

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC HEALTH (SHIPS)**  
**(AMENDMENT) (ENGLAND) REGULATIONS 2007**

**2007 No.1446**

**1.** This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

2.1 The regulations amend the Public Health (Ships) Regulations 1979, primarily to take account of the provisions on ship sanitation certificates in the International Health Regulations (IHR) 2005 of the World Health Organization. (These provisions replace those for deratting certificates in the IHR 1969). Some other minor changes, intended to keep the regulations up-to-date, are made at the same time.

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

3.1 The regulations do not impose a fee increase above the rate of inflation. However, they change the arrangements under which fees for inspecting ships with a view to issuing certificates are set.

3.2 Currently, regulation 20(3) of the Public Health (Ships) Regulations 1979 provides that the owner or master of a ship shall pay the local authority such charge as the Secretary of State may from time to time determine for the inspection of the ship for the purpose of issuing a deratting certificate. For a number of years, the custom has been to increase the charge with effect from 1 April each year by the increase in RPI inflation at September of the previous year.

3.3 The Public Health (Ships) (Amendment) (England) Regulations transfer the responsibility for calculating the charge from the Secretary of State to the local authority making the charge. The local authority is already responsible, under regulation 38 of the 1979 regulations, for calculating the charge for any control measures it applies, so in the Department's view no new issue of principle is raised by this change.

3.4 It is possible that charges for inspections related to the issue of ship sanitation certificates may prove to be higher than those for inspections related to the issue of deratting certificates, because the IHR require those inspecting with a view to issuing a ship sanitation certificate to consider a wider range of matters than those inspecting with a view to issuing a deratting certificate. However, as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007, regulation 38 of the Public Health (Ships) Regulations 1979 provides certain safeguards, consistently with the IHR 2005, for example that the charge must not exceed the actual cost of the service rendered.

#### **4. Legislative Background**

4.1 The regulations take account of provisions in the International Health Regulations 2005, which globally will replace the International Health Regulations 1969 on 15 June 2007. The Public Health (Aircraft) (Amendment) (England) Regulations 2007 also respond to provisions in the International Health Regulations 2005.

#### **5. Extent**

5.1 This instrument applies to England.

5.2 The Public Health (Ships) Regulations 1979 apply in Wales as well as in England. The power to make new regulations in relation to Wales now rests with the National Assembly for Wales. The Assembly issued a consultation paper on ship sanitation certificates in Wales, along similar lines to that issued for England by the Department of Health, and is currently considering the responses to that consultation.

#### **6. European Convention on Human Rights**

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

#### **7. Policy background**

7.1 The World Health Organization (WHO) aims, through its International Health Regulations (IHR), to prevent the spread of disease between countries in ways that avoid unnecessary interference with international traffic and trade.

7.2 The IHR that are currently in force are the IHR 1969. The United Kingdom (UK) Government is a party to the IHR 1969 and one of the ways in which it implements the IHR 1969 is through the Public Health (Ships) Regulations 1979. For example, the IHR 1969 provide for certificates to confirm that ships are free of rats that might spread disease (deratting certificates), and the Public Health (Ships) Regulations 1979 implement those provisions in England and Wales.

7.3 Over time, the need to update the IHR 1969 has become clear. They deal, in the main, only with three specific infectious diseases: cholera, plague and yellow fever. (Originally they also dealt with smallpox, but after that disease was eradicated references to it were removed from the IHR in the 1980s). Consequently, they do not help provide protection against other infectious diseases, such as Severe Acute Respiratory Syndrome (SARS), or against the threat posed by contamination by chemicals or radiation.

7.4 Accordingly, new IHR (the IHR 2005) were adopted by WHO in May 2005. The UK is a party to the IHR 2005. Globally, the IHR 2005 come into force on 15 June 2007, replacing the IHR 1969. The IHR 2005 are a significant improvement on the IHR 1969 because they deal with infectious disease generally, not just with three specific infectious diseases, and also with contamination by radiation and chemicals. While the IHR 1969 set out a limited range of actions that States are required or permitted to take in relation to the three specific infectious diseases, the IHR 2005

permit States, subject to certain safeguards, to take a much broader range of actions in relation to infectious disease and contamination.

