

POLICY NOTE

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

SSI 2017 No. 287

1. Description

1.1 The above instrument was made by 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 and all other powers enabling them to do so. This instrument is subject to the negative procedure.

2. Policy Objective

2.1 These Regulations are necessary to meet the following objectives:

To amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007 in relation to bottled drinking water which is marketed as spring water or bottled drinking water to:

- Transpose Commission Directive (EU) 2015/1787 in relation to an amendment to Annex II to Directive 98/83/EC on the quality of drinking water which takes effect from 27 October 2017.
- Enable the execution of the requirements of the Commission Directive.

3. Policy Background

3.1 The Natural Mineral water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007, as amended, implement Commission Directive (EU) 2015/1787 in relation to an amendment to Annex II to Directive 98/83/EC on the quality of drinking water, removing the need for check monitoring and audit monitoring by local authorities.

3.2 The EU legal requirements for check monitoring and audit monitoring have been removed because they have been superseded by the requirements in other food safety legislation introduced since 1998:

i) 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 which include the general principles and requirements of food law and procedures regarding food safety.

ii) 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 has to show how the FBO identifies and controls hazards. These Regulations enable the enforcement of Regulation (EC) 852/2004 on the hygiene of foodstuffs.

iii) Local authorities, as food 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.

3.3 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.

3.4 In addition to the amendments described above, we are taking the opportunity to correct an error - Regulation 2 (f) corrects a duplication error in the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No 2) Regulations 2007 in relation to parameters for Tritium and Total Indicative Dose. These are described in both Table A in Part 2 of Schedule 2 and Part 3 of Schedule 12 of the 2007 Regulations but are only required in Schedule 12.

3.5 The legislative requirements for the monitoring of natural mineral waters are dealt with separately as are the requirements for radioactivity monitoring of bottled drinking water which is marketed as spring water or bottled drinking water.

4. Consultation

4.1 On 5 June 2017, the Food Standards Sub-Committee of the Scottish Food Enforcement Liaison Committee was consulted about the potential impact of the regulations on local authority Environmental Health Departments but had no comments to offer.

4.2 123 interested parties were consulted between 4 July 2017 to 1 August 2017 on the draft Scottish Regulations and the Business and Regulatory Impact Assessment. Those consulted included enforcement authorities, producers of bottled drinking waters and spring waters, a consumer organisation and trade associations. The consultation was available on the Food Standards Scotland (FSS) Citizen Space website.

4.3 In the consultation documents FSS explained that in its view bottled drinking water and spring water businesses would not be impacted by the draft Scottish Regulations but that this would be reviewed should consultation responses disagree.

4.4 FSS received two responses from local authority Environmental Health Departments, one from a bottled water trade association, one from a bottled water producer and one from a stakeholder who wished to remain anonymous. All responses agreed with our proposals on legislation and either agreed with the impact assessment or did not provide any information on impacts on businesses. Accordingly only a final Regulatory Impact Assessment has been produced.

5. Other Administrations

5.1 These Regulations apply in relation to Scotland only. However, equivalent legislation will be introduced in the other UK countries.

6. Guidance

6.1 Guidance will not be required. Local authority check and audit monitoring are simply no longer needed as existing requirements in other food safety regulations are sufficient.

7. Impact Assessment

7.1 A final Regulatory Impact Assessment has been prepared following public consultation and it accompanies this note.

8. Regulating small businesses

8.1 This Regulation impacts only on Enforcement Authorities and will not affect businesses involved with the production of spring water or bottled drinking water.

9. Monitoring

9.1 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.

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