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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 435**

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

**PART 5**

Miscellaneous and supplemental

**Enforcement**

- 16.** Each food authority shall, within its area—
- (a) enforce and execute these Regulations;
  - (b) for the purposes of carrying out that function take the steps required of member States and competent authorities by Articles 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;
  - (c) carry out periodic checks on any water which has been recognised as a natural mineral water to ensure that—
    - (i) the composition, temperature and other essential characteristics of the water remain stable within the limits of fluctuation,
    - (ii) without prejudice to item (i), the composition, temperature and other essential characteristics of the water are unaffected by any variations in the rate of flow,
    - (iii) 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
    - (iv) the requirements of Schedule 4 are met in relation to the water.
  - (d) 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.

**Arrangements for samples taken for analysis**

**17.—(1)** An authorised officer 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 shall 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 shall 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 shall—

- (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 shall 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 Scotland and was taken by the authorised officer before delivery to a person who intends to sell that water in Scotland, the officer shall give the part of the sample to that person.

(5) If neither paragraph (3) nor (4) applies, the authorised officer shall 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 paragraphs (3) to (5) apply the authorised officer shall 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) Of the remaining parts of the sample, the authorised officer shall, if an analysis is to be carried out, submit one 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 an agent of that person or by sending it 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 he 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) whose name and an address in Scotland is displayed on the bottle or any other container, the officer shall, unless the officer decides not to have an analysis made, within three days of procuring the sample, by a notice inform that person—

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

### **Submission of samples to the Government Chemist**

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

- (a) a decision has been made to send a report to the procurator fiscal or proceedings have been commenced against a person for an offence under these Regulations; and
- (b) the result of the analysis carried out in accordance with regulation 17(7) is to be adduced as evidence,

paragraphs (2) to (6) apply.

(2) The authorised officer—

- (a) may of the officer's own volition; and
- (b) shall—
  - (i) if requested by the prosecutor;
  - (ii) if the court so orders on the application of the prosecutor or the accused; or
  - (iii) if requested by the accused (subject to paragraph (5)),

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

(3) The Government Chemist shall analyse the part sent under paragraph (2) and where the analysis is carried out—

- (a) under paragraph (2)(a) or (b)(i) or (iii), provide the authorised officer; or
- (b) under paragraph (2)(ii), provide the prosecutor and the accused,

with a certificate of analysis.

(4) The authorised officer shall immediately on receipt supply the prosecutor and the accused with a copy of the Government Chemist’s certificate of analysis.

(5) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the accused requesting payment of a fee specified in the notice in respect of the functions mentioned in paragraph (3), and in the absence of agreement by the accused to pay the fee the authorised officer may refuse to comply with the request.

(6) In this regulation “accused” includes a person who is intended to be the subject of a report to the procurator fiscal.

### **Methods of analysis**

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

### **Offences and penalties**

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

### **Defences**

**21.—(1)** In any proceedings for an offence under these Regulations it shall be 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) no offence would have been committed under the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999(1) as they were in force immediately before the coming into force of these Regulations.

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

- (a) the water in question was bottled or sold in an EEA State other than the UK; 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 shall apply for the purposes of these Regulations and any reference in those provisions to the Act or Part thereof shall be construed for the purposes of these Regulations as a reference to these Regulations—

- (a) section 2 (extended meaning of “sale” etc.);
- (b) section 3 (presumption that food intended for human consumption);
- (c) section 20 (offences due to fault of another person);

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(1) S.I.1999/1540, amended by S.S.I. 2000/62, 2003/139, 2004/132 and 2005/616.

- (d) section 21 (defence of due diligence) as it applies for the purposes of sections 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 (obstruction etc. of officers);
- (h) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2) as applied by sub-paragraph (g);
- (i) section 36 (offences by bodies corporate);
- (j) section 36A (offences by Scottish partnerships); and
- (k) section 44 (protection of officers acting in good faith).

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

(3) No person shall 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).

### **Revocations**

**23.**—(1) The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999 are revoked.

(2) The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Scotland) Regulations 2003<sup>(3)</sup> and the Natural Mineral Water, Spring Water and Bottled Drinking Water Amendment (Scotland) Regulations 2004<sup>(4)</sup> are revoked.

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

(3) S.S.I. 2003/139.

(4) S.S.I. 2004/132.