
STATUTORY INSTRUMENTS

1999 No. 1540

The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999

Part IV

Miscellaneous and supplemental

Enforcement

13.—(1) Subject to paragraphs (2) and (3) below, each food authority shall enforce and execute these Regulations within its area.

(2) The relevant authority shall, within its area—

(a) carry out periodic checks on any water which, for the purposes of Article 1.1 and in accordance with Part I of Schedule 1, has been recognised as a natural mineral water to ensure—

(i) that the water is natural mineral water which complies with paragraph 3 of Section I of Annex I and has had its characteristics assessed in accordance with paragraph 2 of that Section as called for by paragraph 4(b) of Annex II; and

(ii) that, subject as specified in regulation 6(1)(c), the exploitation and bottling requirements are met in relation to the water; and

(b) enforce and execute the provisions of regulations 6, 7 and 8.

(3) For the purposes of the enforcement and execution of regulations 5, 10 and 11(1)(e) and (f) “food authority” does not include—

(a) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change; or

(b) the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple).

Analysis

14.—(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) below, and

(b) deal with the remaining parts in accordance with paragraph (7) below.

(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.

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

(5) If neither paragraph (3) nor paragraph (4) above 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 paragraphs (3) to (5) above apply 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) Of the remaining parts of the sample, the authorised officer shall, unless he decides not to have an analysis made, submit one 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 thereof, 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, as appropriate, 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 relevant food authority, to be supplied with a copy of the certificate of analysis by that authority.

15. An authorised officer who has retained part of a sample shall submit it to the Government Chemist (or such other food analyst as the Government Chemist may direct) for analysis if—

- (a) he and the person to whom a part of the sample was given under this regulation so agree (which agreement may include who is to pay the analysis fees), or
- (b) a court so orders.

16. Methods of analysis which accord with Article 12.5 of Directive 80/778 shall be used for the purposes of determining whether water satisfies the provisions of Schedule 3.

Offences and penalties

17. 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, 7, 8, 9, 10(1) or (5), 11(1) or (3), 12 or 19(3).

Defences

18.—(1) In any proceedings for an offence under these Regulations, other than in relation to natural mineral water, it shall be a defence for the person charged to prove—

- (a) that the water in respect of which the offence was alleged to have been committed was intended for export to a country which has legislation analogous to these Regulations and that it complies with that legislation; and
- (b) if the water was intended for export to an EEA State, that—
 - (i) in the case of water marked or labelled with the term “spring water”, the legislation complies with the provisions of Directives 80/777 and 80/778; and
 - (ii) in the case of bottled drinking water, the legislation complies with the provisions of Directive 80/778.

(2) In any proceedings for an offence under these Regulations in relation to the sale of any water other than drinking water it shall be a defence for the person charged to prove that—

- (a) the water in respect of which the offence is alleged to have been committed was placed on the market or labelled, as the case may be, before 28th October 1998; and
- (b) if it had been committed before the date these Regulations came into force the act alleged to constitute the offence would not have constituted an offence under—
 - (i) in the case of natural mineral water, the Natural Mineral Waters Regulations 1985^{M1}; or
 - (ii) in the case of water marked or labelled with the description “spring water”, the Drinking Water in Containers Regulations 1994^{M2}.

(3) In any proceedings for an offence under these Regulations in which it is alleged that any natural mineral water is marked or labelled in contravention of sub-paragraph (d), (f) or (g) of regulation 10(1) it shall be a defence for the person charged to show—

- (a) where the natural mineral water is recognised in Great Britain, that—
 - (i) the water is intended for export to an EEA State; and
 - (ii) the water is marked or labelled with no indication within the meaning of Article 9.2 other than one which is authorised in that State in accordance with that Article for use in relation to that water; and
- (b) where the natural mineral water is recognised in an EEA State other than the United Kingdom, the water is marked or labelled with no indication within the meaning of Article 9.2 other than one which is authorised in that State in accordance with that Article for use in relation to that water.

Marginal Citations

M1 S.I. 1985/71; amended by S.I. 1990/2486, 1991/1476, 1992/2596, 1994/3142 and 1994/3144.

M2 S.I. 1994/743; amending instrument is S.I. 1994/3144.

Application of other provisions

19.—(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 (presumption that food is intended for human consumption);

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- (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 8, 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 (obstruction etc. of officers);
- (h) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2) as applied by paragraph (g) above;
- (i) section 36 (offences by bodies corporate); and
- (j) section 44 (protection of officers acting in good faith).

(2) In so far as regulation 38 (intelligibility) of the Food Labelling Regulations 1996^{M3} would not otherwise cover any name, description, indication, information or other wording with which water is required or permitted by these Regulations to be marked or labelled, it shall apply for the purposes of these Regulations with the modification that the words “the particulars with which a food is required to be marked or labelled by these Regulations” shall be construed so as to cover them.

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

Marginal Citations

M3 [S.I. 1996/1499](#); to which there are amendments not relevant to these Regulations.

Amendments

20.—(1) In the Food Safety (Sampling and Qualifications) Regulations 1990^{M4} in Schedule 1 (provisions to which those Regulations do not apply) the title of the Natural Mineral Waters Regulations 1985 in the left hand column and their reference in the right hand column shall be omitted and at the end of that Schedule there shall be added in the left hand column the title of these Regulations and in the right hand column their reference.

(2) In the Food Safety (General Food Hygiene) Regulations 1995^{M5} in paragraph (1) of regulation 2 (interpretation) in the definition of “water”–

- (a) for sub-paragraph (a) there shall be substituted–
 - “(a) natural mineral water or drinking water within the meaning of the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999; or”;
- (b) the word “or” at the end of sub-paragraph (b) shall be omitted; and
- (c) sub-paragraph (c) shall be omitted.

(3) In the Food Labelling Regulations 1996 in paragraph (1) of regulation 2 (interpretation) in the definition of “natural mineral water” for the words “Natural Mineral Waters Regulations 1985” there shall be substituted the words “ Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999 ”.

Marginal Citations

M4 [S.I. 1990/2463](#); to which there are amendments not relevant to these Regulations.

M5 [S.I. 1995/1763](#); to which there are amendments not relevant to these Regulations.

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Revocations

21. The Regulations specified in columns 1 and 2 of Schedule 4 shall be revoked to the extent specified in column 3 of that Schedule.

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