



Department
for Environment
Food & Rural Affairs

Implementing EU Directive 2015/1787 on the safety and quality of Spring Water and Bottled Drinking Water for Human Consumption

Summary of consultation responses and government response

18 May 2018



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Consultation details

Consultation opened 14 December 2017

Consultation closed 18 January 2018

Background

1. Commission Directive (EU) 2015/1787 (the Directive) amending Annexes II and III to Council Directive 98/83/EC on the quality of water intended for human consumption alters the monitoring requirements for spring water and bottled drinking water and makes changes to the methods of analysis to be used in monitoring. The Department for Environment, Food and Rural Affairs (Defra) is intending to implement the Directive by adjusting domestic legislation to take account of the changes the Directive makes.
2. This consultation applied to the domestic legislation required to implement the Directive in relation to spring water and bottled drinking water. All water which has been bottled for human consumption is classified as a food in accordance with EU law, but Natural Mineral Water is governed by its own directive and not affected by these changes.
3. It was considered that the measures in this directive are cost-neutral and, as such, Defra did not prepare an impact assessment. The department asked for comments on any costs or benefits we had not considered or challenges to the assumptions made in terms of impact.

Introduction to the EU Directive 2015/1787 on the safety and quality of Spring Water and Bottled Drinking Water for Human Consumption

4. The Directive concerns amendments to Council Directive 98/83/EC, taking into account the World Health Organisation (WHO) approach to risk assessment, as well as scientific and technical progress. The amendment brings EU drinking water requirements in line with international requirements and covers the parameters (microbiological and chemical criteria) currently required to be analysed for monitoring purposes; and the specifications (analytical requirements) set out for their analysis.
5. The table in Annex II to Council Directive 98/83/EC which set out minimum monitoring frequencies for 'check' and 'audit' monitoring (the difference between 'check' and 'audit' monitoring relates to the parameters and frequency of those samples) for spring water and bottled drinking water has been removed from the Directive and is now regarded as obsolete (on the grounds that food safety requirements in Regulation (EC) 178/2002 apply covering general food law). Those products are also covered by the principle of 'hazard analysis and critical control point' (HACCP) laid down in Regulation (EC) 852/2004 and the principles of official controls as laid down in Regulation (EC) 882/2004.

6. Interventions by food authorities will continue to be required since official controls under Regulations (EC) 178/2002 and 853/2004 are applicable. Furthermore monitoring under Article 7 of Council Directive 98/83/EU will remain unchanged by this Commission Directive 2015/1787.
7. Independently of the interventions by food authorities, the responsibility of FBOs will not change with the implementation of this Directive, as their existing HACCP based food safety management systems should already provide verification. They should demonstrate that they produce safe food under Regulation (EC) 178/2002 and have controls in place to mitigate against any hazards under Regulation (EC) 853/2004. This includes the need to meet safety and quality requirements appropriate to the category of water.
8. The Directive also make changes to the current methods of analysis. In particular, it will change the minimum performance characteristics, in other words the standards necessary for methods of analysis to comply with the requirements. Domestic provisions which implemented Annex III will be amended to reflect the new methodology in domestic legislation.
9. In the case of the microbiological parameters, the methods of analysis to be used to establish their presence and quantity in the water have been changed by the Directive (EU) 2015/1787. In implementing the Directive Defra will be using those same methods of analysis to use as reference.
10. In the case of chemical and indicator parameters, no specific methods of analysis are required to be used to determine the presence and quantity of the chemical parameters in the water, but the Directive states that the methods of analysis that the authorities use for monitoring must meet certain standards (these are known as 'minimum performance characteristics'). In implementing the Directive, Defra will be incorporating the same two different sets of 'minimum performance characteristics' to determine methods of analysis which the amending directive gives the option to use up to 31 December 2019.

The consultation questions

11. The consultation, conducted through the online platform Citizen Space, sought answers and additional comments on two questions:

Q1 - The implementation of Commission Directive 2015/1787 would remove the minimum requirement for 'check' and 'audit' monitoring by local authorities for spring and bottled drinking water. Do you agree or disagree with the changes?

