
WELSH STATUTORY INSTRUMENTS

2007 No. 3165

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007

PART 1

Introductory

Title, application and commencement

1. The title of these Regulations is the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007, they apply in relation to Wales and come into force on 28 November 2007.

Interpretation

2.—(1) In these Regulations —

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“advertisement” (“*hysbyseb*”) and “advertise” (“*hysbysebu*”) have the same meanings as those given to them in regulation 2(1) of the Food Labelling Regulations 1996(1);

“the Agency” (“*yr Asiantaeth*”) means the Food Standards Agency;

“authorised ozone-enriched air oxidation technique” (“*techneg awdurdodedig i ocsidio aer a gyfoethogwyd ag osôn*”) means—

(a) a treatment with ozone-enriched air authorised and carried out in accordance with Schedule 1; or

(b) in the case of water brought into Wales from other parts of the United Kingdom or from another EEA State a treatment which complies with Article 5 of Directive 2003/40 as implemented in that part of the United Kingdom or that EEA State;

“bottle” (“*potel*”), the noun, means a closed container of any kind in which water is sold for drinking by humans or from which water sold for drinking by humans is derived, and “bottle” (“*potelu*”), the verb, and cognate expressions, is construed accordingly;

“Directive 80/777” (“*Cyfarwyddeb 80/777*”) means 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(2);

“Directive 98/83” (“*Cyfarwyddeb 98/83*”) means Council Directive [98/83/EC](#) relating to the quality of water intended for human consumption(3);

(1) S.I.1996/1499, to which there are amendments not relevant to these Regulations

(2) OJNo. L229, 30.8.80, p.1, as last amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council adapting to Council Decision 1999/468/EC the provisions relating to Committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ No. L284, 31.10.2003, p.1).

(3) OJ No. L330, 5.12.98, p.32.

“Directive 2003/40” (“*Cyfarwydddeb 2003/40*”) means Commission 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 waters⁽⁴⁾;

“drinking water” (“*dwr yfed*”) means water which is intended for sale for drinking by humans other than —

- (a) natural mineral water; or
- (b) water bottled in a bottle marked or labelled “spring water” in accordance with regulation 11;

“effervescent natural mineral water” (“*dwr mwynol naturiol eferw*”) means natural mineral water which, at source or after bottling, gives off carbon dioxide spontaneously and in a clearly visible manner under normal conditions of temperature and pressure;

“natural mineral water” (“*dwr mwynol naturiol*”) 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 must 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,
 - (ii) its original state; and
- (d) is for the time being recognised pursuant to and in accordance with regulation 4;

“parameter” (“*paramedr*”) means a property, element, organism or substance listed in the second column of any Table in Part 2 of Schedule 2;

“prescribed concentration or value” (“*crynodiad neu werth a ragnodwyd*”), in relation to any parameter, means the concentration or value specified in relation to that parameter in any Table in Part 2 of Schedule 2 as measured by reference to the unit of measurement so specified;

“relevant authority” (“*awdurdod perthnasol*”) means the council of a county or county borough; and

“sell” (“*gwerthu*”) includes possess for sale and offer, expose or advertise for sale, and “sale” is construed accordingly.

(2) Other expressions used both in these Regulations and in Directive 80/777 or Directive 98/83 have the same meaning in these Regulations as they bear in the Directive concerned.

(3) Any reference in these Regulations to a numbered Article or Annex is, save where the contrary intention appears, a reference to the Article or Annex so numbered in Directive 80/777.

(4) Any reference in these Regulations to the marking or labelling of a bottle includes both marking or labelling done before any water is bottled and marking or labelling done after bottling.

Exemptions

3.—(1) These Regulations do not apply to any water which —

- (a) has a product licence issued under the provisions of the Medicines Act 1968⁽⁵⁾, or a marketing authorisation within the meaning of the Medicines for Human Use (Marketing

(4) OJ No. L126, 22.5.2003, p.34.

(5) 1968 c. 67.

- Authorisations etc.) Regulations 1994(6), or a marketing authorisation within the meaning of the Veterinary Medicines Regulations 2005(7);
- (b) is a natural mineral water which is used at source for curative purposes in thermal or hydromineral establishments;
 - (c) is not intended for sale for drinking by humans; or
 - (d) is a natural mineral water intended for export to a country other than an EEA State.
- (2) These Regulations do not apply to packaged ice portions intended for use in cooling food.

