

FINAL REGULATORY IMPACT ASSESSMENT

**THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED DRINKING WATER
(SCOTLAND) AMENDMENT REGULATIONS 2017**

Date: 31 August 2017
Stage: Final
Source of intervention: EU
Type of measure: Secondary
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1. Title of Proposal

1.1. The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2017

2. Purpose and intended effect

• Objectives

2.1. The purpose of the Regulations is to transpose, in Scotland, the requirements of Commission Directive (EU) 2015/1787, which comes into force on 27 October 2017, in relation to the removal of the need for local authorities to carry out check and audit monitoring of bottled drinking water which is marketed as spring water or bottled drinking water. Natural mineral water is not affected by this change.

• Background

2.2. Commission Directive (EU) 2015/1787 has amended Annexes II and III to Directive 1998/83/EC on the quality of water for human consumption, which lay down the minimum requirements of the monitoring programmes for all water intended for human consumption and the specifications for the method of analysis of different parameters.

2.3. The amendment to Annex II removes the need for local authority “check monitoring” and “audit monitoring” for bottled drinking water which is marketed as spring water or bottled drinking water

2.4. 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, and parameters already being sampled under check monitoring do not have to be included again in this annual sampling.

2.5. The EU legal requirements for check monitoring and audit monitoring have been removed because it was considered that existing requirements in other food safety regulations are sufficient:

- The General Food Regulations 2004 prohibit a Food Business Operator (FBO) from producing food that is unsafe. This includes foods that contain certain ingredients or contaminants above safe levels. These Regulations enable the enforcement of Regulation (EC) 178/2002.
- FBOs are required, under the Food Hygiene Regulations (Scotland) 2006 to produce a Food Safety management plan based on Hazard Analysis and Critical Control Point (HACCP) principles. This plan should show how the FBO identifies and controls hazards . These Regulations enable the enforcement of Regulation (EC) 852/2004.

- Local authorities will still be required to carry out official controls inspections as required by regulation (EU) 882/2004 to ensure the water is safe and complies with all relevant regulations.

- 2.6. It is therefore proposed to amend regulation 16 (2) of, and delete Schedules 9, 10 and 11 to our 2007 Regulations (as amended) to remove the requirement for check monitoring and audit monitoring.
- 2.7. The monitoring of radiation in spring water and bottled drinking water is covered separately under Council Directive 2013/51/Euratom.
- 2.8. The proposed regulations will also correct an erroneous duplication in the current 2007 Regulations, as amended by the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2015, of parameters for Tritium and Total Indicative Dose in Schedule 2. We propose to delete the references to these parameters in Schedule 2 - the requirements are dealt with in Part 3 of Schedule 12 to the amended 2007 Regulations.

- **Rationale for Government intervention**

- 2.9 Failure to transpose Directive (EU) 2015/1787 could result in infraction proceedings against the UK; therefore it is necessary to ensure that the EU requirements are implemented in Scotland.
- 2.10 Legislating for removing the now superseded local authority check and audit monitoring will clarify and reduce responsibilities and therefore help to meet the outcome of “Our public services are high quality, continually improving, efficient and responsive to local people’s needs” as part of the Scottish Government’s national Performance Framework.

3. Consultation

- **Within Government**

- 3.1 The consultation package was discussed with Scottish Government officials from the Population Health Directorate and the Food, Drink and Industry Growth Team.

Public consultation

- 3.2 A shortened 4 week consultation was carried out on the draft national legislation from 4th July 2017 to 1 August 2017.

- **Business**

- 3.3 The business impact part of the Impact Assessment process was not required as we did not consider the proposed Regulations will impact on food business operators. During the public consultation stakeholders were invited to comment on this assumption and respondees either agreed or provided no comments on this aspect.

4. Options

Option 1 – Do nothing

- 4.1. Under EU Law the UK is obliged to provide for the transposition of this EU Directive. Failure to include the requirements of Commission Directive (EU) 2015/1787 in the

Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No.2) Regulations 2007 would constitute a failure to comply with EU obligations and may lead to the UK being liable to infraction proceedings and consequent fines. Scotland would be required to pay a percentage of any UK fine if the infraction related to a devolved matter. Option 1 is therefore disregarded as an option but it is the baseline against which other options are appraised.

