

**EXPLANATORY MEMORANDUM TO**  
**THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED**  
**DRINKING WATER (ENGLAND) (AMENDMENT) REGULATIONS 2010**

**2010 No. 433**

**1.** This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the Instrument**

2.1 This Statutory Instrument amends the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 (S.I. 2785/2007, “the 2007 Regulations”) to put in place provisions relating to the enforcement of European Commission Regulation (EU) No 115/2010 on the use of activated alumina treatment to remove fluoride from natural mineral water and spring water [OJ No. L37, 10.2.2010, p.13].

2.2 In addition, this instrument amends the 2007 Regulations to include more explicit statements on monitoring requirements for spring water and bottled drinking water for enforcement authorities. This is in response to a European Commission reasoned opinion that asserted that the current UK implementation of Council Directive 98/83/EC was not clear enough on this issue in that it simply cross-referred to the relevant EU provisions rather than transposing them in terms, a method of transposition which the Commission considered inadequate, given the nature of the EU provisions.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 2007<sup>1</sup>, as amended in 2009<sup>2</sup>, transpose the requirements of European Council Directives (EC) 2009/54, 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.

4.2 European Commission Regulation (EU) No. 115/2010 sets out requirements for using activated alumina treatment to reduce levels of fluoride in natural mineral waters and spring waters. As a Regulation this is “directly applicable”, i.e. it automatically has the force of law in the UK as from the date on which it comes into force (2 March 2010). However, enforcement powers must be provided for and this is done via this amending Instrument.

4.3 Separately, the European Commission has issued a reasoned opinion as part of infraction proceedings against the UK relating to the UK implementation of Council Directive 98/83/EC on the quality of water intended for human consumption which raises a number of points of concern to the Commission. That Directive relates to bottled water and to public and private water supplies (the latter two falling within the policy remit of DEFRA).

4.4 For bottled water specifically (which falls within the Food Standards Agency's policy remit) the Commission considered that the 2007 Regulations, by simply cross-referring as they do to the relevant parts of the Directive, do not provide a clear enough statement of the monitoring requirements applicable to bottled water under the Directive for chemicals, microbiology etc. . The Commission considered in particular that the Table of monitoring frequencies prescribed in the Directive should have been reproduced in the 2007 Regulations.

4.5 The amending Instrument therefore inserts into the 2007 Regulations provisions that set out the monitoring requirements for with which Food Authorities enforcing the Regulations must comply, including monitoring frequencies. It is emphasised though that these changes do not make any change of substance to the current requirements, but merely make them more explicit in the 2007 Regulations.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

5.2 Separate but parallel legislation is being drawn up in Scotland, Wales and Northern Ireland.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 Commission Regulation (EU) No. 115/2010 is directly applicable in the UK but enforcement provisions must be put in place so that Food Authorities are able to enforce the legislation. The Commission Regulation will come into force 20 days after publication in the *Official Journal of the European Union* i.e. on 2 March 2010. Whilst it might be possible to bring in enforcement powers for this EU Regulation sooner than 9 April, this date was chosen to avoid the need for 2 separate instruments and having regard to the fact that the delay will only be short and that it is understood that there will be no practical consequences for producers.

7.2 One of the main bottled water trade associations, the British Soft Drinks Association (BSDA), advised that they were not aware of any producers in the UK who use, or would need to use, treatments to remove fluoride from natural mineral

water or spring water (removal of fluoride from natural mineral water is currently illegal).

7.3 In 2006 the European Commission sent an Article 226 letter to DEFRA setting out concerns regarding UK implementation of Council Directive 98/83/EC. The UK was unable to persuade the Commission that these concerns were without foundation and in consequence a reasoned opinion was issued by the Commission in November 2009 setting out in what respects it considered the UK had not implemented the Directive fully/in the correct manner.

7.4 Most of the issues the Commission want resolved relate to public and private water supplies (for which, as already mentioned, DEFRA have policy responsibility) but there is one issue to do with bottled water. This criticism is that current UK legislation on bottled water simply cross-refers to the relevant provisions in the Directive which cover monitoring requirements. The Commission consider that this is an inadequate method of transposition in the case of these provisions and, in particular, that the Table of monitoring frequencies set out in the Directive should be reproduced in the UK legislation.

7.5 It was decided by the FSA that, whilst the manner of implementation used in the current SI was arguably legitimate, it would be prudent to act on the opinion of the Commission and amend the 2007 Regulations appropriately so as to avoid infraction proceedings. The UK has until 20 April 2010 to put in place measures to comply with the Commission's reasoned opinion, the Commission having agreed to an extension of the time normally permitted for Member States to comply with a reasoned opinion.