Q2 - The implementation of Commission Directive 2015/1787 would amend methods of water analysis for microbiological and chemical parameters, and the 'minimum performance characteristics' required for analysis. Do you agree or disagree with the changes?

12. In addition, the following question was asked, giving respondents the opportunity to comment on the consultation process:

Q3 - Thank you for taking your time to participate in this online survey. It would be appreciated, if you can provide us with an insight into how you view the tool and the area (s) you feel is in need of improvement, by completing our feedback questionnaire. Overall, how satisfied are you with our online consultation tool?

Consultation analysis

13. During the five week public consultation, conducted online through the platform Citizen Space¹, respondents were asked to what extent they agreed or disagreed with the implementation of the Directive, and were asked for additional comments.
14. The consultation in England generated 10 formal responses: 2 from trade associations; 3 from local authorities, one from industry and 4 from individuals. There was no petition, campaign or otherwise duplicated responses.
15. Responses were first summarised by respondent-group, followed by a detailed consideration of individual comments.

Summary of responses

16. The responses by trade associations were supportive of the proposed implementation. They expressed that they are satisfied, as there are sufficient safeguards in place for spring and bottled waters in general food safety and HACCP requirements.
17. Responses from local authorities were mixed. The reasons for agreeing included that they believed there are already sufficient safeguards for spring and bottled waters. There was no supporting information on why one local authority disagreed with the implementation.
18. Individual respondents raised concerns about the level of scrutiny over FBO responsibilities, particularly around sampling frequency given resource constraints for local authorities. There were also concerns around the level of impact assessment conducted around the effect of the implementation on industry.

Government response to individual comments

19. For those leaving comments, the department's responses are detailed below.

¹ <https://consult.defra.gov.uk/food/transposing-eu-directive-2015-1787/>

Q1: The implementation of Commission Directive 2015/1787 would remove the minimum requirement for ‘check’ and ‘audit’ monitoring by local authorities for spring and bottled drinking water. Do you agree or disagree with the changes?

Respondent	Comment	Response
Cornwall County Council	The requirements of 178/EU HACCP will satisfy this requirement instead.	No response
Cornwall County Council	The requirements of 178/EU HACCP will satisfy this requirement instead.	No response
British Soft Drinks Association	Agree with the removal of the 'check and audit' monitoring as sufficient safeguards are in place for spring and bottled waters in general food safety and HACCP requirements.	No response
Individual	a) Concerns about sample frequency, in particular to those perceived as 'no risk'. If resources for local authorities are constrained, they will be unable to prioritise water sampling.	a) Interventions by food authorities will continue to be required since official controls under Regulations (EC) 178/2002 and 882/2004 are applicable. Further, monitoring under Article 7 of Council Directive 98/83/EU will remain unchanged by this Commission Directive 2015/1787.

	<p>b) Concerns that there is no named authority to complain to.</p>	<p>Independently of food authorities, the responsibility of FBOs will not change, as their existing HACCP based food safety management systems should already provide verification. They should demonstrate that they produce safe food under Regulation (EC) 178/2002 and have controls in place to mitigate against any hazards under Regulation (EC) 852/2004. This includes the need to meet safety and quality requirements appropriate to the category of water.</p> <p>Physical sampling of water will continue to be carried out by the FBO and the results scrutinised by the food authority, so the only difference in the process is the minimum frequency those samples would be collected by the food authority.</p> <p>b) Consumers can raise their concerns through several ways, by contacting their own local authorities. Whether they are responsible or not for that particular food business, they will contact the correspondent authority. Concerns can also be raised through the FSA website², where several ways of reporting concerns are described and can be accessed.</p>
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² <https://www.food.gov.uk/enforcement/report-problem>

Q2: - The implementation of Commission Directive 2015/1787 would amend methods of water analysis for microbiological and chemical parameters, and the ‘minimum performance characteristics’ required for analysis. Do you agree or disagree with the changes?

