

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

Summary report of stakeholders' responses

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 consultation was issued 12 April 2017 and closed on 5 July 2017

The FSA in Wales carried out a 12-week public consultation exercise that was published on its website and sent directly to all identified stakeholder organisations. It also held a stakeholder meeting with the Natural Hydration Council and two producers in Wales

- 1 The FSA is grateful to those stakeholders who responded and sets out in the table below responses in order of the key proposals.
- 2 The key proposals on which the consultation sought views were:
 - **Transposition of Commission Directive 2015/1787 removing the requirement for check and audit monitoring for spring water and bottled drinking water**
 - **Amendment of regulation 2 on definitions of “fluoride removal treatment” and “ozone-enriched air treatment”**
 - **Amendment of regulation 13 on sale of natural mineral water**
 - **Clarification of regulation 15 on the disinfection of spring water**
 - **Amendment of regulation 17 on the advertising of spring water**
 - **Amendment of regulation 18 on the sale of spring water**
 - **Amendment of Schedule 3 to meet the requirements of Directive 2009/54**
 - **Amendment of parameters in Schedule 7 to match Directive 98/83**
 - **Amendment of Schedule 9 to clarify period of exemption**
 - **Draft Guidance on the 2015 Regulations (as amended by the 2017 Regulations)**
- 3 The Food Standards Agency's considered responses to stakeholders' comments are given in the last column of the table. A summary of changes to the original proposal(s) resulting from stakeholder comments is set out in the final table.
- 4 A list of stakeholders who responded can be found at the end of the document.

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Q1: - Do you agree with the proposal to transpose Commission Directive 2015/1787, which would remove the requirement for check and audit monitoring for spring water and bottled drinking water from the 2015 Regulations?

Respondent	Comment	Response
Natural Hydration Council	Agree – so long as applied consistently across the UK	The FSA in Wales understands that all countries of the UK will be transposing the Directive. This means that the other UK local authorities will not continue check and audit monitoring.
British Soft Drinks Association	Agreed	No Response
Welsh Heads of Trading Standards	Agreed	No Response
Powys County Council	Agreed	No Response
Montgomery Spring	Concern for commercial disadvantage for Wales businesses if other UK local authorities continue monitoring	The FSA in Wales understands that all countries of the UK will be transposing the Directive
Highland Spring	Agreed	No Response
Brecon Carreg (Spadel UK)	Concern for commercial disadvantage for Wales businesses if other UK local authorities continue monitoring	The FSA in Wales understands that all countries of the UK will be transposing the Directive. This means that the other UK local authorities will not continue check and audit monitoring.

Q2: Do you agree that clarity on the use of spring water as an ingredient in production of soft drinks is desirable?

Respondent	Comment	Response
Natural Hydration Council	Agree, but see comment on guidance below	See response on guidance below
British Soft Drinks Association	Agreed	No Response
Welsh Heads of Trading Standards	Agreed	No Response
Powys County Council	Agreed	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Montgomery Spring	Agree, but see comment on guidance below	See response on guidance below
Highland Spring	Agreed	No Response
Brecon Carreg (Spadel UK)	Agreed	No Response

Q3: Do you agree that the Regulations should clarify that no person may sell spring water in Wales if it has been labelled with anything that may cause it to be confused with a natural mineral water?

Respondent	Comment	Response
Natural Hydration Council	Agreed	No Response
British Soft Drinks Association	Agreed	No Response
Welsh Heads of Trading Standards	Agreed (comment on guidance dealt with elsewhere)	No Response
Powys County Council	Agreed	No Response
Montgomery Spring	No Comment	No Response
Highland Spring	Agreed	No Response
Brecon Carreg (Spadel UK)	Agreed	No Response

Q4: Do you agree that water produced elsewhere should comply with the requirements described in the Wales Regulations if it is to be sold in Wales?

Respondent	Comment	Response
Natural Hydration Council	Agreed	No Response
British Soft Drinks Association	Agreed – though this may affect producers in other parts of the UK producing water that is compliant in those parts of the UK	The FSA in Wales is aware of differences in the regulations in other parts of the UK, but has no authority or responsibility outside Wales.

