EXPLANATORY MEMORANDUM TO

THE NATURAL MINERAL WATER, SPRING WATER AND BOTTLED DRINKING WATER (ENGLAND)(AMENDMENT)(NO. 2) REGULATIONS 2010

2010 No. 896

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

2.1 This Statutory Instrument amends the Natural Mineral Water, Spring Water and Bottled Drinking Water (England)(Amendment) Regulations 2010 (S.I. 2010 No. 433, "the 2010 Regulations"), which themselves amend the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (England) 2007 (S.I. 2007 No. 2785), to correct a transcription error which set the ammonium limit for enforcement testing of spring water and bottled drinking water at 200 micrograms per litre of such water when it should have been 0.5 milligrams per litre (equivalent to 500 micrograms per litre). This error appears in what, by virtue of regulation 9 of the 2010 Regulations, will become Schedule 9 to the 2007 Regulations unless this correcting Statutory Instrument is enacted.

2.2 The 2010 Regulations transcribe from European Council Directive 98/83/EC the chemical and microbiological limits applicable to spring water and bottled drinking water, have been made and laid before Parliament and are due to come into force on 9 April 2010.

2.3 The opportunity has also been taken to make a minor amendment to the footnotes of the table in what will become Schedule 9 of the 2007 Regulations to remove errant uses of the word 'parameter'.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 To ensure, having regard to the considerations referred to in paragraph 7.2, that this amendment will apply from a date preceding the date that the 2010 Regulations come into force, this instrument must come into force on 8 April, which will mean the SI will be laid for less than the minimum of 21 days normally required.

3.2 As this instrument is being made due to a defect in the 2010 Regulations it is being issued free of charge to all known recipients of the 2010 Regulations.

4. Legislative Context

4.1 The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 2007[1] (as amended)[2], transpose the requirements of European Council Directives (EC) 2009/54, 98/83/EC, Commission Directive 2003/40/EC and establish

enforcement powers for Commission Regulation (EU) 115/2010. These Regulations lay down requirements for the exploitation, bottling, labelling or other marking and sale of natural mineral water, spring water and bottled drinking water. Limits are set for certain chemical and microbiological parameters in the water to ensure the quality and safety of bottled water.

4.2 The 2010 Regulations include provisions transcribing monitoring requirements for Food Authorities contained in Article 7 of Council Directive 98/83/EC, including the ammonium limit referred to in paragraph 2.1 in response to an Article 226 Reasoned Opinion from the Commission. The Commission considered that the method used to implement these monitoring requirements in UK law, making a simple reference to the relevant sections to the parent Directive, was insufficiently clear.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 Separate but parallel legislation is being drawn up in Scotland, and Northern Ireland. No further instrument is required in Wales as their timetable for making the 2010 Regulations was behind the rest of the UK and they have been able to incorporate the necessary correction into the 2010 Regulations.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Because of a drafting error in the 2010 Regulations, an incorrect value for ammonium was transcribed from Council Directive 98/83/EC into those Regulations. This error was detected only after the Regulations had been signed and laid.

7.2 Making this amendment to the 2010 Regulations before they come into force will ensure there is no period during which the wrong numerical limit applies for audit monitoring of ammonium.

7.3 The amending SI is intended to rectify this error before the 2010 Regulations come into force, so that the correct limits are applied within the timeframe given by the Commission to comply with their Article 226 Reasoned opinion (deadline of 20 April 2010).

- ***Consolidation***

7.4 It is intended that, in late 2010/early 2011, the 2007 Regulations and their amendments will be consolidated.

8. Consultation outcome

8.1 This instrument corrects a drafting error in the 2010 Regulations and, as the need to do so is urgent in the terms of the governing consultation provision (Article 9 of Regulation (EC) No.178/2002[3]), consultation has not been carried out.

9. Guidance

9.1 Current guidance on bottled water legislation is being reviewed, is expected to be finalised during 2010 and will include up-to-date advice on the legislation. In the meantime, consultees (which include trade associations and LACORS) will be contacted to inform them of this amending instrument, as well as all Local Authorities in England.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This change is to correct a drafting error in setting limits for enforcement monitoring and therefore will not have an impact on small businesses.

12. Monitoring and review

12.1 The 2010 Regulations introduce enforcement powers for European Commission Regulation (EU) 115/2010 and transpose existing sampling etc. requirements more explicitly. A review of the 2007 Regulations as a whole, including existing amendments to them and the amendments this instrument will make to them, is planned for 2012.

13. Contact

Paul Nunn at the Food Standards Agency (Tel: 020 7276 8160) or email: paul.nunn@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.

Footnotes:

1) The Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 (Statutory Instrument No. 2007/2785)
2) The Natural Mineral Water, Spring Water and Bottled Drinking Water (England)(Amendment) Regulations 2009 (Statutory Instrument No. 2009/1598) and The Natural Mineral Water, Spring Water and Bottled Drinking Water (England)(Amendment) Regulations 2010 (Statutory Instrument No. 2010/433)
3) OJ No. L31, 1.2.2001, p.1

APPENDIX

TRANSPOSITION NOTE

This transposition note outlines how the requirements of Article 7 of European Council Directive Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ No. L 330, 3.11.98, p.32), (in so far as it requires Member State/competent authority monitoring of spring water and bottled drinking water to ensure compliance with chemical and microbiological limits prescribed for such water in that Directive), have been transposed into the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 by The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (England)(Amendment) (No. 2) Regulations 2010.

Provision of Directive	Purpose	Implementing Regulation
Article 7 as read with Annex II, Table A point 2	To ensure that the correct numerical limits are set for parameters (including ammonium) to be tested for audit monitoring by competent authorities.	Regulation 3.