WELSH STATUTORY INSTRUMENTS

2007 No. 3165 (W.276)

FOOD, WALES

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

Made - - - -	*5 November 2007*
Laid before the National Assembly for Wales - -	*7 November 2007*
Coming into force - -	*28 November 2007*

The Welsh Ministers make 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(**1**) and now vested in them (**2**).

In accordance with section 48(4A) of that Act, they have 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(**3**) there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

(**1**) 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.

(**2**) 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 are now exercisable by the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c. 32).

(**3**) OJ No. L31, 1.2.2002, p.1, as last amended by Commission Regulation (EC) No. 575/2006 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. L100, 8.4.2006, p.3).

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(**4**);

"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(**5**);

"Directive 98/83" ("*Cyfarwyddeb 98/83*") means Council Directive 98/83/EC relating to the quality of water intended for human consumption(**6**);

"Directive 2003/40" ("*Cyfarwyddeb 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(**7**);

"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;

(**4**) S.I. 1996/1499, to which there are amendments not relevant to these Regulations
(**5**) OJ No. 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).
(**6**) OJ No. L330, 5.12.98, p.32.
(**7**) OJ No. L126, 22.5.2003, p.34.

"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(**8**), or a marketing authorisation within the meaning of the Medicines for Human Use (Marketing Authorisations etc.) Regulations 1994(**9**), or a marketing authorisation within the meaning of the Veterinary Medicines Regulations 2005(**10**);

(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.

(**8**) 1968 c. 67.
(**9**) S.I. 1994/3144; to which there are amendments not relevant to these Regulations.
(**10**) S.I. 2005/2745.

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,

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(**11**) or the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999(**12**) 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.

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.

(**11**) S.I. 1985/71, revoked by S.I. 1999/1540.
(**12**) S.I. 1999/1540, amended by S.I. 2000/656, S.I. 2003/3042 (W.287) and S.I. 2004/1509 (W.158).