Option 2 – Transpose Directive (EU) 2015/1787 into domestic law

4.2. This option transposes the Directive in relation to the removal of the need for local authorities to carry out “audit” and “check” monitoring and removes the risk of the UK incurring infraction proceedings.

4.3. This is the preferred option.

- **Sectors and groups affected**

4.4. We do not consider that these amendments will incur any costs to industry and therefore there will be no costs to pass on to consumers.

4.5. Public health will not be affected as, as explained earlier, existing requirements in other food safety legislation removes the need for audit and check monitoring.

4.6. Enforcement Authorities will be the main group affected by the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2017.

4.7 We have consulted the Food Standards Sub Committee of the Scottish Food Enforcement Liaison Committee who did not express any concerns on the impact on local authorities of the proposed Regulations.

Benefits

Option 2

Transpose Directive (EU) 2015/1787 into domestic law.

4.8 As explained earlier, we do not consider that businesses or consumers will be affected by the proposed Regulations.

Enforcement Authorities

4.9 Updated legislation would remove the need for Local Authority Environmental Health Departments to carry out “audit” and “check” monitoring. Some potential cost savings may be involved here.

- **Costs**

4.10 We do not consider that either business or consumers will be affected by the proposed Regulations

Enforcement Authorities

4.11 Enforcement Authorities would have to spend some time familiarising themselves with the new legislation – although this is expected to be minimal given the simple change involved.

5. Scottish Firms Impact Test

5.1. We consider that the draft Regulations will not impact on businesses in Scotland.

- **Competition Assessment**

5.2. We do not consider that any Scottish producers of bottled spring water or bottled drinking water will be impacted by this proposed legislation.

- **Test run of business forms**

5.3. No new or additional forms will be introduced by this proposal therefore no test run need be completed.

6. Legal Aid Impact Test

6.1. The proposed Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2017 will not introduce new criminal sanctions or civil penalties therefore there are no legal aid implications.

7. Enforcement, sanctions and monitoring

- **Enforcement**

7.1. Enforcement of the Regulations in Scotland will be the responsibility of Local Authorities. In Scotland, Enforcement Officers from Local Authority Health Departments will need to familiarise themselves with the new requirements (very small impact) and ensure they are adhered to.

- **Sanctions**

7.2. Regulation 20 of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No.2) Regulations 2017 lays down that the penalty on summary conviction for an offence under the Regulations is a fine not exceeding level 5 on the standard scale.

7.3. The Proposals outlined in this RIA do not introduce new sanctions or penalties in the proposed draft regulations.

- **Monitoring**

7.4. No specific monitoring will be required - the requirement for check and audit monitoring is being removed as existing requirements in other food safety regulations are sufficient.

8. Implementation and delivery plan

8.1. The requirements of Directive (EU) 2015/1787 concerning check and audit monitoring of bottled drinking water which is marketed as spring water or bottled drinking water come into force on 27 October 2017. These requirements will be transposed by the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2017 which will come into force on 27 October 2017.

8.2. The publication of the Scottish Regulations will be communicated to stakeholders by means of an Interested Parties letter. This will be issued shortly after the Scottish Statutory Instrument has been published on the legislation.gov.uk website.

9. Post-implementation review

9.1 A review to establish the actual costs and benefits and the achievement of the desired effects will not be necessary as we are simply removing local authority auditing requirements that are now superfluous.

10. Summary and recommendation

10.1. Option 2 – This is the preferred option. It ensures that Scottish Ministers meet their obligation to implement agreed EU legislation. It also ensures that Scottish industry can compete on the same legal basis with its EU counterparts.

11. Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: economic, environmental social policy and administrative
1	No cost to Government as a result of the introduction of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2017	Possible infraction fines.
2	No infraction fines. Enforcement authorities will be working to a consistent legal standard throughout EU	Minor familiarisation costs for local authorities.

Option 2 is considered to be the preferred option

12. Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Ministers signatureAILEEN CAMPBELL

Ministers titleMINISTER FOR PUBLIC HEALTH AND SPORT

Date

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