PART 2

Natural mineral water

Recognition as natural mineral water

- 4.—(1) Water is recognised as natural mineral water where —
- (a) in the case of water extracted from the ground in Wales, recognition is granted by the relevant authority in accordance with Part 1 of Schedule 3;
 - (b) in the case of water extracted from the ground in another part of the United Kingdom, it is recognised there pursuant to Directive 80/777 by a responsible authority of that part of the United Kingdom;
 - (c) in the case of water extracted from the ground in an EEA State other than the United Kingdom, it is recognised there pursuant to Directive 80/777 by a responsible authority of that EEA State; and
 - (d) in the case of water extracted from the ground in a country other than an EEA State —
 - (i) it is recognised by the Agency, in accordance with Part 2 of Schedule 3, or
 - (ii) it has an equivalent recognition, given by a responsible authority of —
 - (aa) another part of the United Kingdom, or
 - (bb) an EEA State other than the United Kingdom.
- (2) Where, in relation to any water that has been recognised under paragraph (1)(a) or (d)(i), it is found—
- (a) by analysis in accordance with Part 3 of Schedule 3, that the requirements of paragraph 3 of that Part are not met;
 - (b) that the requirements of Schedule 4 are not met; or
 - (c) that the content of the water is not in accordance with paragraph 2(c) of Part 1 or, as the case may be, paragraph 2(c) of Part 2 of Schedule 3,
- the relevant authority or, as the case may be, the Agency, may withdraw that recognition until such time as the requirements concerned are met.
- (3) Where—
- (a) the relevant authority declines to grant or withdraws recognition of a water; or
 - (b) the Agency declines to grant or withdraws recognition of a water,

(6) S.I. 1994/3144; to which there are amendments not relevant to these Regulations.

(7) S.I. 2005/2745.

the person who exploits or wishes to exploit the spring from which that water emerges or, if different, the person who owns the land on which that spring is situated, may apply to the Agency for a review of that decision.

(4) Upon an application for review of a decision being made under paragraph (3), the Agency must make such inquiry into the matter as may seem to it to be appropriate and, having considered the results of that inquiry and any relevant facts elicited by it, must either—

- (a) confirm the decision; or
- (b) direct the relevant authority to grant or restore, or itself restore, as appropriate, recognition of the water in question.

(5) A person who exploits a spring from which there is extracted water which is recognised as a natural mineral water in accordance with paragraph (1)(a) or (d)(i), may apply to the relevant authority or the Agency, as appropriate, to have that recognition withdrawn.

(6) Where the relevant authority—

- (a) grants, restores or withdraws recognition, it must immediately inform the Agency of that fact;
- (b) is notified of any change to the trade description of a natural mineral water or to the name of a spring from which natural mineral water has been extracted, it must immediately inform the Agency of that change; or
- (c) is directed by the Agency under paragraph (4)(b) to grant or restore recognition, it must immediately comply with that direction.

(7) Any recognition of water as a natural mineral water granted under the Natural Mineral Waters Regulations 1985⁽⁸⁾ or the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999⁽⁹⁾ and subsisting on the date that these Regulations come into force must—

- (a) in the case of water extracted from the ground in Wales, be treated as if it were recognition granted by the relevant authority under paragraph (1)(a).
- (b) in the case of water extracted from the ground in a country other than an EEA State, be treated as if it were recognition granted by the Agency under paragraph (1)(d)(i); and

(8) The publication in the Official Journal of the European Union of the name of any water as a natural mineral water recognised in the Community for the purposes of Directive 80/777 is, save where recognition was granted in accordance with Schedule 3, conclusive evidence that that water is recognised for the purposes of that Directive.

(9) Schedule 5 has effect for the purposes specified for it in Schedule 3.

Exploitation of natural mineral water springs

5.—(1) No person may exploit any spring for the purpose of marketing the water from it as natural mineral water unless—

- (a) the water extracted from that spring is natural mineral water;
- (b) the relevant authority has given permission for that spring to be exploited; and
- (c) the requirements of Schedule 4 are met.

(2) Where it is found during exploitation that natural mineral water is polluted and that bottling of the water would contravene paragraph 6, 7 or 8 of Schedule 4, no person may exploit the spring from which the water is extracted until the cause of the pollution is eradicated and the bottling of the water would comply with those paragraphs.

⁽⁸⁾ S.I. 1985/71, revoked by S.I. 1999/1540.

⁽⁹⁾ S.I. 1999/1540, amended by S.I. 2000/656, S.I. 2003/3042 (W.287) and S.I. 2004/1509 (W.158).

