

**EXPLANATORY MEMORANDUM TO**  
**THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED**  
**DRINKING WATER (AMENDMENT) (ENGLAND) REGULATIONS 2009**

**2009 No. 1598**

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

This memorandum contains information for the Joint Committee on Statutory Instruments

2. **Purpose of the instrument**

- 2.1 This Statutory Instrument amends the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 2007 (SI 2007 No 2785).

The existing Statutory Instrument implements all existing European legislation relating to natural mineral water, spring water and bottled drinking water (Directives 80/777/EEC (as amended), 98/83/EC and 2003/40/EC). Directive 80/777/EEC has been consolidated in Council Directive 2009/54/EC, necessitating amendments to the Statutory Instrument which replace references to a previous Directive with references to the recast Directive.

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

- 3.1 The European Council has allowed only 20 days for the recast Directive 2009/54/EC to come into force from the date of its publication in the Official Journal of the European Union. Therefore, in order to ensure the continued enforceability after its coming into force date of all requirements relating to natural mineral water contained in SI 2007/2785, the amending Statutory Instrument will be laid before Parliament for a reduced period.

4. **Legislative Context**

- 4.1 The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 2007 transposed the requirements of European Directives 80/777/EEC (as amended by 96/70/EC), 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.

European Directive 80/777/EEC on natural mineral water, which was amended by Directive 96/70/EC to encompass spring water, has been replaced with a single recast Directive 2009/54/EC. This recast Directive is essentially a consolidation, although with some amendment of the procedures for developing new detailed rules for natural mineral waters in EC Committees. As a result of the adoption of the recast directive, references in national legislation to Directive 80/777/EEC need to be replaced so that

the legal requirements concerned can continue to be enforced. The opportunity is also being taken in the amending Statutory Instrument to correct the drafting of certain provisions of the 2007 Statutory Instrument and an error as to a date in a provision of those Regulations giving effect to a derogation in Directive 80/777/EEC (and the recast directive), which allows transporting water from a spring to a separate bottling plant by tanker.

The recast Directive 2009/54/EC permits the introduction of new treatments for natural mineral water and spring water by way of future Commission Directives or 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 In 2008, bottled water accounted for 14.8% of the total UK soft drinks market (by volume) and had a retail value of £1,497 million. This industry is controlled by the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 2007.

European legislation in general is currently going through a process of consolidation of Regulations and Directives that have been amended several times, to ensure clarity.

The 2007 Statutory Instrument makes several direct references to the previous European Directive 80/777/EEC when setting out the requirements that must be complied with, and these references need to be updated to refer to the new Directive 2009/54/EC. In addition, a couple of drafting shortcomings are resolved by the amending Instrument (poor subparagraph layout and clarifying text on the requirement for absence of some micro-organisms from natural mineral water and spring water during marketing). Also, Directive 96/70/EC allows a derogation permitting tankering of spring water from a spring to bottling facilities where such tankering was permitted in the Member State before the “time of notification” of this Directive. The UK had hitherto understood that this time was 23 November 1996. However, the recast Directive 2009/54/EC has made clear that it was in fact 13 December 1996. This change is reflected in the amending Statutory Instrument. Some translation corrections were also made to the English text of the recast Directive and where necessary these changes have been mirrored in the amending Statutory Instrument.

- ***Consolidation***

7.2 As the amending Statutory Instrument does not change the substance of what is required by the existing legislation, the 2007 Regulations have not previously been amended and there is a limited timescale to implement the recast directive, it was decided not to consolidate those Regulations on this occasion.

## **8. Consultation outcome**

8.1 A 6-week public consultation of 250 interested parties was carried out on an earlier draft of the Regulations in August. No Impact Assessment (IA) was included as the new legislation does not make any notable changes to the existing requirements applicable to producers. The consultation concluded on 26 September 2008.

Three responses were received, one of which objected to the revised drafting of one provision, but this was misconceived as the consultee concerned had failed to appreciate that the revised provision was a slight redraft that left the existing requirements unchanged in substance. The two remaining responses offered no comments.

The translation corrections were identified in the English text of the recast fairly recently and after the above consultation had taken place. The main trade associations were briefly contacted on this and they have not raised concerns over these changes. A letter was sent to interested parties on the 30 April 2009 explaining how these corrections change the draft Statutory Instrument. No comments were received.

## **9. Guidance**

9.1 No new guidance is provided as this will not change any requirements contained in the existing Statutory Instrument. Existing Guidance will be updated with corrected references to European Directives, dates, etc.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is considered to be negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small businesses.

11.2 The legislation makes no changes to existing requirements on producers, small or large.

11.3 The basis for the final decision to take no specific action to assist small businesses was that there is no change to the existing requirements for any business.

## **12. Monitoring & review**

12.1 This amendment does not change the requirements on producers so no review is planned.

## **13. Contact**

Dr Nigel Harrison at the Food Standards Agency (Tel: 020 7276 8177) or E-mail: [nigel.harrison@foodstandards.gsi.gov.uk](mailto:nigel.harrison@foodstandards.gsi.gov.uk)) can answer any queries regarding the instrument.

## ANNEX

### TRANSPOSITION NOTE FOR THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED DRINKING WATER (AMENDMENT) (ENGLAND) REGULATIONS 2009.

1. Council Directive 80/777/EEC on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters (OJ No. L229, 30.8.80, p.1) has been amended a number of times.
2. That Directive has thus now been replaced and re-enacted with minimal significant change by Council Directive 2009/54/EC (OJ No. L164, 26.6.2009, p.45).
3. Directive 80/777/EEC is implemented in England in the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 (SI 2007/2785) and a number of the provisions of those Regulations refer to that Directive.
4. With effect from the date when the new Directive comes into force [state date], those provisions, in their current form, would be unenforceable. Hence the amending Regulations replace references in the 2007 Regulations to Directive 80/777/EEC with references to the new Directive, delete from the Regulations the redundant definition of "Directive 80/777" and replace it with one of "Directive 2009/54" (regulations 3 and 4 of the amending Regulations).
5. The remaining provisions of the amending Regulations do not transpose elements of the new Directive that could be classed as being among the main elements of that Directive and hence are not covered in this note. Indeed it is a consequence of the fact that the new Directive is very largely a consolidating measure that minimal change to the 2007 Regulations has been necessary.