I. Introduction and summary

1. This assessment estimates the costs and benefits of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Scotland) Regulations 2003. It reflects the response to public consultation which took place in two phases: from March to June 2001 and subsequently from November 2001 to January 2002 and relates to the implementation of Directive 98/83/EC. The parts of the original consultation package relating to the implementation of the provision from Directive 80/777/EEC governing the making of claims that water is suitable for infant feeding will be transposed as a separate SSI.

2. Approximately 40 individuals and organisations representing interests in Scotland, England, Wales and Northern Ireland responded to our consultation process which included sending documents via mail and e-mail, holding telephone discussions and posting documents on the Food Standards Agency’s website. The group of respondents included a major bottled water producer; the main trade association in the soft drinks sector; consultants to the bottled water industry; experts in public health, infant feeding and infant health; microbiologists; local authority enforcement officers; representatives of national enforcement co-ordinating bodies and other government departments and agencies.
3. As a result of the first phase of consultation (March – June 2001) and internal discussion, the initial draft of the Regulations was amended markedly in certain respects, notably:

- by including a provision formalising existing notification procedures for new natural mineral water recognitions, withdrawals or changes in name.
- by redrafting the provision covering mutual recognition.
- by adding a provision to ensure that recognition can be withdrawn from existing natural mineral waters which fail to comply with new toxic substance limits.

4. As we had made significant changes to the draft Regulation, we considered it appropriate to consult on the second draft (from November 2001 to January 2002). This second phase of consultation yielded only two further comments, both of which had already been dealt with.

5. Although further changes have been made, namely, the two Directives being transposed through separate Regulations, where appropriate, comments made in previous consultations have been addressed.

**Summary of costs and benefits**

6. The most significant benefits of these amending Regulations will be to consumers of natural mineral waters, spring waters and bottled drinking waters. Consumers will be better protected by new limits for toxic substances. These Regulations are likely to have a minimal financial impact on exploiters and bottlers of natural mineral waters, spring waters and bottled drinking waters. Enforcement authorities will benefit from improved enforcement provisions but will also bear implementation costs.
II. **Purpose and intended effect of the amending regulations**


8. The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Scotland) Regulations 2003 will introduce a number of amendments to the current UK legislation – the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999 (SI 1540). The most significant amendments will be to:

   i. implement Directive 98/83/EC on the quality of water intended for human consumption as it applies to spring water and bottled drinking water.
   
   ii. amend some of the toxic substance limits for natural mineral water.
   
   iii. introduce an offence prohibiting the bottling of spring waters in contravention of the Regulations and sale of such waters so bottled.
   
   iv. introduce an offence prohibiting the sale of bottled drinking water not complying with the labelling requirements for such waters.
   
   v. ensure that recognition can be withdrawn from natural mineral waters which fail to comply with the new toxic substance limits.
   
   vi. formalise the existing practice whereby local authorities inform the Food Standards Agency of new natural mineral water recognitions, withdrawals or changes in name.

**Risk assessment**

10. By virtue of the following amendments, the risk of consumers being adversely affected by components of bottled water will be reduced:

i. limits for some toxic substances have been amended to take account of up-to-date knowledge.

ii. recognition can be withdrawn from natural mineral waters which fail to comply with the new toxic substance limits.

11. By tightening the provisions in the current legislation through increasing the requirements related to the enforcement of natural mineral water, spring water and bottled drinking water, bottled waters will be better monitored and enforced.

12. By transposing the provisions of Directive 98/83/EC into national legislation, the risk of inequitable regulation of the EU bottled water industry will be reduced.

**Options**

13. If we did not implement the provisions of Directive 98/83/EC relating to bottled water, we would have failed to protect the health of consumers. In addition, this would have led to incomplete transposition of the Directive and the risk of infraction proceedings. Directive 98/83/EC introduces changes to the limits for many of the chemical constituents in water intended for human consumption. The Scottish Executive Water Services Unit (SE) is implementing the provisions of the Directive as they apply to public and private water supplies. New limits chosen for bottled waters are similar to those set for public supplies because the same health considerations apply to natural mineral water, spring and bottled drinking waters, which are drunk by some consumers in place of tap water.
III. Benefits
14. Consumers will benefit from the changes in the legislation because limits for certain substances in bottled waters have been amended to take account of the latest public health requirements. Enforcement officers will benefit from provision of the necessary offences and allow enforcement in areas where thus far, there has been no standard. At present, it is not possible to quantify any of these benefits.

