

2017 No. 934 (W. 228)

FOOD, WALES

**The Natural Mineral Water, Spring
Water and Bottled Drinking Water
(Wales) (Amendment) Regulations
2017**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 (S.I. 2015/1867 (W. 274)) (“the principal Regulations”).

The amendments—

- (a) implement the amended monitoring requirements for spring water and bottled drinking water provided for by Commission Directive (EU) 2015/1787 amending Annexes II and III to Council Directive 98/83/EC on the quality of water intended for human consumption (OJ No L 260, 7.10.2015, p 6). The amendments remove the requirement for food authorities to conduct check and audit monitoring of spring water and bottled drinking water (*regulations 8 and 14*);
- (b) provide that natural mineral water and spring water that has been subjected to fluoride removal treatment or ozone-enriched air treatment in a non-EEA State may be sold in Wales. The water may only be sold if those treatments have been authorised by the responsible authority in that non-EEA State and the Food Standards Agency or responsible authority in another part of the UK or EEA has determined that the procedure for authorising the treatment in that State is equivalent to the requirements under Articles 1 to 3 of Regulation (EU) 115/2010 (*regulations 3, 9 and 10*);
- (c) clarify that natural mineral water and spring water extracted otherwise than in Wales may only be sold in Wales if it complies with the

requirements as described in the principal Regulations in relation to exploitation (in the case of natural mineral water), treatments and additions, and bottling and labelling requirements (*regulations 4 and 7*);

- (d) clarify that the rules on treatments and additions do not prevent spring water from being used in the manufacture of soft drinks (*regulation 5*);
- (e) prohibit the advertising of spring water in a way that is liable to cause the water to be confused with a natural mineral water, and prohibiting the use of “mineral water”, “dŵr mwynol”, or its equivalent in any other language, in the advertising of spring water (*regulation 6*);
- (f) correct two errors in the Welsh language text of the principal Regulations (*regulations 11 and 12(b)*);
- (g) correct various other errors in the principal Regulations (*regulations 12(a) and 13*); and
- (h) clarify that the exemption period from monitoring for certain radiological substances lasts 5 years (*regulation 15*).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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(Wales) (Amendment) Regulations
2017**

Made *17 September 2017*

Laid before the National Assembly for Wales
20 September 2017

Coming into force *27 October 2017*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 6(4), 16(1), 17(1), 26(1) and (3), 31 and 48(1) of the Food Safety Act 1990⁽¹⁾.

In accordance with section 48(4A)⁽²⁾ of the Food Safety Act 1990, the Welsh Ministers have had regard to relevant advice given by the Food Standards Agency before making these Regulations.

There has been open and transparent public consultation during the preparation and evaluation of

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- (1) 1990 c. 16. Section 6(4) was amended by section 31 of, and paragraph 6 of Schedule 9 to, the Deregulation and Contracting Out Act 1994 (c. 40), section 40(1) and (4) of, and paragraph 10(1) and (3) of Schedule 5 and Schedule 6 to, the Food Standards Act 1999 (c. 28) (“the 1999 Act”), and S.I. 2002/794. Section 16(1) was amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the 1999 Act. Section 17(1) was amended by paragraphs 8 and 12(a) of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 31 was amended by section 40(1) of, and paragraph 8 of Schedule 5 to, the 1999 Act. Section 48 was amended by section 40(1) of, and paragraph 8 of Schedule 5 to, the 1999 Act. Functions formerly exercisable by the “the Ministers” so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

these Regulations 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⁽¹⁾.

Title, application and commencement

1.—(1) The title of these Regulations is the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2017.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 27 October 2017.

Amendment of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015

2. The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015⁽²⁾ are amended in accordance with regulations 3 to 15.

3. In regulation 2 (interpretation), in paragraph (1)—

(a) for the definition of “fluoride removal treatment”, substitute—

““fluoride removal treatment” (*“triniaeth tynnu fflworid”*) has the meaning given in regulation 27A;”;

(b) for the definition of “ozone-enriched air treatment”, substitute—

““ozone-enriched air treatment” (*“triniaeth aer a gyfoethogir ag osôn”*) has the meaning given in regulation 27B;”.

