
STATUTORY INSTRUMENTS

2007 No. 2785

The Natural Mineral Water, Spring Water and
Bottled Drinking Water (England) Regulations 2007

PART 5

Miscellaneous and supplemental

Enforcement

16.—(1) Each relevant authority shall, within its area—

- (a) carry out periodic checks on any water which has been recognised as a natural mineral water to ensure that—
 - (i) the composition, temperature and other essential characteristics of the water remain stable within the limits of natural fluctuation,
 - (ii) without prejudice to head (i) above, the composition, temperature and other essential characteristics of the water are unaffected by any variations in the rate of flow,
 - (iii) the viable colony count at source (before the water is subjected to any treatment) is reasonably constant, taking into account the qualitative and quantitative composition of the water considered in the recognition of the water and whether it continues to satisfy the requirements of Part 1 of Schedule 3, and
 - (iv) the requirements of Schedule 4 are met in relation to the water.

(2) Each relevant authority shall, within its area, carry out periodic checks on any ozone-enriched air oxidation technique authorised by it pursuant to Schedule 1, to ensure that the requirements of that Schedule continue to be satisfied.

(3) Each food authority shall, within its area—

- (a) enforce and execute these Regulations; and
- (b) for the purposes of carrying out that function, take the steps required of member States and competent authorities by Article 7.1, 7.2, 7.3, and 7.6 of Directive 98/83 in relation to products to which that Directive and these Regulations apply.

Arrangements for samples taken for analysis

17.—(1) An authorised officer of a food authority who has procured a sample under section 29 of the Act and who considers that it should be analysed for the purposes of these Regulations shall deal with the sample in accordance with this regulation and for the purposes of this regulation “sample” includes one or more bottles of any water.

(2) The authorised officer shall forthwith divide the sample into three parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall —

- (a) with respect to one part of the sample comply with paragraphs (3) to (6); and
- (b) deal with the remaining parts in accordance with paragraph (7).

(3) If the sample was purchased by the authorised officer, he shall give the part of the sample to the person from whom it was purchased.

(4) If the sample is a sample of water brought into England and was taken by the authorised officer before delivery to a person who intends to sell that water in England, the officer shall give the part of the sample to that person.

(5) If neither paragraph (3) nor paragraph (4) applies, the authorised officer shall give the part of the sample to the person appearing to be the owner of the water from which the sample was taken.

(6) In every case to which paragraph (3), (4) or (5) applies, the authorised officer shall inform the person to whom the part of the sample is given that the sample was purchased or taken, as appropriate, for the purpose of analysis by a public analyst.

(7) The authorised officer shall, unless he decides not to have an analysis made, submit one of the remaining parts of the sample for analysis in accordance with section 30 of the Act and retain the other.

(8) Any part of a sample which under this regulation is to be given to any person may be given by delivering it to him or to his agent or by sending it to him by registered post or the recorded delivery service; but where after reasonable enquiry the authorised officer is unable to ascertain the name and address of the person to whom the part of the sample is to be given he may, in lieu of giving the part to that person, retain it.

(9) If it appears to the authorised officer that any water, of which he has procured a sample for the purpose of analysis by a public analyst, was exploited or bottled by a person (not being a person to whom one part of the sample is required to be given by this regulation) having his name and an address in the United Kingdom displayed on the bottle or any other container, the officer shall, unless he decides not to have an analysis made, within three days of procuring the sample send to that person a notice informing him —

- (a) that the sample has been procured by the officer; and
- (b) where the sample was taken or, as the case may be, from whom it was purchased.

(10) Where a sample taken or purchased by an authorised officer has been analysed by a public analyst, any person to whom a part of the sample was given under this regulation shall be entitled, upon request to the food authority, to be supplied with a copy of the certificate of analysis by that authority.

Secondary analysis by the Government Chemist

18.—(1) Where a part of a sample has been retained under regulation 17(7) and—

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned in regulation 17,

paragraphs (2) to (7) apply.

(2) The authorised officer—

- (a) may of his own volition;
- (b) shall if requested by the prosecutor (if a person other than the authorised officer);
- (c) shall if the court so orders; or
- (d) shall (subject to paragraph (6)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall analyse the part sent to him under paragraph (2) and send to the authorised officer a certificate of analysis.

(4) Any certificate of analysis sent by the Government Chemist shall be signed by him or on his behalf, but the analysis may be carried out by a person under the direction of the person who signs the certificate.

(5) The authorised officer shall immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the defendant with a copy of the Government Chemist's certificate of analysis.

(6) Where a request is made under paragraph (2)(d) the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the defendant to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation "defendant" includes a prospective defendant.

Methods of analysis

19. Methods of analysis which accord with Article 7.5 of Directive 98/83 shall be used for the purposes of determining whether or not water satisfies the provisions of Schedule 2.

Offences and penalties

20. A person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if he contravenes regulation 5, 6(1), 7(1), (3), or (4), 8, 9, 10, 11, 12, 13, 14, 15 or 22(3).

Defences

21.—(1) In any proceedings for an offence under these Regulations it shall be a defence for the accused to show that —

- (a) the water was bottled and marked or labelled before these Regulations came into force; and
- (b) under the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, no offence would have been committed by him.

(2) In any proceedings for an offence under these Regulations where it is alleged that water does not meet the requirements in paragraph 1(c) of Part 1 of Schedule 2, it shall be a defence for the person accused to show that—

- (a) the water in question was bottled or sold in an EEA State other than the UK; and
- (b) the water complied with the law in that EEA State when it was bottled or sold.

Application of other provisions

22.—(1) The following provisions of the Act shall apply for the purposes of these Regulations and, unless the context otherwise requires, any reference in those provisions to the Act or Part thereof shall be construed for the purposes of these Regulations as a reference to these Regulations —

- (a) section 2 (extended meaning of "sale" etc.);
- (b) section 3 (presumptions that food intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21 (defence of due diligence) as it applies for the purposes of section 14 or 15;
- (e) section 22 (defence of publication in the course of business);

- (f) section 30(8) (which relates to documentary evidence);
- (g) section 33(1) (obstruction etc. of officers);
- (h) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection 1(b) above” shall be deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (g)
- (i) section 35(1) (punishment of offences) in so far as it relates to offences under section 33(1) as applied by sub-paragraph (g);
- (j) section 35(2) and (3) insofar as they relate to offences under section 33(2) as applied by sub-paragraph (h)
- (k) section 36 (offences by bodies corporate); and
- (l) section 44 (protection of officers acting in good faith).

(2) Regulation 38 (intelligibility) of the Food Labelling Regulations 1996 shall apply to any name, description, indication, information or other wording with which water is required or permitted by these Regulations to be marked or labelled, as it applies to particulars required to be labelled under the Food Labelling Regulations 1996.

(3) No person shall sell any water to which these Regulations apply if the bottle in which it is bottled is not marked or labelled in accordance with regulation 38 of the Food Labelling Regulations 1996 as applied by paragraph (2).

Revocation

23. The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999 are revoked in so far as they apply to England.