IV. Compliance Cost Estimates
15. The following estimates of implementation and policy costs are based on the partial RIA and the responses to our consultation.

Business sectors affected
16. The amending Regulations apply to exploiters and bottlers of natural mineral waters, spring waters and bottled drinking waters. Charities and the voluntary sector that are involved in the production or sale of bottled water will be subject to the same requirements as other sectors of the industry.

17. In 2001 the bottled water sector in the UK was worth almost £900 million, and was comprised of four major brands, each with a market share of between 5 and 10 percent based on volume. Of the bottled water sold in the UK, 28% of the water was imported. With regard to the 72% of water that was produced in the UK, 46% was branded and 26% was own label. Approximately half of the water was sold through supermarkets, one-fifth was sold to offices for use in water coolers, one-fifth through other retail and one-tenth sold by restaurants and or public houses. We understand that there are a large number of medium-sized businesses producing bottled waters (each employing in the region of 40-60 people). In addition, there are an unknown number of small businesses in this sector with 20 or fewer employees.
Compliance costs for a typical business

Natural mineral water producers

18. Once the amending Regulations come into force, natural mineral water producers will have to meet new limits for some toxic substances. Analysis of heavy metals and pollutants is already undertaken when recognition is sought and we anticipate that the changes will not require significant increases in analytical costs. During consultation, only one of our ‘industry’ respondents hinted at the possibility that compliance with one of the new limits could present a problem. A survey carried out in April 2002 to investigate levels of antimony, arsenic, bromate and nickel in the bottled waters on sale in the UK, found that only one Scottish water sample (Purely Scottish) contained arsenic at levels greater than 10 micrograms per litre, the limit that will apply from 25 December 2003. The manufacturer was informed of the result obtained from the sample. The results of this survey are presented in Food Survey Information Sheet number 28/02.

Spring water and bottled drinking water producers

19. Spring water and bottled drinking water producers will also have to comply with new compositional limits. However, analysis for nearly all of the parameters are already required, and many other analyses will no longer be required. On balance, there is likely to be a minimal financial impact due to these changes. Our consultation did not provide any evidence that these producers would face increased charges once the amending Regulations come into force. To the best of our knowledge, Scottish spring waters and bottled drinking waters already meet the revised limits. Again, a survey of bottled waters on sale in the UK suggested that no spring waters or bottled drinking waters produced in Scotland would be unable to meet the new limits.

Small Business Litmus Test

20. As indicated above (paragraph 18) the UK bottled water sector is dominated by four major companies who share a large part of the market. While there
are an unknown number of small businesses in this sector, we have no reason to believe that the amending Regulations will discriminate in any way against small businesses. The Scottish Executive Small Business Unit and the Federation of Small Businesses were included in our consultation process and did not raise any concerns of unique relevance to small businesses.

21. We estimate that there will be no policy costs and minimal implementation costs imposed on natural mineral water, spring water and bottled drinking water producers as a result of these amending Regulations.

V. Other costs

22. There will be implementation costs to some Local Authorities arising from the statutory requirement (Article 7 of Directive 98/83/EC) to sample spring and bottled drinking waters at a frequency dependent on the volume of water marketed. This frequency will vary from authority to authority since some Local Authorities have one or more spring water sources within their areas while others have none. It is likely that there will be additional costs to some Local Authorities because the new legislation requires a greater frequency of inspections than currently required. None of the 32 local authorities in Scotland provided estimates of any increased costs in sampling or analysis as a response to public consultation.

23. Directive 98/83/EC also sets new limits for private water supplies. Current legislation, The Private Water Supplies (Scotland) Regulations 1992 (No 575 S64), allows the costs of sampling and analysis to be recovered. It is likely that this will continue on the implementation of the new legislation. As such, local authorities may be able to recover some of the sampling and analysis costs from companies bottling water from private supplies.
VI. Sanctions and review

24. The amended Regulations will require compliance with new compositional limits from the 25th December 2003. Environmental Health Officers will enforce the Regulations. No specific review date is provided for by the Regulations or by the Directive. However, officials will maintain regular contact with SFELC, LACORS, COSLA and relevant trade associations to monitor compliance with, and enforcement, of these Regulations.
Regulatory Quality

Declaration:

I have read the Regulatory Impact assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the responsible Minister.................................................................

Date..............................................................................................................

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