Treatments and additions for natural mineral water

- 6.—(1) No person may subject natural mineral water in its state at source to—
- (a) any treatment other than—
 - (i) an authorised ozone-enriched air oxidation technique,
 - (ii) the separation of its unstable elements, such as iron and sulphur compounds, by filtration or decanting, whether or not preceded by oxygenation, in so far as the treatment does not alter the composition of the water as regards the essential constituents which give it its properties, or
 - (iii) the total or partial elimination of free carbon dioxide by exclusively physical methods; or
 - (b) any addition other than the introduction or the reintroduction of carbon dioxide to produce effervescent natural mineral water.
- (2) Paragraph (1) does not prevent the use of natural mineral water in the manufacture of soft drinks.

Bottling of natural mineral water

- 7.—(1) No person may bottle any natural mineral water which, at the time of bottling, contains any substance listed in Schedule 6 at a level which exceeds the maximum limit specified in relation to that substance in that Schedule.
- (2) The methods used for detection of the substances listed in Schedule 6 must conform to the performance characteristics for analysis specified in Schedule 7.
- (3) No person may bottle any natural mineral water which does not meet the requirements of Schedule 4.
- (4) No person may bottle any natural mineral water in any bottle other than a bottle which is fitted with closures designed to avoid any possibility of adulteration or contamination.

Marking, labelling and advertising of natural mineral water

- 8.—(1) No person may cause a natural mineral water to be bottled in a bottle marked or labelled with—
- (a) a trade description which includes the name of a locality, hamlet or other place, unless that trade description refers to a natural mineral water the spring of which is exploited at the place indicated by that description and is not misleading as regards the place of exploitation of the spring;
 - (b) a trade description which is different from the name of the spring or the place of its exploitation, unless the place of exploitation or the name of the spring is also marked or labelled on the bottle, using letters at least one and a half times the height and width of the largest of the letters used for that trade description;
 - (c) any designation, proprietary name, trade mark, brand name, illustration or other sign, whether emblematic 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;
 - (d) any indication other than those specified in sub-paragraphs (f) and (g) attributing to the natural mineral water properties relating to the prevention, treatment or cure of a human illness;
 - (e) any indication listed in column 1 of the Table in Schedule 8, except where the natural mineral water meets the criterion so listed and corresponding to that indication;

- (f) the indication “may be diuretic” or “may be laxative” unless the natural mineral water has been assessed as possessing the property attributed by the indication in accordance with physico-chemical analysis and pharmacological, physiological or clinical examination, as appropriate;
 - (g) the indication “stimulates digestion” or “may facilitate the hepato-biliary functions” unless the natural mineral water has been assessed as possessing the property attributed by the indication in accordance with physico-chemical analysis and pharmacological, physiological and clinical examination; or
 - (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,
 - (bb) “natural mineral water fortified with gas from the spring” to describe water whose content of carbon dioxide from the water table or 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”.
- (2) No person may cause natural mineral water to be bottled in a bottle unless the bottle is marked or labelled with —
- (a) a statement of analytical composition indicating the characteristic constituents of the water;
 - (b) the name of the place where the spring is exploited and the name of the spring;
 - (c) in any case where it has undergone the treatment of total or partial elimination of free carbon dioxide by exclusively physical methods, the indication “fully de-carbonated” or “partially de-carbonated”, as appropriate;
 - (d) in any case where it has undergone an authorised ozone-enriched air oxidation technique, the words “water subjected to an authorised ozone-enriched air oxidation technique”, which must appear in proximity to the analytical composition of characteristic constituents; and
 - (e) in any case where its fluoride concentration exceeds 1.5 mg/l—
 - (i) the words “contains more than 1.5 mg/l of fluoride: not suitable for regular consumption by infants and children under 7 years of age”, which must appear in proximity to the trade name and in clearly visible characters, and
 - (ii) the actual fluoride content in relation to the physico-chemical composition, which must be included within the statement referred to in paragraph (2)(a).
- (3) Where in accordance with paragraph (1)(b) a bottle containing a natural mineral water is required to be marked or labelled with the place of exploitation or the name of the spring—
- (a) the same requirement also applies to any written advertisement for that natural mineral water; and

(b) in any other advertisement, at least equivalent prominence must be given to the place of exploitation or the name of the spring as is given to the trade description.

(4) No person may advertise any natural mineral water under any designation, proprietary name, trade mark, brand name, illustration or other sign, whether emblematic 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.

(5) No person may advertise any natural mineral water in contravention of paragraph (3).

Sale of natural mineral water

9.—(1) No person may sell any water bottled in a bottle the marking or labelling of which uses the name “natural mineral water” in or as the name of the water unless that water is natural mineral water.

