

2009 No. 1598

FOOD, ENGLAND

**The Natural Mineral Water, Spring Water and Bottled Drinking
Water (England) (Amendment) Regulations 2009**

<i>Made</i> - - - -	<i>30th June 2009</i>
<i>Laid before Parliament</i>	<i>1st July 2009</i>
<i>Coming into force</i> - -	<i>16th July 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1), 17(1), 26(1)(a) and (3), 31 and 48(1) of and paragraphs 1 and 4(b) of Schedule 1 to the Food Safety Act 1990(a) and now vested in him(b).

In accordance with section 48(4A) of that Act, he has taken into account relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c) there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title and commencement

1. These Regulations may be cited as the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) (Amendment) Regulations 2009 and come into force on 16th July 2009.

(a) 1990 c. 16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), “the 1999 Act”. Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting out Act 1994 (1994 c. 40), Schedule 6 to the 1999 Act and S.I. 2004/2990.

(b) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Functions of “the Ministers” so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act, and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32). Those functions so far as exercisable in relation to Scotland were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c.46) as read with section 40(2) of the 1999 Act.

(c) OJ No. L31, 1.2.2002, p.1, as last amended by Commission Regulation (EC) No. 202/2008 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (OJ No. L60, 5.3.2008, p.17).

Amendment of the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007

2. The Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007^(a) are amended in accordance with regulations 3 to 8.

3. In paragraph (1) of regulation 2 (interpretation)—

- (a) the definition of “Directive 80/777” is deleted;
- (b) immediately after the definition of “Directive 2003/40” there is inserted the following definition—

““Directive 2009/54” means Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (Recast)^(b)”; and

(c) for the definition of “natural mineral water” there is substituted the following definition—

““natural mineral water” means water which—

- (a) is microbiologically wholesome;
- (b) originates in an underground water table or deposit and emerges from a spring tapped at one or more natural or bore exits;
- (c) can be clearly distinguished from ordinary drinking water on account of the following characteristics having been preserved intact because of the underground origin of the water, which origin shall have been protected from all risk of pollution—
 - (i) its nature, which is characterised by its mineral content, trace elements or other constituents and, where appropriate, by certain effects, and
 - (ii) its original purity; and
- (d) is for the time being recognised pursuant to and in accordance with regulation 4;”.

4.—(1) In each of the provisions referred to in paragraph (2), for the reference to “Directive 80/777” there is substituted a reference to “Directive 2009/54”.

(2) The provisions are paragraphs (2) and (3) of regulation 2 and sub-paragraphs (b) and (c) of paragraph (1) and paragraph (8) of regulation 4 (recognition as natural mineral water).

5. In regulation 8 (marking, labelling and advertising of natural mineral water)—

(a) for sub-paragraph (c) of paragraph (1) there is substituted the following sub-paragraph —

“(c) any indication, designation, trade mark, brand name, picture or other sign, whether figurative or not, the use of which suggests a characteristic which the water does not possess, in particular as regards its origin, the date of authorisation to exploit it, the results of analyses or any similar references to guarantees of authenticity;”;

(b) for sub-paragraph (h) of paragraph (1) there is substituted the following sub-paragraph—

“(h) a sales description other than—

(i) in the case of an effervescent natural mineral water, one of the following, as appropriate—

- (aa) “naturally carbonated natural mineral water” to describe water whose content of carbon dioxide from the spring after decanting, if any, and bottling is the same as at source, taking into account where appropriate the reintroduction of a quantity of carbon dioxide from the same water table or deposit equivalent to that released in the course of those operations and subject to the usual technical tolerances,

^(a) S.I. 2007/2785.

^(b) OJ No. L164, 26.6.2009, p.45.