Respondent	Comment	Response
Cornwall County Council	Not within remit to comment	No response
Cornwall County Council	Not within remit to comment	No response
British Soft Drinks Association	BSDA would agree that changes should be made to reflect the content of the Commission Directive.	No response
Individual	Would rather not comment	No response
Individual	<ul style="list-style-type: none"> a) Concerns over a reduction of what is actually being sampled in water. b) Concerns over who will be conducting future water analyses. c) Analyses should take place after a longer elapsed time. 	<p>a) This amendment to the regulations will fully transpose Commission Directive 2015/1787. Annex I of that directive, which details what in the sample is analysed, will not be changed. Annex III, detailing how water is analysed, is subject to change, based on the latest scientific and technical advice.</p> <p>What is sampled is always subject to continuous review and risk assessment by the EU authorities and the directive and its amendments are the result of such scientific views.</p>

		<p>b) Defra confirms that the sampling process is not part of its remit and that the enforcement over food law is carried out in England by the Food standards Agency through the food authorities in each area.</p> <p>c) Most of the water sampling is not only conducted after bottling but before, at source, depending on the type of water and in occasions, for example bacterial total viable counts, both at source and after bottling.</p> <p>FBOs are obliged to produce also detailed shelf-life testing when assigning a particular Best Before date to the water, which include constituents after a period of time. Bottle labels should include instructions determining how to store bottles of water safely.</p>
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Q3 - Thank you for taking your time to participate in this online survey. It would be appreciated, if you can provide us with an insight into how you view the tool and the area (s) you feel is in need of improvement, by completing our feedback questionnaire. Overall, how satisfied are you with our online consultation tool?

Respondent	Comment	Response
British Soft Drinks Association	Comment that it would be good to access all the questions in the consultation in one document, for the purposes of consulting with members.	We will endeavour to include a summary of the questions on the introduction for future consultations.
Individual	<p>a) Comment that the 'before' and 'after' following the legal change should have been detailed with regards to sampling and variables analysed.</p> <p>b) Concern that with the current form of questionnaire, there will only be a limited amount of responses.</p> <p>c) Concern over who will pay for future water analysis.</p>	<p>a) The section of the consultation stating <i>what will change</i>, specifically addresses the changes to the current regime and indeed these are attached to the consultation. We take however on board that a more approachable information will be the sought outcome in future consultations.</p> <p>b) Since the actual parameters being tested have not changed as a result of implementing the consulted changes, there was no easy way to compare the changes and we tried and address the main points: -The removal of minimum frequency of samples being taken by food authorities, but crucially not by the FBO to legally put their foodstuff on the market. -The changes of the method of analysis and their performance characteristics, which are of main interest to laboratories performing the analysis and food authorities when checking whether those methods of analysis have been complied with. We take however on board that a more approachable information will be the sought outcome in future consultations.</p>

		c) Sampling and analysis is paid for by the food business, whose responsibility does not change with the introduction of these changes. As mentioned before these changes find their root in on the World Health Organisation (WHO) approach to risk assessment in view of the latest scientific and technical advice.
Individual	Concern that there was no impact assessment about the changes of monitoring requirements for microbiology.	As stated in the Impact section of the consultation, we envisaged the impact to be neutral for the industry. We invited industry to challenge these views, but following the consultation, the responses suggest that the main industry associations agreed with the changes.

What has happened since

20. A detailed analysis of the responses took place and policy colleagues took these into account when making their decision. .
21. A summary of these responses to the consultation is attached here, and is published and placed on the government website GOV.UK.
22. As a result of the analysis, Defra moved ahead with the implementation of the directive which was transposed in the new The Natural Mineral Water, Spring Water and Bottled Drinking Water (England) (Amendment) Regulations 2018. This came into force on 6 April 2018.
23. The government is thankful to those who responded to the consultation and will continue to engage with stakeholders.