7.6 The amending Instrument not only transcribes the Table of monitoring frequencies, but also all the provisions in Council Directive 98/83/EC that address monitoring requirements for Food Authorities and which are at present referred to in the 2007 Regulations at regulation 16(3)(b). This addresses the concern raised by the Commission about clarity, but also improves accessibility to the requirements as they will now be set out clearly in the amending Regulations. As stated, these amendments result in no changes of substance to existing sampling etc. requirements.

### ***Consolidation***

7.7 It is planned that in late 2010/early 2011 the 2007 Regulations and their amendments will be consolidated.

## **8. Consultation outcome**

8.1 A 6 week consultation was carried out with 205 stakeholders sent a draft of the amending Instrument that contained enforcement powers for Commission Regulation (EU) No. 115/2010. The amending Instrument was then re-issued 4 weeks into the consultation, to all the stakeholders that had received the initial draft, after the text transcribing monitoring requirements from Council Directive 98/83/EC was added, and two weeks were added to the consultation deadline. The consultation concluded on 9 February 2010.

8.2 Consultees were asked whether they had any comments on the draft Statutory Instrument and whether they considered its measures would impose further burdens on their business. Four responses were received by the end of the consultation. Two were positive but made no specific comments; one was again positive but did propose the introduction of caps on charges that can be levied by local authorities for monitoring; and the final response opposed any treatment of natural mineral water.

8.3 The response regarding introduction of caps on charges levied by local authorities will require consideration of the desirability and viability of this proposal before any response can be made. On the comment objecting to any treatment of natural mineral water, removal of fluoride is enabled by the Commission Regulation and is directly applicable. However, the UK does have a clear position in Europe that treatment of natural mineral water should be kept to a minimum whilst still ensuring water is safe and compliant with legal limits.

8.4 In a separate exercise, Local Authorities in Derbyshire, North Yorkshire, County Durham, Cumbria, Northumberland and Cornwall were contacted to establish whether they had any spring water producers in their area (with a focus on small businesses) that used fluoride removal treatment. These Counties were selected as they contain regions of fluoride bearing rocks (which would be expected to have elevated fluoride levels in groundwater). Of the 31 Local Authorities in these Counties, 29 responded and indicated that either they had no spring water producers in their area or that the spring water producers did not use fluoride treatments.

8.5 No Impact Assessment (IA) was included as the new legislation does not contain any requirements that are expected to impact on producers or enforcers. This was stated in the consultation and consultees were invited to comment on this point. No responses were received that contradicted this understanding.

## **9. Guidance**

9.1 Current guidance on bottled water legislation is being reviewed, is expected to be finalised during 2010 and will include up-to-date advice. In the meantime consultees (which include trade associations and LACORS) will be contacted to inform them of this amending instrument as well as all Local Authorities in England.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

## **11. Regulating Small Business**

11.1 The legislation applies to small business. However, the instrument simply introduces enforcement powers for a directly applicable EU Regulation that prescribes requirements for a treatment which is understood not to be used in the UK (as mentioned above). It also transcribes more explicitly than hitherto (but without change of substance) Food Authority monitoring requirements from the framework

Council Directive on water for human consumption (98/83/EC), which already apply. It is therefore considered that this will not introduce new burdens for small businesses. Hence no specific action has been taken to assist them.

## **12. Monitoring and Review**

12.1 This Instrument introduces enforcement powers for a directly applicable EU Regulation and transposes existing sampling etc. requirements more explicitly. A review of the 2007 Regulations as a whole, including the amendments this instrument will make to them, is planned for 2012.

## **13. Contact**

Andy Furmage at the Food Standards Agency (Tel: 020 7276 8158 or email: andy.furmage@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.

### Footnotes:

- 1) The Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 (Statutory Instrument No. 2007 /2785)
- 2) The Natural Mineral Water, Spring Water and Bottled Drinking Water (England)(Amendment) Regulations 2009 (Statutory Instrument No. 2009/1598)

## APPENDIX

### TRANSPOSITION NOTE

This transposition note outlines how the requirements of European Council Directive Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ No. L 330, 3.11.98, p.32) in relation to Member State/competent authority monitoring of spring water and bottled drinking water have been transposed into the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 by The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (England)(Amendment) Regulations 2010.

| <b>Provision of Directive</b> | <b>Purpose</b>  | <b>Implementing Regulation</b> |
|-------------------------------|---|--------------------------------|
| Article 7(1) to (3) and (6)   | To ensure that water intended for human consumption is adequately monitored by Member States/competent authorities in order to check that it meets the requirements of the Directive. | Regulation 6.                  |