- (bb) “natural mineral water fortified with gas from the spring” to describe water whose content of carbon dioxide from the same water table or the same deposit after decanting, if any, and bottling is greater than that established at source, or
- (cc) “carbonated natural mineral water” to describe water to which has been added carbon dioxide of an origin other than the water table or deposit from which the water comes; and
- (ii) in the case of a natural mineral water other than an effervescent natural mineral water, “natural mineral water”;

(c) for paragraph (4) there is substituted the following paragraph—

“(4) No person shall advertise any natural mineral water under any indication, designation, trade mark, brand name, picture or other sign, whether figurative or not, the use of which suggests a characteristic which the water does not possess, in particular as regards its origin, the date of authorisation to exploit it, the results of analyses or any similar references to guarantees of authenticity.”.

6. In regulation 9 (sale of natural mineral water) for sub-paragraph (c) of paragraph (2) there is substituted the following sub-paragraph—

“(c) where the revivable total colony count of that water is in excess of that which would result from the normal increase in the bacterial count which it had at source; or ”.

7. For paragraph (1) of regulation 16 (enforcement) there is substituted the following paragraph—

“(1) Each relevant authority shall, within its area carry out periodic checks on any water which has been recognised as a natural mineral water to ensure that—

- (a) the composition, temperature and other essential characteristics of the water remain stable within the limits of natural fluctuation;
- (b) without prejudice to sub-paragraph (a), the composition, temperature and other essential characteristics of the water are unaffected by any variations in the rate of flow;
- (c) 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
- (d) the requirements of Schedule 4 are met in relation to the water.”.

8. In Schedule 4 (exploitation and bottling requirements for natural mineral water and spring water)—

(a) for paragraph 4 there is substituted the following paragraph—

“4. The conditions of exploitation, particularly the washing and bottling equipment, must meet hygiene requirements. In particular, the containers must be so treated or manufactured as to avoid adverse effects on the microbiological and chemical characteristics of the water.”;

(b) for sub-paragraph (3) of paragraph 5 there is substituted the following sub-paragraph—

“(3) Water distributed to the ultimate consumer in a bottle marked or labelled with the description “spring water” may be transported from the spring to the bottling plant in a container which is not for distribution to the ultimate consumer if, on or before 13th December 1996, water from that spring was so transported.”; and

(c) for paragraph 8 there is substituted the following paragraph—

“8. Both at source and during its marketing, water shall be free from—

- (a) parasites and pathogenic micro-organisms;

- (b) *Escherichia coli* and other coliforms and faecal streptococci in any 250 ml sample examined;
- (c) sporulated sulphite-reducing anaerobes in any 50 ml sample examined; and
- (d) *Pseudomonas aeruginosa* in any 250 ml sample examined.”.

Signed by authority of the Secretary of State for Health.

30th June 2009

Gillian Merron
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 (S.I. 2007/2785) and in so doing implement Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (Recast) (OJ No. L164, 26.6.2009, p.45).

2. The Regulations amend the 2007 Regulations by –

- (a) removing the definition of “Directive 80/777” from paragraph (1) of regulation 2 (interpretation), inserting one of “Directive 2009/54” into that paragraph and substituting in it a new definition of “natural mineral water” (*regulation 3*);
- (b) substituting references to “Directive 2009/54” for the references to “Directive 80/777” that appear in specified provisions (*regulation 4*);
- (c) making minor changes to the wording of regulation 8(1)(c) and (h) and (4), regulation 9(2)(c) and paragraph 4 of Schedule 4, to reflect minor differences between the provisions of Directive 2009/54 (which those domestic provisions now implement) and the corresponding provisions of Directive 80/777 (which those domestic provisions formerly implemented) (*regulations 5, 6 and 8(a)*);
- (d) substituting a revised version of paragraph (1) of regulation 16 in order to correct a typographical error in that paragraph (*regulation 7*);
- (e) substituting, for the provision under which spring water may be transported from spring to bottling plant in containers not for distribution to the ultimate consumer if water from the spring was so transported before 23rd November 1996, one which changes that date to 13th December 1996 (*regulation 8(b)*); and
- (f) substituting, for the provision under which natural mineral water and spring water must be free of specified organisms, one which lays down that such water must be free of them both at source and during marketing (*regulation 8(c)*).

3. A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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The Natural Mineral Water, Spring Water and Bottled Drinking
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£4.00