7.5 It is not currently possible to take full account of the IHR 2005 in public health legislation in England. The Department of Health has set out proposals for updating the 1984 Act in a consultation paper published on 28 March 2007 (*Review of Parts II, V and VI of the Public Health (Control of Disease) Act 1984: A Consultation*, available on the Department's website at [http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH\\_073452](http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_073452)) and will take account of the responses to that consultation in deciding what changes should be made to the legislation in the medium term.

7.6 In the short term, it is nevertheless desirable to make a number of amendments to the Public Health (Ships) Regulations 1979.

#### Ship sanitation certificates

7.7 The bulk of the changes made by the amending regulations reflect the fact that, with the replacement of the IHR 1969 by the IHR 2005, deratting certificates will be replaced by ship sanitation certificates as internationally recognised documents. The Department of Health consulted publicly for thirteen and a half weeks from December 2006 to March 2007 on how to make provision for ship sanitation certificates in England. Detailed information about the proposals in the consultation paper and the background to them is in the consultation paper (available on the Department of Health website at [http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH\\_063679](http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_063679)).

The proposals were chiefly of interest to local authorities and the ports and shipping industry, rather than to the public at large. A summary report on the twenty-three responses received to the consultation is at Annex A to this explanatory memorandum. A more detailed report is available on the Department of Health website.

#### Other changes

7.8 In addition to making provision for ship sanitation certificates, the Public Health (Ships) (Amendment) (England) Regulations 2007 also make minor adjustments to the 1979 regulations, for example to remove or update material that is now, or will be after 15 June 2007, out of date.

## **8. Impact**

8.1 A Regulatory Impact Assessment is at Annex B to this memorandum. This covers the impact on business and on the public sector.

## **9. Contact**

Jenny Harper at the Department of Health, [jenny.harper@dh.gsi.gov.uk](mailto:jenny.harper@dh.gsi.gov.uk), or 020 7972 4048.

## **ANNEX A: SUMMARY REPORT ON CONSULTATION ON HOW TO PROVIDE IN ENGLAND FOR SHIP SANITATION CERTIFICATES**

1. The Department of Health published a consultation paper in December 2006 on how to provide in England for the ship sanitation certificates required by the International Health Regulations (IHR) 2005 of the World Health Organization (WHO). Twenty-three responses to the consultation paper were received. Sixteen of these came from local (including port health) authority respondents and six from others, including the Chamber of Shipping, the British Ports Association, Nautilus UK, the Health Protection Agency, and the Royal Mail. The paragraphs below summarise the comments made in the responses and set out the action that the Department of Health is now taking. A more detailed report is available on the Department of Health website.

### **Proposal 1: Form of the Ship Sanitation Certificate**

2. Ten respondents indicated that they were content with the form for the Ship Sanitation Certificate set out at Annex 3 of the IHR 2005. Regulation 18D of, and Schedule 3 to, the Public Health (Ships) Regulations, as amended by regulations 17 and 30 of the Public Health (Ships) (Amendment) (England) Regulations 2007, now provide for this to be the form used in England.

3. Seven respondents suggested that the certificate should include more detail. The Department of Health will bear these points in mind as and when revisions to the IHR 2005 are considered.

### **Proposal 2: Supply of the certificate**

4. Fourteen respondents thought that there should be a central supply point from which those responsible for issuing certificates could obtain forms for the certificates. Fifteen respondents favoured supplying forms by modern means, for example from a password-protected website. We welcome the offer made by the Local Authority Co-ordinators of Regulatory Services (LACORS) to do this and they have agreed to take this forward.

### **Proposal 3: Period of validity**

5. Eighteen respondents agreed that certificates in England should be issued for six months, rather than for a shorter period, and regulation 18D(2) of the Public Health (Ships) Regulations as amended by regulation 17 of the Public Health (Ships) (Amendment) (England) Regulations 2007 provides for this.

### **Proposal 4: Who should issue certificates?**

6. Seventeen respondents agreed that local authorities should issue ship sanitation certificates in England (as they currently do deratting certificates) and regulations 18A-D of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 provide for this.

7. Three local authority respondents expressed support for the issue of certificates by Ministry of Defence ports, and this practice will continue.

8. The Chamber of Shipping suggested that certificates should be issued by the Maritime and Coastguard Agency rather than by local authorities. This would be a major change to current arrangements and not something which could be achieved under the Public Health (Control of Disease) Act 1984. The Department of Health and the Department for Transport will, however, continue to encourage close co-operation between local authorities and the Maritime and Coastguard Agency on matters of mutual interest.