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Welsh Heads of Trading Standards	Ban on UV will be difficult to enforce while it is still legal in England and Scotland.	For water to be sold in Wales it must comply with the Wales regs even if it is produced elsewhere. The FSA will reflect this in guidance, and will work with local authorities to deliver compliance.
Powys County Council	Agreed, though this raises questions for enforcement authorities over the implementation of the Regulations.	Specific enforcement questions will be answered directly. The FSA will share this advice with all appropriate authorities.
Montgomery Spring	Some of our customers ship bottled water from England and Scotland into Wales. These customers will be interested in the legality of cross-border trade.	Water that complies with the Regulations in Wales will be legal to sell in Wales, whatever its origin.
Highland Spring	Agreed	No Response
Brecon Carreg (Spadel UK)	Agreed	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Q5: Do you agree with the proposal to amend Schedule 3 to the 2015 Regulations reflect the requirements of the relevant EU Directive?		
Respondent	Comment	Response
Natural Hydration Council	Agreed	No Response
British Soft Drinks Association	Agreed	No Response
Welsh Heads of Trading Standards	No Comment	No Response
Powys County Council	Agreed	No Response
Montgomery Spring	No Comment	No Response
Highland Spring	Agreed	No Response
Brecon Carreg (Spadel UK)	Agreed	No Response
Q6: Do you agree with the proposal to amend Schedule 7 to the 2015 Regulations reflect the requirements of the relevant EU Directive?		
Respondent	Comment	Response
Natural Hydration Council	Agreed	No Response
British Soft Drinks Association	Agreed	No Response
Welsh Heads of Trading Standards	No Comment	No Response
Powys County Council	Agreed	No Response
Montgomery Spring	No Comment	No Response
Highland Spring	Agreed	No Response
Brecon Carreg (Spadel UK)	Agreed	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Q7: Do you agree with the proposal to amend Schedule 9 to the 2015 Regulations to make clear that there is a 5-year limit on exemptions?		
Respondent	Comment	Response
Natural Hydration Council	Agreed	No Response
British Soft Drinks Association	Appreciate clarity but would prefer a rolling 5-year exemption	The FSA in Wales considers that the Regulations reflect the EU Directive. This will be kept under review as experience of how exemptions work in practice over the coming years.
Welsh Heads of Trading Standards	Disagree with the five year limit. The exemptions should be far longer	The FSA in Wales considers that the Regulations reflect the EU Directive. This will be kept under review as experience of how exemptions work in practice over the coming years. In particular these amending Regulations seek to clarify rather than newly impose the 5-year limit, which is in the 2015 Regulations.
Powys County Council	Agreed	No Response
Montgomery Spring	No Comment	No Response
Highland Spring	Agreed	No Response
Brecon Carreg (Spadel UK)	Agreed	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Q8: Do you agree with the assessment of the proposals as cost-neutral? Please provide evidence of any costs or benefits that may arise from the implementation of the proposals.		
Respondent	Comment	Response
Natural Hydration Council	Agreed	No Response
British Soft Drinks Association	Proposals will be cost-neutral in Wales, but there could be loss of business for producers in England or Scotland who produce water legally in those countries but are non-compliant with Regulations in Wales	The FSA in Wales is aware of differences in the regulations in other parts of the UK, but has no authority or responsibility outside Wales.
Welsh Heads of Trading Standards	Refer to Radon testing as very expensive and suggest that businesses will not seek exemptions as they will not have to carry out testing themselves.	It is for local authorities to apply the exemptions rather than for businesses to apply for them. In practice local authorities work with businesses to achieve compliance. Costs for radon testing were assessed in the consultation on the 2015 Regulations and no new costs for radon testing are proposed by the 2017 amending regulations.
Powys County Council	A benefit is identified as approximately 3 hours a month of EHO time will be saved, plus some admin cost.	The FSA acknowledges this saving, but notes that it is financially negligible. No Impact Assessment would be required to register this marginal benefit.
Montgomery Spring	No Comment	No Response
Highland Spring	Agreed	No Response
Brecon Carreg (Spadel UK)	No Comment	No Response

Q9: Do you have any comments on the draft guidance?

There were several comments on the guidance from all respondents, all of which have been taken into account when updating the draft guidance for publication.

Some specific points on the guidance where it would be helpful for the FSA to respond in this document can be found after the responses to the specific questions asked in the consultation.

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Q10: Do you consider that the policy/proposed Regulations will have an effect on opportunities for use of the Welsh language?		
Respondent	Comment	Response
Natural Hydration Council	No Comment	No Response
British Soft Drinks Association	Agreed	No Response
Welsh Heads of Trading Standards	No Comment	No Response
Montgomery Spring	No Comment	No Response
Powys County Council	No Comment	No Response
Highland Spring	No Comment	No Response
Brecon Carreg	No Comment	No Response
Q11: We would like to know your views on the effects that the proposed Regulations would have on the Welsh language, specifically on: i) opportunities for people to use Welsh and ii) on treating the Welsh language no less favourably than English.		
Respondent	Comment	Response
Natural Hydration Council	No Comment	No Response
British Soft Drinks Association	No Comment	No Response
Welsh Heads of Trading Standards	No Comment	No Response
Powys County Council	No Comment	No Response
Montgomery Spring	No Comment	No Response
Highland Spring	No Comment	No Response
Brecon Carreg	No Comment	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Q12: What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?		
Respondent	Comment	Response
Natural Hydration Council	No Comment	No Response
British Soft Drinks Association	No Comment	No Response
Welsh Heads of Trading Standards	No Comment	No Response
Powys County Council	No Comment	No Response
Montgomery Spring	No Comment	No Response
Highland Spring	No Comment	No Response
Brecon Carreg	No Comment	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Specific points made in connection with the draft guidance

