authorised activated alumina treatment that has a disinfectant action (regulation 7); and
- (f) insert new Schedules 1A, 9, 10 and 11 (regulations 8 and 9).

No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the costs of business.

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