**Proposal 5: What standards should be met by bodies authorised to issue certificates?**

9. Nine respondents agreed that the task of inspecting a ship with a view to issuing a certificate should be carried out by an environmental health officer (EHO), but nine did not. Twelve respondents agreed that any control measures necessary before the issue of a Ship Sanitation Control Certificate should be applied under the supervision of an EHO, but five did not. The respondents who disagreed with the two proposals agreed that appropriate expertise needed to be involved, but did not agree that only EHOs, or EHOs necessarily, could provide this. There is no international consensus on this point, and no guidance yet available from WHO. Taking account of these points, regulation 4(5)(b) and (c) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 do not require EHO involvement in these two tasks: it is instead for local authorities to ensure that appropriate expertise is involved.

10. The Association of Port Health Authorities recommended the development of a competency matrix, to assist local authorities in ensuring that the appropriate expertise is involved. We encourage the Association to take this forward if it is something that their members would find useful.

**Proposal 6: Who should be authorised to extend the validity of certificates and what standards should they meet?**

11. Seventeen respondents agreed that in England it should be possible, as envisaged by the IHR 2005, to extend the validity of certificates by one month “if the inspection or control measures required [before issuing a new certificate] cannot be accomplished at the port”. Fifteen respondents agreed that the bodies authorised to extend the validity of certificates should be local authorities. Regulation 18B(5) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 provides for this.

12. Nine respondents agreed with the proposal that any inspection before the decision is taken to extend the validity of a certificate should be carried out by an EHO, but seven did not. Consistently with the approach taken at paragraph 9 above, the Public Health (Ships) (Amendment) (England) Regulations 2007 leave it to the authority concerned to provide for the involvement of appropriate expertise: regulation 18B(5) of the Public Health (Ships) Regulations as amended requires that validity be extended only by an officer authorised by the authority.

13. The consultation paper asked if circumstances could arise in England in which there might be a case for extending the validity of a certificate without inspecting the ship. Eleven respondents answered no, but six answered yes or identified reasons for doing so. Bearing in mind that the IHR allow for extensions without inspection, and that some respondents thought such action might be justified, regulation 18B(5) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 provides for this. This means that if an authority has reason to believe that a particular ship is unlikely to pose a public health risk, it will be able to extend the validity of the certificate without inspection. However, the authority is not obliged to extend validity whenever a ship requests this, regardless of its assessment of the health risk.

**Proposal 7: Providing information to WHO**

14. Fifteen respondents agreed that bodies should provide their details to the Health Protection Agency as a condition of being authorised to issue (or extend the validity of) certificates, and that the Health Protection Agency, on behalf of the UK Government, should

be required to keep WHO informed of authorised bodies. Both these elements of Proposal 7 are being taken forward, the former being provided for by regulation 4(5)(a) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007.

#### **Proposal 8: Provision of information by WHO**

15. The consultation paper noted that WHO plans to make information about ports authorised to issue certificates more readily available than in the past. Eight respondents commented, generally emphasising that there had been difficulties in the past in obtaining accurate information and that information should be available more readily in future. We continue to encourage WHO to pursue its plans to achieve this.

#### **Proposal 9: Action if a valid certificate is not produced or if there is evidence of a public health risk**

16. The consultation paper proposed to amend the Public Health (Ships) Regulations so that if a ship arriving in a port is not able to produce a valid certificate or if there is evidence of a public health risk, then, consistently with the IHR 2005:

- if the competent authority is authorised to issue Ship Sanitation Control Certificates, it may apply necessary control measures to the ship (or cause them to be applied), and when satisfied that the control measures have been satisfactorily completed issue a Ship Sanitation Control Certificate;
- if the competent authority is not authorised to issue Ship Sanitation Control Certificates, it may allow the ship to depart, in which case it must inform the competent authority for next known point of entry, and note in the certificate the evidence of risk found and the control measures required.

Six respondents indicated agreement with this proposal, and regulation 18B of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 takes it forward. Seven other respondents did not disagree but made a variety of points (for example about the legal powers to detain a ship and the practicalities of doing so) which we have considered carefully.

17. The consultation paper also proposed to reflect in the regulations the requirement in Article 27.1 of the IHR 2005 that if a competent authority applies additional health measures, including isolation of the ship, the Health Protection Agency, as the National IHR Focal Point, must be notified of this. Six respondents supported this proposal, and regulation 18C(3) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 takes it forward.