(2) No person may sell any bottled natural mineral water —

(a) which contains—

(i) Parasites or pathogenic micro-organisms,

(ii) *Escherichia coli* or other coliforms and faecal streptococci in any 250 ml sample examined,

(iii) Sporulated sulphite-reducing anaerobes in any 50 ml sample examined, or

(iv) *Pseudomonas aeruginosa* in any 250 ml sample examined;

(b) where the total colony count of the water at the source from which that water was taken does not comply with paragraph 7 of Schedule 4;

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

(d) where that water contains any organoleptic defect.

(3) No person may sell any bottled natural mineral water—

(a) which has been extracted from a spring which is exploited in contravention of regulation 5;

(b) which has been subjected to any treatment or addition in contravention of regulation 6; or

(c) which is marked or labelled in contravention of regulation 8.

(4) No person may sell any natural mineral water from one and the same spring under more than one trade description.

PART 3

Spring water

Bottling of spring water and exploitation of spring water springs

10.—(1) No person may cause any water to be bottled in a bottle marked or labelled with the description “spring water” unless that water —

(a) has been extracted from a spring; and

(b) meets the requirements of Schedules 2 and 4.

(2) No person may cause any water which has been treated with ozone-enriched air to be bottled in a bottle marked or labelled spring water, unless that treatment is an authorised ozone-enriched air oxidation technique.

(3) Where it is found during exploitation that spring water is polluted and that bottling of the water would contravene paragraph 6, 7 or 8 of Schedule 4, no person may exploit the spring from which the water is extracted until the cause of the pollution is eradicated and the bottling of the water would comply with those paragraphs.

Marking, labelling and advertising of spring water

11.—(1) No person may cause any bottle to be marked or labelled with the description “spring water” unless the water contained in it—

- (a) is bottled as specified in regulation 10; and
- (b) is intended for consumption in its natural state.

(2) No person may cause any bottle containing water and marked or labelled with the description “spring water” to be marked or labelled with—

- (a) a trade description including the name of a locality, hamlet or other place, unless that trade description refers to water the spring of which is exploited at the place indicated by that description and is not misleading as regards the place of exploitation of the spring; or
- (b) a trade description that is different from the name of the spring or the place of its exploitation unless the place of exploitation or the name of the spring is also marked or labelled on the bottle, using letters at least one and a half times the height and width of the largest of the letters used for that trade description.

(3) No person may cause any water to be bottled in a bottle marked or labelled with the description “spring water” unless the bottle is also marked or labelled with—

- (a) the name of the place where the spring in question is exploited; and
- (b) the name of the spring; and
- (c) in any case where the water has undergone an authorised ozone-enriched air oxidation technique, the words “water subjected to an authorised ozone-enriched air oxidation technique”, which words must appear in proximity to the particulars referred to in subparagraphs (a) and (b).

(4) Where in accordance with paragraph (2)(b) a bottle containing spring water is required to be marked or labelled with the place of exploitation or the name of the spring—

- (a) the same requirement also applies to any written advertisement for that spring water; and
- (b) in any other advertisement, at least equivalent importance must be given to the place of exploitation or the name of the spring as is given to the trade description.

(5) No person may advertise any spring water in contravention of paragraph (4).

Sale of spring water

12.—(1) No person may sell any water bottled in a bottle marked or labelled with the description “spring water”—

- (a) which has not been bottled in accordance with regulation 10; or
- (b) which is not marked or labelled in accordance with regulation 11.

(2) No person may sell water from one and the same spring, bottled in a bottle marked or labelled with the description “spring water”, under more than one trade description.

PART 4

Bottled drinking water

Bottling of drinking water

13. No person may cause any drinking water to be bottled unless that water meets the requirements of Schedule 2.

Marking, labelling and advertising of bottled drinking water

14. No person may—

- (a) cause any drinking water which does not satisfy the provisions of Section I of Annex I to be bottled in a bottle marked or labelled with—
 - (i) any designation, proprietary name, trade mark, brand name, illustration or other sign, whether emblematic or not, the use of which is liable to cause confusion of the water with a natural mineral water, or
 - (ii) the description “mineral water”; or
- (b) cause any bottled drinking water which does not satisfy the provisions of Section I of Annex I to be advertised under—
 - (i) any designation, proprietary name, trade mark, brand name, illustration or other sign, whether emblematic or not, the use of which is liable to cause confusion of the water with a natural mineral water, or
 - (ii) the description “mineral water”.

Sale of bottled drinking water

15. No person may sell any bottled drinking water which—

- (a) has not been bottled in accordance with regulation 13; or
- (b) has not been marked or labelled in accordance with regulation 14.

PART 5

Miscellaneous and supplemental

Enforcement

16.—(1) Each relevant authority must, 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 paragraph (a) above, 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.

