

EXPLANATORY MEMORANDUM TO

THE NATURAL MINERAL, SPRING WATER AND BOTTLED DRINKING WATER REGULATIONS (NORTHERN IRELAND) 2015

2015 No. 365

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Food Standards Agency in 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(1), 25(1) and (3), 26(3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991 and paragraph 1A of Schedule 2 to the European Communities Act 1972.

2. Purpose of the Rule

- 2.1 The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007 (“the 2007 Regulations”) have been separately amended four times, so a consolidation of these amendments into a single statutory rule would be helpful to businesses, regulations and enforcers.
- 2.2 The proposed Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015 will:
 - Consolidate existing regulations;
 - Introduce a more proportionate enforcement regime, introducing the use of Improvement Notices for non-compliance;
 - Remove a national provision which calls for the re-calcification up to 60 mg/l for any bottled water or spring water which has been softened or desalinated;
 - Clarify permitted treatments for spring water; and
 - Apply new monitoring requirements for radioactive substances laid down in Directive 2013/51/EURATOM.

3. Matters of special interest to the Health Committee

- 3.1 None.

4. Legislative Context

- 4.1 There are three European Union Directives (implemented in Northern Ireland by the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007) which govern the exploitation, production, marketing requirements and permitted treatments of bottled drinking water. They are:
 - I. Council Directive 98/83/EC relating to the quality of water intended for human consumption¹;
 - II. Council Directive 2003/40/EC establishing the list, concentration limits and labelling requirements for the constituents of Natural mineral waters and the conditions for using ozone enriched air for the treatment of natural mineral waters and spring waters²;

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:330:0032:0054:EN:PDF>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:126:0034:0039:EN:PDF>

III. Council Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of Natural mineral water (recast)³.

5. Parity or Replicatory Measure

5.1 This Rule applies to Northern Ireland only. Parallel legislation is being made in Wales. The proposed regulations in England and Scotland address the requirement to transpose the Euratom Directive, which sets out requirements for Radon testing for spring water but do not include a measure to prohibit decontamination of spring water by UV.

6. European Convention on Human Rights

6.1 As this Rule 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

Consolidation of existing regulations

7.1 The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007 (“the 2007 Regulations”) have been separately amended four times, so a consolidation of these amendments into a single statutory rule would be helpful to businesses, regulations and enforcers.

Introduction of improvement notices

7.2 District Councils in Northern Ireland are responsible for the enforcement of these Regulations. Where it becomes necessary to take formal enforcement action of a provision of the Regulations, enforcement officers will have the power to serve an improvement notice under Article 9 of the Food Safety (Northern Ireland) Order 1991. The food business operator who fails to comply with the requirements of the improvement notice will be guilty of a criminal offence and may be prosecuted for not complying with the notice.

7.3 Any person served with an improvement notice has the right of appeal. It is proposed that appeals continue to be referred to a Court of Summary Jurisdiction as is currently the case in respect of comparable appeals under the Food Hygiene Regulations (Northern Ireland) 2006.

No longer requiring the fortification of water with calcium up to a level of 60 mg/l in the case where it has been softened or desalinated

7.4 The 2007 regulations contain a national provision which calls for the re-calcification up to 60 mg/l for any bottled water or spring water which had been softened or de-salinated. While this was no longer required by EU regulations, the UK retained the requirement for minimum hardness as a national provision in SR 1999 No. 301 and its replacement in relation to Northern Ireland, SR 2007 No. 420. This was done on health grounds, based on advice at the time from the Committee on Medical Aspects of Food Policy, which claimed that calcium helped prevent coronary heart disease. The original EU requirement was therefore maintained as a national provision.

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:164:0045:0058:EN:PDF>

- 7.5 More recent (2010) national scientific evidence produced by the Scientific Advisory Committee on Nutrition⁽⁴⁾ shows the national provision no longer has a scientific basis, as the validity of the original evidence is disputed.

Clarifying permitted treatments for spring water in line with European requirements

- 7.6 Directive 2009/54/EC [recast] on the exploitation and marketing of natural mineral water (the “Natural Mineral Water Directive”) states that natural mineral water and spring water must be free from pollution and pathogenic bacteria at source and that disinfection treatment must not be used at any stage in their production.
- 7.7 The Natural Mineral Water Directive has been transposed into national legislation. In Northern Ireland, the relevant legislation is the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007 (the “2007 Regulations”). However, the implementing legislation in force in the UK, including in Northern Ireland, has been unintentionally under-implementing the Directive by permitting the use of disinfection treatments in the production of spring water, as opposed to natural mineral water. The under-implementation was due to the misinterpretation of a particular provision in the Directive which appeared to allow Member States to continue with national treatments for spring water, which for the UK, was the use of ultraviolet (UV) disinfection treatment.
- 7.8 The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015 will ensure compliance with EU law.

New EU requirements for monitoring of radioactivity in water

- 7.9 The Council of the European Union adopted a new Directive under the Euratom Treaty on 22 October 2013; Council Directive 2013/51/Euratom⁽⁵⁾ laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (the “Directive”).
- 7.10 The Directive sets out parametric values, and frequencies and performance characteristics for analytical methods for monitoring radioactive substances in water intended for human consumption. This includes water as defined in the scope of the Drinking Water Directive 98/83/EC for drinking, cooking, food preparation or other domestic purposes supplied from a distribution network, tanker or in bottles or containers. It also includes all water used in any food production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption. Natural mineral waters are exempt from the requirements of the Directive.

8. Consultation outcome

- 8.1 The FSA in Northern Ireland conducted a formal public consultation from 1st June 2015 to 24th August 2015, seeking comments on the draft Statutory Rule. Two responses were received to the consultation in NI. Respondents were broadly supportive of the proposals. However one response indicated that it believes there should be further examination of the impact of disallowing UV decontamination in the production of spring water on the supply chains of businesses that purchase spring water for commercial use. As part of the consultation we explicitly requested that consultees “advise us of any costs or benefits that will result from the correct implementation of EU Regulations and the subsequent requirement to discontinue using UV decontamination in the production of spring water”.

⁴ http://www.sacn.gov.uk/pdfs/sacn_position_statement_hard_water_and_cardiovascular_disease.pdf

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0051&from=EN>

No detailed evidence was provided during the consultation period to quantify any additional impacts.

- 8.2 The FSA believes that the full 12-week public consultation exercise, which included a public stakeholder meeting, entirely satisfies the requirements of Article 9 of Regulation (EC) 178/2002, and provided all consultees with proper opportunity to evaluate the impacts, including providing detailed costs of the impact on the whole market.

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 differentially across any of the section 75 groups.

10. Guidance

- 10.1 The current FSA guidance on the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations will be updated to take account of the changes described above.

11. Impact

- 11.1 An Impact Assessment accompanied the consultation which identified sectors affected, benefits and costs of the options.

12. Regulating small business

- 12.1 The legislation applies to small businesses.

13. Monitoring

- 13.1 The FSA will work with enforcement authorities where problems or suspected infringements of the legislation arise. The effectiveness of the rule will also be monitored via general feedback from industry and enforcement authorities.

14. Contact

Esther Chartres at the Food Standards Agency NI, Tel: 028 9041 7737,

Email: esther.chartres@foodstandards.gsi.gov.uk or

Hayley Atcheson, Tel: 028 9041 7763

Email: hayley.atcheson@foodstandards.gsi.gov.uk