#### **Proposal 10: Charges for issuing certificates and applying control measures**

18. Sixteen respondents agreed that, as now, ship's operators should meet the costs of inspecting ships with a view to issuing certificates, although one did not. Regulation 38 of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) Regulations 2007 provides for charges to be made.

19. The consultation paper asked whether inspection costs should be calculated by the body concerned, rather than set centrally by the Secretary of State. Six respondents agreed, but eleven did not, often on the basis that they would prefer standard charges to apply throughout the UK, or even throughout the European Union (EU). However, neither UK nor EU wide charges can be required under the powers under which the Public Health (Ships)

Regulations are made; there could also be difficulties in setting a standard charge which took account of costs in all the different parts of the EU. The Department of Health remains of the view that the authorities that carry out inspections are best placed to calculate the costs of those inspections. Accordingly, regulation 38 of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 widens the power local authorities already have to make charges for control measures they apply to cover charges for inspections as well.

20. The consultation paper asked if it would be helpful to have guidance on how to calculate inspection costs, and fourteen respondents thought that it would. In answer to a question about who might produce this, a variety of bodies were suggested. We have invited the Association of Port Health Authorities (APHA) to consider taking this forward.

21. The consultation paper explained that the IHR 2005 set various requirements for charges and, to meet one of these, proposed that bodies authorised to issue certificates should publish their charges at least ten days in advance. Thirteen respondents agreed that they should. This, and other IHR requirements (for example that charges should not exceed costs) are reflected in regulation 38 of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007.

#### **Proposal 11: The armed forces**

22. The consultation paper proposed that the Public Health (Ships) Regulations 1979 should be amended to make clear that, by agreement with a local authority, a ship of the exempt armed forces may be issued with a certificate by that authority. Sixteen respondents agreed with this proposal, and regulation 3(2) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) Regulations 2007 takes it forward, taking account of advice from the Ministry of Defence that in practice such provision is needed only for ships of the UK armed forces .

#### **Proposal 12: Mail**

23. The consultation paper proposed, taking account of the IHR 2005, to repeal the current “saving for mail” in the Public Health (Ships) Regulations (which means that mail may not be inspected or have any control measures applied to it), and invited views on the similar provision in the Public Health (Aircraft) Regulations. Sixteen respondents favoured repeal, but Royal Mail Group did not. We have considered the concerns they raised carefully, but believe that problems they envisage are unlikely to arise. The IHR 2005 envisage that inspections and control measures may be applied to mail, in the same way as to other cargoes. It would not be possible to comply with the IHR 2005 if there are no powers to take such action in relation to mail. Accordingly, regulation 27 of the Public Health (Ships) (Amendment) (England) Regulations 2007 provides for the repeal of the saving for mail.

#### **Proposal 13: Enforcement and sanctions**

24. The consultation paper proposed no immediate change to provisions on sanctions and enforcement but invited comments on what changes might be desirable in the longer term. Twelve respondents offered comments. The Department of Health will take these into account, along with any comments made in response to the proposals in chapter 8 of the consultation paper on changes to the Act under which the Public Health (Ships) Regulations are made. (This consultation paper, *Review of Parts II, IV and V of the Public Health (Control of Disease) Act 1984*, was published on 28 March 2007 with a request for any comments by 25 June 2007).

#### **Proposal 14: Protection against forgery**

25. The consultation paper invited views on what measures should be taken in the production and issue of certificates to guard against forgery. Twelve respondents commented, generally noting that forgery is not common and suggesting the use of watermarked or coloured paper and/or embossing stamps on certificates. We have drawn these points to the attention of LACORS, in view of their offer to make forms for the certificates available on their website.

26. The consultation paper also asked whether regulations should repeat the current requirement for the issuing authority to retain a copy of any certificate issued: sixteen respondents agreed that they should. The period for which respondents suggested copies should be retained ranged from one year to six years. Regulation 18D(3) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 requires copies to be retained for one year (which allows authorities to retain them for longer if they wish).

#### **Proposal 15: Maximising the benefits and minimising the costs**

27. The consultation paper invited comments on the draft regulatory impact assessment. Ten respondents offered comments, which we have taken into account in revising the assessment to produce the version that is published alongside the Public Health (Ships) (Amendment) (England) Regulations 2007.