4. In regulation 13 (sale of natural mineral water), for sub-paragraphs (a) to (d) of paragraph (2) substitute—

“(a) has been extracted from a spring—

(i) in Wales, which has been exploited in contravention of regulation 8; or

(ii) otherwise than in Wales, which has been exploited otherwise than in compliance with the requirements as described at regulation 8(1)(a) and (c) and regulation 8(2), or if the responsible authority of the area in

(1) OJ No L 31, 1.2.2002, p 1, last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ No L 189, 27.6.2014, p 1).

(2) S.I. 2015/1867 (W. 274).

which the spring is exploited has not given permission for the spring to be so exploited;

- (b) has been subjected—
 - (i) in Wales, to any treatment or addition in contravention of regulation 9; or
 - (ii) otherwise than in Wales, to—
 - (aa) a treatment which is not described at regulation 9(1)(a)(i), 9(1)(a)(ii), a fluoride removal treatment, or an ozone-enriched air oxidation treatment;
 - (bb) any addition other than an addition described in regulation 9(1)(b); or
 - (cc) any disinfection treatment, the addition of bacteriostatic elements, or any other treatment likely to change the viable colony count of the natural mineral water;
- (c) is bottled—
 - (i) in Wales, in contravention of regulation 10; or
 - (ii) otherwise than in Wales, in contravention of the requirements as described in regulation 10;
- (d) is labelled—
 - (i) in Wales, in contravention of regulation 11; or
 - (ii) otherwise than in Wales, in contravention of the requirements as described in regulation 11; or”.

5.—(1) Regulation 15 (treatments and additions for water intended to be labelled and sold as “spring water” or “dŵr ffynnon”) is renumbered as paragraph (1) of that regulation.

(2) After paragraph (1) as so renumbered, insert—

“(2) Paragraph (1) does not prevent the use of water intended to be labelled and sold as “spring water”, “dŵr ffynnon”, or its equivalent in any other language in the manufacture of soft drinks.”

6. In regulation 17 (advertising of water as “spring water” or “dŵr ffynnon”), after paragraph (2), insert—

“(3) No person may advertise water intended to be labelled and sold as “spring water”, “dŵr

ffynnon”, or its equivalent in any other language under—

- (a) a 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
- (b) the description “mineral water”, “dŵr mwynol”, or its equivalent in any other language.”

7. In regulation 18 (sale of water as “spring water” or “dŵr ffynnon”) for sub-paragraphs (a) to (c) of paragraph (1) substitute—

“(a) is bottled—

- (i) in Wales, in contravention of regulation 14(1); or
- (ii) otherwise than in Wales, in contravention of the requirements as described in regulation 14(1);

(b) has been subjected—

- (i) in Wales, to any treatment or addition in contravention of regulation 15; or
- (ii) otherwise than in Wales, to—
 - (aa) treatment which is not described at regulation 15(1)(a)(i), 15(1)(a)(ii), a fluoride removal treatment, or an ozone-enriched air oxidation treatment;
 - (bb) any addition other than an addition described in regulation 15(1)(b); or
 - (cc) any disinfection treatment, the addition of bacteriostatic elements, or any other treatment likely to change the viable colony count of the natural mineral water;

(c) is labelled—

- (i) in Wales, in contravention of regulation 16; or
- (ii) otherwise than in Wales, in contravention of the requirements as described in regulation 16; or”.

8. In regulation 24 (monitoring of water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water), omit paragraph (2)(a).

9. After regulation 27 (monitoring of certain treatments) insert—

“Fluoride removal treatment

27A. For the purposes of these Regulations, a fluoride removal treatment means—

- (a) a treatment of natural mineral water or water intended to be bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, with activated alumina in order to remove fluoride which is authorised in accordance with regulations 9(1)(a)(iii) or 15(a)(iii) and Schedule 2;
- (b) in the case of natural mineral water or water intended to be bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, brought into Wales from another part of the United Kingdom or from another EEA State, a treatment which has been authorised by the responsible authority in the area in which the water is extracted as complying with the requirements of Articles 1 to 3 of Regulation 115/2010 and which does not have a disinfectant action; or
- (c) in the case of natural mineral water or water intended to be bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, brought into Wales from a country other than an EEA State, a treatment that has been authorised by the responsible authority in that country in accordance with procedures for authorising fluoride removal treatment in that country which have been determined by the Agency or responsible authority in another part of the United Kingdom or in another EEA State to be equivalent to the requirements of Articles 1 to 3 of Regulation 115/2010 and which does not have a disinfectant action.”