(2) Each relevant authority must, within its area, carry out periodic checks on any ozone-enriched air oxidation technique authorised by it pursuant to Schedule 1, to ensure that the requirements of that Schedule continue to be satisfied.

(3) Each food authority must, within its area—

- (a) enforce and execute these Regulations; and
- (b) for the purposes of carrying out that function, take the steps required of member States and competent authorities by Article 7.1, 7.2, 7.3, and 7.6 of Directive 98/83 in relation to products to which that Directive and these Regulations apply.

Arrangements for samples taken for analysis

17.—(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 must 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 must 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 must —

- (a) with respect to one part of the sample comply with paragraphs (3) to (6); and
- (b) deal with the remaining parts in accordance with paragraph (7).

(3) If the sample was purchased by the authorised officer, the officer must give the part of the sample to the person from whom it was purchased.

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

(5) If neither paragraph (3) nor paragraph (4) applies, the authorised officer must 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 paragraph (3), (4) or (5) applies, the authorised officer must 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) The authorised officer must, unless he or she decides not to have an analysis made, submit one of the remaining parts of the sample 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 that person or to his or her agent or by sending it to that person 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 the officer 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 the officer 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 or her name and an address in the United Kingdom displayed on the bottle or any other container, the officer must, unless the officer decides not to have an analysis made, within three days of procuring the sample send to that person a notice informing him or her—

- (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 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 is entitled, upon request to the food authority, to be supplied with a copy of the certificate of analysis by that authority.

Secondary analysis by the Government Chemist

18.—(1) Where a part of a sample has been retained under regulation 17(7) and—

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned in regulation 17,

paragraphs (2) to (7) apply.

(2) The authorised officer—

- (a) may of his or her own volition;
- (b) must if requested by the prosecutor (if a person other than the authorised officer);
- (c) must if the court so orders; or
- (d) must (subject to paragraph (6)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist must analyse the part sent to him or her under paragraph (2) and send to the authorised officer a certificate of analysis.

(4) Any certificate of analysis sent by the Government Chemist must be signed by the Chemist or on his or her behalf, but the analysis may be carried out by a person under the direction of the person who signs the certificate.

(5) The authorised officer must immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the defendant with a copy of the Government Chemist's certificate of analysis.

(6) Where a request is made under paragraph (2)(d) the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the defendant to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation "defendant" includes a prospective defendant.

Methods of analysis

19. Methods of analysis which accord with Article 7.5 of Directive 98/83 must be used for the purposes of determining whether or not water satisfies the provisions of Schedule 2.

Offences and penalties

20. A person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if he or she contravenes regulation 5, 6(1), 7(1), (3), or (4), 8, 9, 10, 11, 12, 13, 14, 15 or 22(3).

Defences

21.—(1) In any proceedings for an offence under these Regulations it is a defence for the accused to show that —

- (a) the water was bottled and marked or labelled before these Regulations came into force; and
- (b) under the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, no offence would have been committed by the accused.

(2) In any proceedings for an offence under these Regulations where it is alleged that water does not meet the requirements in paragraph 1(c) of Part 1 of Schedule 2, it is a defence for the person accused to show that—

- (a) the water in question was bottled or sold in an EEA State other than the United Kingdom; and
- (b) the water complied with the law in that EEA State when it was bottled or sold.

Application of other provisions

22.—(1) The following provisions of the Act apply for the purposes of these Regulations and, unless the context otherwise requires, any reference in those provisions to the Act or Part thereof is construed for the purposes of these Regulations as a reference to these Regulations —

- (a) section 2 (extended meaning of “sale” etc.);
- (b) section 3 (presumptions that food intended for human consumption);
- (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 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(1) (obstruction etc. of officers);
- (h) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection 1(b) above” is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (g)
- (i) section 35(1) (punishment of offences) in so far as it relates to offences under section 33(1) as applied by sub-paragraph (g);
- (j) section 35(2) and (3) insofar as they relate to offences under section 33(2) as applied by sub-paragraph (h)
- (k) section 36 (offences by bodies corporate); and
- (l) section 44 (protection of officers acting in good faith).

(2) Regulation 38 (intelligibility) of the Food Labelling Regulations 1996 applies to any name, description, indication, information or other wording with which water is required or permitted by these Regulations to be marked or labelled, as it applies to particulars required to be labelled under the Food Labelling Regulations 1996.

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

Revocation

23. The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999 are revoked in so far as they apply to Wales.

G. Thomas

Under authority of the Minister for Health and
Social Services, one of the Welsh Ministers

5 November 2007