#### **Proposal 16: When should ship sanitation certificates become available?**

28. The consultation paper invited views on when provisions for ship sanitation certificates should come into effect. Ten respondents favoured 15 June 2007; three favoured 15 June 2008; and three favoured an interim date. Six respondents favoured a three month gap between the making of regulations and their coming into effect but two others thought this was not important. Having considered the responses carefully, we have decided that the Public Health (Ships) (Amendment) (England) Regulations should come into force on 15 June 2007 (and regulation 1(1) of those regulations provides for that). Globally, this is the date that the shipping industry has known to expect since the IHR were adopted by the World Health Organization in May 2005. If local authorities that wish to issue certificates prefer to do so from a later date, they are able to ask the Department of Health to make their authorisations effective from a later date.

#### **Proposal 17: Transitional arrangements**

29. The consultation paper proposed that, at least for an interim period, public health authorities in England should recognise a deratting certificate, unless there is evidence of a public health risk. Twenty respondents supported this, and one disagreed. Regulation 33 of the Public Health (Ships) (Amendment) (England) Regulations 2007 provides for authorities to treat a valid deratting certificate as equivalent to a ship sanitation certificate, unless there is reason to suspect that there is a risk of disease on a particular ship. The regulations do not in terms limit the length of this transitional period, but it will come to an end as and when states cease to issue deratting certificates and the certificates that have been issued expire.



## **ANNEX B: REGULATORY IMPACT ASSESSMENT**

### **Introduction**

1. This is a regulatory impact assessment (RIA) for the Public Health (Ships) (Amendment) (England) Regulations 2007.

### **Purpose and Intended Effect**

#### *Objectives*

2. The regulations make it possible to meet in England the requirements of the IHR 2005 in relation to ship sanitation certificates. This should:

- help ships' operators, by enabling them to obtain in England ship sanitation certificates that will be recognised internationally. Shipping drives global and national economic development. Ports are gateways to the global distribution network. Imports and exports together are equivalent to about 60% of UK Gross Domestic Product (GDP);
- maintain the international attractiveness of ports in England (which would not happen if they were not able to issue ship sanitation certificates); and
- contribute to the overall purpose of the IHR 2005 of protecting public health without undue interference with international traffic and trade.

### **Background**

3. The purpose of the International Health Regulations 2005 is "to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks and which avoid unnecessary interference with international traffic and trade" (Article 2 of the IHR). They were adopted by the World Health Assembly in May 2005. (The Assembly is the supreme decision-making body of the World Health Organization, attended by delegations from all 193 member states).

### **Rationale for Government Intervention**

4. The UK is a member of the World Health Organization and currently a party to the IHR 1969. It is also a party to the IHR 2005, which come into force globally from 15 June 2007.

5. Even if the UK were not bound to implement the provisions in the IHR 2005 on ship sanitation certificates, there would be a strong case for doing so. The deratting certificates that ports in England currently issue (as provided for in the IHR 1969) will become obsolete as the IHR 2005 are implemented globally.

### **Consultation**

#### *Within Government*

6. The measures proposed have been discussed within the UK Government by departments with an interest, for example, in transport, trade, local government, health and safety, animal and human health, revenue and customs, and defence. They have also been discussed with the Scottish Executive, the Welsh Assembly Government and the Department of Health, Social Services and Public Safety in Northern Ireland.

#### *Public Consultation*

7. The IHR themselves were produced by the World Health Organization, which involved a wide range of governmental and non-governmental interests in an international process before the IHR were adopted by the World Health Assembly in May 2005.

8. The UK Government held initial discussions with the Health Protection Agency, the Association of Port Health Authorities, the Chartered Institute of Environmental Health and the Royal Mail when developing the proposals reflected in a consultation paper published on 20 December 2006 (now available on the Department of Health website at [http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH\\_063679](http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_063679)).

That public consultation ran for thirteen and a half weeks until 23 March 2007 and attracted twenty-three responses. The consultation paper included, and invited comments on, a draft regulatory impact assessment. The comments received have been considered carefully in producing this final version of the regulatory impact assessment.

#### **Options**

9. Three main options have been identified for the implementation of the provisions on ship sanitation certificates in the IHR 2005:

##### **Option 1 – do nothing**

This option would entail not implementing the provisions on ship sanitation certificates in the IHR 2005.