Definitions		
Respondent	Comment	Response
Natural Hydration Council	No Comment	No Response
British Soft Drinks Association	<p>Definitions of “source” and “borehole” should be reinstated</p> <p>Disagree that ECJ judgement applies to spring water as spring water is not required to have a stable composition</p> <p>Consistency required in the use of source and spring through the guidance</p>	<p>FSA will consider reinstating these definitions</p> <p>ECJ judgement defines “one and the same spring” in respect of application of EU law – it is difficult to see how this would not apply to the specific prohibition on more than one trade description for spring water as well, albeit that the composition of the “spring” need not be stable over time. FSA will seek further advice. However, the FSA will make it clear that the definition applies specifically to “one and the same spring” when used in conjunction with the rules on Trade Descriptions.</p> <p>FSA will reflect this in the final guidance, but this needs to reflect the use of these terms in the Regulations.</p>
Welsh Heads of Trading Standards	No Comment	No Response
Powys County Council	No Comment	No Response
Montgomery Spring	No Comment	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Highland Spring	<p>Definitions of “source” and “borehole” should be reinstated</p> <p>Disagree that ECJ judgement applies to spring water as spring water is not required to have a stable composition</p> <p>Consistency required in the use of source and spring through the guidance</p>	See response to British Soft Drinks Association above.
Brecon Carreg	No Comment	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Trade description and sales description		
Respondent	Comment	Response
Natural Hydration Council	<p>Included suggested text for this section.</p> <p>Agree that the brand name on an “own brand” bottle of Natural Mineral Water or Spring Water does not constitute a trade description.</p> <p>NHC believes that trade description should be included on label</p>	<p>FSA will consider suggestions when drafting final guidance.</p> <p>The FSA agrees that the brand of a retailer, which covers a range of products, does not constitute a trade description for NMW or Spring Water.</p> <p>FSA does not consider that the Regulations <i>require</i> inclusion of a trade description on the label. Rather, the Regulations set out the rules if a trade description is used.</p>
British Soft Drinks Association	No Comment	No Response
Welsh Heads of Trading Standards	<p>Agree with the interpretations of “trade description” and “sales description”</p> <p>Agree that the brand name on an “own brand” bottle of Natural Mineral Water or Spring Water does not constitute a trade description.</p>	<p>No Response</p> <p>The FSA agrees that the brand of a retailer, which covers a range of products, does not constitute a trade description for NMW or Spring Water.</p>
Powys County Council	No Comment	No Response
Montgomery Spring	Assume that the brand name on an “own brand” bottle of Natural Mineral Water or Spring Water does not constitute a trade description.	The FSA agrees that the brand of a retailer, which covers a range of products, does not constitute a trade description for NMW or Spring Water.

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Highland Spring	<p>Brand, even separate from the sales description, forms part of the trade description.</p> <p>Disagree that “trade description” does not have to be included on label</p>	<p>The FSA disagrees that retailer “own brand” branding, which can cover a whole range of products, forms part of the specific “trade description” for NMW or Spring Water.</p> <p>FSA does not consider that the Regulations <i>require</i> inclusion of a trade description on the label. Rather, the Regulations set out the rules if a trade description is used.</p>
Brecon Carreg	No Comment	No Response

Summary of substantive comments to the FSA consultation on *The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Wales) Regulations 2017*

Use of Spring Water in soft drinks		
Respondent	Comment	Response
Natural Hydration Council	Once water has entered a part of the production plant clearly identified for the sole purpose of being mixed with other ingredients, the spring water should be considered an “ingredient” and UV treatment permitted to the satisfaction of the local authority.	The Regulations do not allow any disinfection treatment for spring water. If the water is to be labelled as spring water in the name or ingredients of a composite product, such as a soft drink, then it will need to comply with the regulations for spring water. Once one or more ingredients are added to spring water the resulting product is a composite product. There is no prohibition on the use of UV treatment in a composite product.
British Soft Drinks Association	Believe the answer goes beyond the regulation and should be same as question for Natural Mineral Water	FSA will re-examine guidance in light of this comment, to ensure consistency between natural mineral water and spring water.
Welsh Heads of Trading Standards	No Comment	No Response
Powys County Council	No Comment	No Response
Montgomery Spring	Once water has entered a part of the production plant clearly identified for the sole purpose of being mixed with other ingredients, the spring water should be considered an “ingredient” and UV treatment permitted to the satisfaction of the local authority.	The Regulations do not allow any disinfection treatment for spring water. If the water is to be labelled as spring water in the name or ingredients of a composite product, such as a soft drink, then it will need to comply with the regulations for spring water. Once one or more ingredients are added to spring water the resulting product is a composite product. There is no prohibition on the use of UV treatment in a composite product.
Highland Spring	No Comment	No Response
Brecon Carreg	No Comment	No Response

List of respondents

Natural Hydration Council
British Soft Drinks Association*
Welsh Heads of Trading Standards
Powys County Council
Montgomery Spring
Highland Spring
Brecon Carreg (Spadel UK)

* Communication was received separately from A.G.Barr plc (a member of BSDA) supporting this response.