

EXPLANATORY MEMORANDUM TO

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) Regulations (Northern Ireland) 2010

2010 No. 68

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Food Standards Agency Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 15(1), 16, 25(1)(a) and (3), 32 and 47(2) of, and paragraphs 1 and 4(b) of Schedule 1 to the Food Safety (Northern Ireland) Order 1991.

2. Purpose of the Rule

- 2.1 This Statutory Rule amends the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007 (S.R. 2007 No. 420 “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 Rule 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 of a method of transposition which the Commission considered inadequate, given the nature of the EU provisions.

3. Legislative Context

- 3.1 The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007¹, as amended in 2009², 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.
- 3.2 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 operation (2 March 2010). However, enforcement powers must be provided for and this is done via this amending Rule.

- 3.3 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.
- 3.4 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.
- 3.5 The amending Rule therefore inserts into the 2007 Regulations provisions that set out the monitoring requirements for with which District Councils 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.

4. Territorial Extent and Application

- 4.1 This instrument applies to Northern Ireland.
- 4.2 Separate but parallel legislation is being drawn up in England, Scotland and Wales.

5. European Convention on Human Rights

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

6. Policy background

What is being done and why

- 6.1 Commission Regulation (EU) No. 115/2010 is directly applicable in the UK but enforcement provisions must be put in place so that District Councils are able to enforce the legislation. The Commission Regulation will come into operation 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 Rules 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.
- 6.2 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).

- 6.3 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.
- 6.4 Most of the issues the Commission want resolved relate to public and private water supplies 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.
- 6.5 It was decided by the FSA that, whilst the manner of implementation used in the current SR 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.
- 6.6 The amending Rule not only transcribes the Table of monitoring frequencies, but also all the provisions in Council Directive 98/83/EC that address monitoring requirements for District Councils 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

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

7. Consultation outcome

- 7.1 A 6 week consultation was carried out in Northern Ireland with stakeholders being sent a draft of the amending Rule that contained enforcement powers for Commission Regulation (EU) No. 115/2010. The amending Rule 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 12th February 2010.

7.2 Consultees were asked whether they had any comments on the draft Statutory Rule and whether they considered its measures would impose further burdens on their business. One response was received in Northern Ireland. The response queried the implications for enforcement authorities and businesses.

7.3 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.

8. Guidance

8.1 Current guidance on bottled water legislation is being reviewed, is expected to be finalised during 2010 and will include up-to-date advice.

9. Equality Impact

9.1 These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differently across any of the Section 75 groups.

10. Impact

10.1 An Impact Assessment has not been prepared for this rule 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 Rule 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 Rule 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 Rule will make to them, is planned for 2012.

13. Contact

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Footnotes:

- 1) The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007 (Statutory Rule 2007 No. 420)
- 2) The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) Regulations (Northern Ireland) 2009 (Statutory Rule 2009 No. 260)