##### **Option 2 – implement the ship sanitation provisions from 15 June 2007**

This option would entail implementing the ship sanitation provisions from the date the IHR 2005 generally come into force.

##### **Option 3 – implement the ship sanitation provisions from 15 June 2008**

This option would entail implementing the ship sanitation provisions a year later than under Option 2.

(It is possible to identify further variants, by choosing other dates for implementation).

#### **Costs and Benefits**

##### *Sectors and Groups Affected*

10. The changes made by the Regulations in order to implement the IHR provisions on ship sanitation certificates will affect:

##### Directly

- the bodies responsible for issuing ship sanitation certificates (and those currently responsible for issuing deratting certificates);

- ships' operators, who will want to obtain ship sanitation certification certificates, rather than deratting certificates, because under the IHR 2005 only the former will be internationally recognised documents;

- the Health Protection Agency, which will have some responsibilities in relation to ship sanitation certificates (providing to WHO details of bodies authorised to issue, or extend the validity of, certificates; receiving information from competent authorities if they use control measures such as isolation of a ship);

- any body or bodies that might provide support to those issuing certificates, for example by supplying forms and/or providing guidance on the calculation of charges;

#### Indirectly

- the population of the UK and of the world as a whole, who potentially benefit from the improved contribution to public health that will be made by the IHR 2005 compared with the IHR 1969.

### *Devolved Administrations*

11. Public health is generally devolved, and it is for the National Assembly for Wales, the Scottish Executive, and the Department of Health, Social Services and Public Safety to implement in Wales, Scotland and Northern Ireland respectively the provisions in the IHR 2005 on ship sanitation certificates. The UK Government works closely with those bodies. The National Assembly for Wales has conducted a consultation on arrangements for Wales along similar lines to that conducted for England by the Department of Health and is currently considering the responses to that consultation.

### *Benefits*

12. We have identified that the benefits for each option are as follows:

#### **Option 1 – Do Nothing**

There are no benefits.

#### **Option 2 – Implement provisions on certificates from 15 June 2007**

The benefits of this option are that from an early date:

- ships' operators will be able to obtain in England the ship sanitation certificates that they will be required to produce by an increasing number of other countries as the IHR 2005 are implemented;

- as a result, ports in England will maintain their attractiveness internationally;

- the associated public health benefits will begin to be achieved. A number of diseases could potentially be spread by ships. By ensuring that ships are checked for health risks, and that the necessary procedures to rid the ship of infection, contamination and/or their vectors/reservoirs giving rise to the risks are carried out, the new system of ship sanitation certificates will help to control the spread of disease by ships.

Three respondents to the consultation exercise noted that these benefits would be maximised if the World Health Organization maintain an international database

containing the details of all ports designated to issue ship sanitation certificates (as we understand it plans to do).

### **Option 3 – Implement provisions on certificates from 15 June 2008**

The benefit of this approach is that it gives ships' operators and the bodies that will issue certificates more time to prepare for the implementation of the provisions on ship sanitation certificates.

#### *Costs*

13. The consultation on the introduction of ship sanitation certificates did not elicit any responses on the actual costs to local authorities or ships' operators of the introduction of ship sanitation certificates. As a consequence, it has not been possible to quantify exactly the costs of each option. However, we have identified that the general costs of each option are as follows:

#### **Option 1 – Do Nothing**

If the provisions on ship sanitation certificates are not implemented in England, ports in England are likely to become less attractive to ships engaged on international voyages, since they will not be able to obtain in England the certificates that will be required by an increasing number of other countries as the IHR 2005 are implemented.

Internationally, the failure to provide for ship sanitation certificates in England might be the subject of comment. Other countries might use the UK example to justify failing to implement aspects of the IHR themselves. There could be a cost to public health as a result.

#### **Option 2 – Implement provisions on certificates from 15 June 2007**

Because ship sanitation certificates cover a wider range of health risks than the existing deratting certificates, it is *possible* that:

- inspections relating to them will take longer and so will cost more;
- inspections are more likely to identify the need for a health measure, or measures, to be applied;
- allowing local authorities to set their own charges could lead to different charges in different places.

