

Explanatory Memorandum to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2011.

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance 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 (Amendment) (Wales) Regulations 2011

Gwenda Thomas AM

Deputy Minister for Social Services

12 February 2011

1. Description

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2011 amend the Natural Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007 by providing that languages, in addition to English, may be used on the label or marking of bottle natural mineral water. The Regulations also update references to the Veterinary Medicines Regulations 2009 in the 2007 Regulations.

2. Matters of special interest to the Constitutional Affairs Committee

The issue of bilingual labelling was raised during scrutiny by the Constitutional Affairs Committee of an earlier set of amending Regulations – the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2010. The Constitutional Affairs Committee reported to the National Assembly that the Regulations could be construed as making the use of the Welsh Language on labels illegal. The Food Standards Agency policy is that the use of bilingual labelling is allowed, but it recognises that the Regulations should be clearer on this issue.

3. Legislative background

The powers enabling this Instrument to be made are provided by section 16(1)(e), 17(1), 26(1)(a), and 48(1) of the Food Safety Act 1990. These powers were transferred to the National Assembly for Wales and are now exercisable by the Welsh Ministers by virtue of paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006. This instrument is subject to the negative procedure.

4. Purpose & intended effect of the legislation

The Natural Mineral Water, Spring Water and Bottled Water (Wales) (Amendment) Regulations 2010 were made on 11 March 2010 and came into force on 9 April 2010. They were scrutinised by the Constitutional Affairs Committee who reported to the Assembly on the grounds that the 2007 regulations, and subsequent amendments, could be construed as making the use of the Welsh language on labels illegal. The Food Standards Agency recognised that the issue needs clarification.

Under the relevant EC Directives the prescribed wording on labels must appear in the official community language of the Member State, which is English in this case. However the Directives do not prohibit the additional use of a non community language. This amendment makes it plain that Welsh (or any other non-community language) may be used in addition to English.

The Deputy Minister for Social Services gave evidence to the Constitutional Affairs Committee on 29 April 2010 regarding the use of the Welsh language for labelling, and stated that to ease the Committee's concerns, amending regulations would be brought forward.

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2011 merely clarify actions already in force and do not impose any additional burdens on industry or enforcement authorities. The Regulations have been discussed with the FSA lawyers in England, Scotland and Northern Ireland, and Defra lawyers who will be making identical amendments to their Regulations.

A further review of the 2007 Regulations has been undertaken and a number of provisions have been identified that require similar amendments. Following discussions with policy officials and lawyers responsible for the equivalent regulations in England and in Scotland, a new catch-all provision has been agreed to deal with this point through a single amendment, rather than amend each provision separately. The opportunity is also being taken to update a reference to the Veterinary Medicines Regulations 2005 by substituting it with a reference to the Veterinary Medicines Regulations 2009.

Similar legislation is being made in England, Scotland and Northern Ireland as Welsh water producers sell their product throughout the UK.

5. Consultation

The amendment will be of interest to bottled water producers and local authority enforcement officers. Consultation papers have been sent to all producers of natural mineral water in Wales and to all local authorities. All producers were asked to comment if there was to be any effect on their business.

The consultation began on the 3 August 2010 and ended on 30 August 2010. There were no responses.

6. Regulatory Impact Assessment (RIA)

No RIA has been prepared as there are no impacts on industry or enforcement bodies. The consultation paper specifically asked water producers and local authorities for comment on possible impacts but none were made.