

## **Explanatory Memorandum: The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2010**

This Explanatory Memorandum has been prepared by the Food Standards Agency Wales and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2010

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

11 March 2010

## Description

1. This Statutory Instrument amends the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007 (S.I. 3165 (W.276)), “the 2007 Regulations”) to put in place provisions relating to the enforcement of Commission Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina treatment for the removal of fluoride from natural mineral waters and spring waters (OJ No. L37, 10.2.2010 p13: and
2. It also implements, in relation to Wales, Article 7.1 to 3 and 6 of Council Directive 98/83/EC relating to the quality of water intended for human consumption (OJ No. L330, 3.11.98, p.32). and corrects errors in the Welsh text of the 2007 Regulations.

## Matters of special interest to the Constitutional Affairs Committee

3. At its meeting of the 23<sup>rd</sup> September 2009, the then Subordinate Legislation Committee considered The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2009 and raised concerns that regulations provided for labels to be in English only.
4. Following correspondence with the Deputy Minister for Social Security, the committee agreed to take no further action until the amending regulations (these 2010 regulations) were available.
5. The Food Standards Agency policy, for all food labelling, is that the use of the prescribed English language wording is mandatory, it being an official community language. Bilingual labelling **may also be used**, at the discretion of the food producer, as long as the integrity of the mandatory English language element of the label is not compromised. This policy is fully in accordance with Article 16 of the European Directive 2000/13/EC of 20 March 2000 copied below.

### *Article 16:*

- 1. Member States shall ensure that the sale is prohibited within their own territories of foodstuffs for which the particulars provided for in Article 3 and Article 4(2) do not appear in a language easily understood by the consumer, unless the consumer is in fact informed by means of other measures determined in accordance with the procedure laid down in Article 20(2) as regards one or more labelling particulars.*
- 2. Within its own territory, the Member State in which the product is marketed may, in accordance with the rules of the Treaty, stipulate that those labelling particulars shall be given in one or more languages which it shall determine from among the official languages of the Community.*
- 3. Paragraphs 1 and 2 shall not preclude the labelling particulars from being indicated in several languages.*

6. The main concern that was raised about the use of bilingual labelling is that placing additional information on a label could cause the typeface used to become so small that consumers cannot access the information easily and this compromises clear food labelling.

## Legislative background

7. The powers enabling this Instrument to be made are set out in sections 16, 17, 26, 31, and 48 of and Schedule 1 to the Food Safety Act 1990. These were functions transferred to the National Assembly for Wales and now exercisable by the Welsh Ministers by virtue of paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006. The instrument is subject to annulment, (the negative procedure).
8. These Regulations amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007 by—
  - a. inserting definitions of “authorised activated alumina treatment” and “Regulation 115/2010” into paragraph (1) of regulation 2 (interpretation) (*regulation 3*);
  - b. substituting a revised version of paragraph (1) of regulation 6 (treatment and additions for natural mineral water) in order to add authorised activated alumina treatments to the list of treatments to which natural mineral water in its state at source may lawfully be subjected (*regulation 4*);
  - c. adding a paragraph to regulation 10 (bottling of spring water and exploitation of spring water springs) prohibiting the bottling of water which has been treated with activated alumina for removal of fluoride in a bottle marked or labelled “spring water” unless the treatment is an authorised activated alumina treatment (*regulation 5*);
  - d. substituting for paragraph (3) of regulation 16 (enforcement) new paragraphs (3) to (6), which :
    - i. require relevant authorities to carry out periodic checks on authorised activated alumina treatments which they have authorised in accordance with new Schedule 1A, to ensure that the requirements of that Schedule continue to be satisfied,
    - ii. require food authorities to carry out regular monitoring of the quality of bottled drinking water and spring water to check specified matters,
    - iii. in order to comply with that requirement, require food authorities to—
      - (aa) carry out regular check monitoring in relation to the parameters, properties, elements, substances and organisms set out in new Schedule 10, and
      - (bb) carry out audit monitoring in relation to any parameter and the properties,