10. After new regulation 27A (fluoride removal treatment), insert—

“Ozone-enriched air treatment

27B. For the purposes of these Regulations, an ozone-enriched air treatment means—

- (a) a treatment of natural mineral water or water intended to be bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, with ozone-enriched air which is authorised in accordance with regulations 9(1)(a)(iv) or 15(a)(iv) and Schedule 3;
- (b) in the case of natural mineral water or water intended to be bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, brought into Wales from another part of the United Kingdom or from another EEA State, a treatment which has been authorised by the responsible authority in the area in which the water is extracted as complying with Article 5 of Directive 2003/40, as read with Article 7 of that Directive in respect of its application to spring water, as implemented in that part of the United Kingdom or that EEA State, and which does not have a disinfectant action; or
- (c) in the case of natural mineral water or water intended to be bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, brought into Wales from a country other than an EEA State, a treatment that has been authorised by the responsible authority in that country in accordance with procedures for authorising ozone-enriched air treatment in that country which have been determined by the Agency or responsible authority in another part of the United Kingdom or in another EEA State to be equivalent to the requirements of Article 5 of Directive 2003/40, as read with Article 7 of that Directive in respect of its application to spring water, and which does not have a disinfectant action.”

11. In Schedule 2 (fluoride removal treatment), for the Welsh text of sub-paragraph (b) of paragraph 3, substitute “nad yw’r driniaeth yn cael effaith ddiheintio.”

12. In Schedule 3 (ozone-enriched air treatment)—

- (a) in sub-paragraph (b) of paragraph 1, for “3, 4 and 5” substitute “6, 7 and 8”;
- (b) for the Welsh text of sub-paragraph (c) of paragraph 1, substitute “nad yw’r driniaeth yn cael effaith ddiheintio.”

13. In Schedule 7 (requirements for water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water including prescribed concentrations or values of parameters), in Part 3 (parametric values for indicator parameters), in Table C (indicator parameters), in the row relating to—

- (a) item 5, parameter “Colour”—
 - (i) in column 3 (units of measurement), for “Mg/1 Pt/Co scale” substitute “Acceptable to consumers and no abnormal change”; and
 - (ii) in column 4 (maximum concentration or value), omit “20”;
- (b) item 10, parameter “Odour”—
 - (i) in column 3 (units of measurement), for “Dilution number” substitute “Acceptable to consumers and no abnormal change”; and
 - (ii) in column 4 (maximum concentration or value), omit “3 at 25°C”;
- (c) item 14, parameter “Taste”—
 - (i) in column 3 (units of measurement), for “Dilution number” substitute “Acceptable to consumers and no abnormal change”; and
 - (ii) in column 4 (maximum concentration or value), omit “3 at 25°C”.

14. Omit Schedule 8 (monitoring for parameters other than radioactive substances in water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water).

15.—(1) In Schedule 9 (monitoring for radioactive substances in water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water), paragraph 13 (exemption from monitoring) is renumbered as sub-paragraph (1) of that paragraph.

(2) After sub-paragraph (1) so renumbered, insert—

“(2) Subject to sub-paragraph (3), the exemption from monitoring under sub-paragraph (1) lapses after a period of 5 years, beginning on the date the food authority notifies its decision to the Agency in accordance with sub-paragraph (1)(b).

(3) The exemption from monitoring under sub-paragraph (1) lapses immediately if the level of radon, tritium or indicative dose exceeds the relevant parametric value specified in Part 4 of Schedule 7.”

Vaughan Gething

Minister for Social Services and Public Health under
authority of the Cabinet Secretary for Health, Well-
being and Sport, one of the Welsh Ministers

17 September 2017