- elements, substances and organisms set out in new Schedule 9,
- iv. for the purposes of that requirement, require food authorities to carry out sampling and analysis in accordance with the relevant minimum frequencies set out in new Schedule 11,
  - v. require food authorities to carry out additional monitoring in relation to any property, element, substance or organism which is neither a parameter nor a property, element, substance or organism set out in new Schedule 9 if they have reason to suspect that it may be present in the water concerned in an amount or number which constitutes a potential danger to human health, and
  - vi. require the checks and monitoring referred to in divisions (ii) to (v) of this sub-paragraph to be carried out using samples representative of the quality of the water concerned consumed throughout the year in which the samples are taken (*regulation 6*);
- e. substituting a revised regulation 20 (offences and penalties) in order to make it an offence to fail to comply with specified provisions of Commission Regulation (EU) No. 115/2010 or to carry out an authorised activated alumina treatment that has a disinfectant action (*regulation 7*); and
  - f. insert new Schedules 1A, 9, 10 and 11 (*regulations 8 and 9*).
- g. Inserting English Language label descriptions in various parts of the Welsh language version of the 2007 regulations (*regulation 10*)

### **Purpose & intended effect of the legislation**

9. The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 2007, as amended, transpose the requirements of European Council Directive (EC) 2009/54, 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.
10. The new Commission Regulation (EU) No. 115/2010 sets out the requirements for using activated alumina treatment to reduce levels of fluoride in natural mineral waters and spring waters. As a Regulation this is “directly applicable”, i.e. it automatically has the force of law in the UK 20 days after publication in the Official Journal of the European Union on the 9th February 2010. This amending Instrument provides enforcement powers. We will not be bringing the Regulations into force until a later date, the 9<sup>th</sup> April, which will avoid the need for 2 separate instruments and having regard to the fact that the delay will only be short and there will be no practical consequences for the trade.

11. Separately, the European Commission has also issued a reasoned opinion as part of infringement proceedings against the UK, relating to the UK implementation of Council Directive (EC) 98/83 on the quality of water intended for human consumption. That Directive relates to bottled water and to public and private water supplies (the latter two falling within the policy remit of DEFRA).
12. For bottled water specifically (which falls within the Food Standards Agency's policy remit) the Commission considered that the 2007 Regulations, by simply cross-referencing to the relevant parts of the Directive, do not provide a clear enough statement of the monitoring requirements applicable to bottled water. The Commission considers in particular that the Table of monitoring frequencies prescribed in the Directive should have been reproduced in the 2007 Regulations.
13. The amending Instrument therefore inserts directly into the 2007 Regulations the monitoring requirements, including monitoring frequencies. It is emphasised that this does not change the current requirements, but merely make them more explicit in the 2007 Regulations. There will be no impact on Welsh bottled water producers and there will be no impact on local authority enforcement officers.
14. The UK has until 20 April 2010 to put in place these measures to comply with the Commission's reasoned opinion, the Commission having agreed to an extension of the time normally permitted for Member States to comply with a reasoned opinion.
15. The 2009 amendment regulations deleted, in error, English language label descriptions from the Welsh language version of the 2007 principal regulations. The remedial corrections are at paragraph 10 of the instrument.

## **Consultation**

16. An 8 week consultation with 110 stakeholders was carried out on a draft of the amending Instrument that just contained enforcement powers for Commission Regulation (EU) No. 115/2010. The amending Instrument was then re-issued to all the stakeholders 4 weeks into the consultation, after the reasoned opinion amendments were added. Two weeks were added to the consultation deadline. The consultation concluded on 9 February 2010. Consultees were asked whether they had any comments on the draft Statutory Instrument and whether they considered its measures would impose further burdens on their business.
17. No impact on producers or enforcers is expected. One of the main bottled water trade associations, the British Soft Drinks Association (BSDA), advised that they were not aware of any producers in the UK who use, or would need to use, treatments to remove fluoride from natural mineral water or spring water.

18. In a separate exercise, Local Authorities in Wrexham, Flintshire, Conwy and Powys were contacted to establish whether they had any spring water producers in their area (with a focus on small businesses) that used fluoride removal treatment. These Counties were selected as they contain regions of fluoride bearing rocks (which would be expected to have elevated fluoride levels in groundwater). Each authority confirmed that either they had no spring water producers in their area or that the spring water producers did not use fluoride treatments.

19. There was no response from Welsh interests.

### **Regulatory Impact Assessment (RIA)**

20. No Impact Assessment (IA) was included as the new legislation does not contain any requirements that are expected to impact on producers or enforcers. No responses were received that contradicted this understanding