It is important, however, not to overstate these possible additional costs:

- additional inspection costs could arise if the introduction of ship sanitation certificates meant a move from a position in which the only checks carried out on ships related to the presence of rats. In practice, of course, that is not the case: there are already checks on ships for a number of other reasons, although not currently under the Public Health (Ships) Regulations 1979. It may be possible to combine inspections (for example, an inspection for a ship sanitation certificate with one required for food safety purposes);
- it is not clear that a significant number of additional health measures will be needed as a result of the introduction of ship sanitation certificates. For example, we understand that Southampton, which handled 5,894 ship arrivals (1,400 arrivals by **different** vessels) in 2005 (excluding arrivals from the Isle of Wight), inspects

around 150 ships a year and identifies the need for only around two ships a year to be deratted;

- the regulations enable local authorities to take a risk-based approach, deciding in the light of their assessment of the risk involved what kind of staff should undertake an inspection and apply, or supervise the application of, any control measures needed. (For example, the regulations do not require authorities to use environmental health officers).
- local authorities applying to the Department of Health to be authorised to issue (or extend the validity of) certificates have confirmed that they generally already have the capacities to perform ship sanitation inspections without additional resources;
- it is a reasonable assumption that the implementation of ship sanitation certificates will not significantly affect the number of certificates issued and where they are issued. The time and money costs associated with the new certificates would have to be significantly different before it would have an impact on shipping behaviour. Port costs tend to be small in proportion to vessel costs, labour costs, fuel costs and value of goods carried. Diverting to call at a more distant port increases the time, cost, and unreliability of the delivery of the goods to the eventual inland destination;
- nevertheless, ships are able to be inspected at any port authorised to carry out inspections and so have the option of being inspected at a port which charges less.

Under Option 2, any extra costs would arise from June 2007. There is the possibility of some start-up costs, for example to train staff in new procedures, before that, but these are expected to be minimal, since staff will be drawing on their existing expertise. However, since the regulations provide for deratting certificates to continue to be recognised as valid, any extra costs or burdens would build up more gradually than under option 3.

In addition to the costs of inspections and health measures, there will also be some administrative costs to bodies authorised to issue/extend the validity of certificates and to the Health Protection Agency. These arise as a result of the IHR requirements that:

- bodies authorised to issue/extend the validity of certificates should let the National IHR Focal Point have their details, and that the Focal Point should pass these details to WHO; and
- bodies authorised to issue/extend the validity of certificates should inform the Focal Point if additional health measures, such as isolation, are applied.

However, these costs seem likely to be de minimis, and in the latter case to arise extremely rarely. It is necessary for WHO to receive details of ports authorised to issue certificates if it is to be able to provide ready access to a database of such ports, as some of the respondents emphasised they were keen should happen.

### **Option 3 – Implement provisions on certificates from 15 June 2008**

The same additional costs would arise as under Option 2. They would not arise until June 2008 (or earlier, in the case of start up costs), i.e later than under Option 2; but they would not build up so gradually as under Option 2 (because there would be fewer ships with

deratting certificates after June 2008). In addition, the benefits associated with early implementation under option 2 would not be achieved to the same extent.

14. Carrying out inspections and issuing certificates would have costs to the bodies (local authorities) authorised to issue certificates, which the regulations allow to be recovered through charges to ships' operators. Similarly, applying, or supervising the application of, any health measures required would also have costs, and where these are incurred by local authorities, the regulations again enable authorities to recover them from the ships' operators.

### **Equity and Fairness Including Race Equality Assessment**

15. In terms of equity and fairness, it is worth noting that the regulations include provisions, based on those in the IHR 2005, limiting the charges that may be made to no more than the actual cost of the service provided and preventing discrimination in charges, for example between ships of different flags. We have considered the potential impact on race equality. The IHR 2005 envisage that any ship engaged in international traffic and trade may be asked to produce a ship sanitation certificate, so in that respect there are no equity or fairness issues. Different measures might be taken in relation to different ships, but this would be on the basis of public health risk, not of the race of the crew, passengers, or operators.

### **Small Firms Impact Test**

16. There are no small firms issues. The consultation exercise did not highlight any.

### **Competition Assessment**

17. We do not consider that there are competition issues.

### Royal Mail

18. In informal discussions before publication of the consultation paper, Royal Mail sought reassurance that any additional burdens that result from abolition of the saving for mail would apply equally to other postal carriers in a competitive market place. The draft regulatory impact assessment published with the consultation paper explained that we envisaged that:

- there would be powers to inspect/apply other health measures to all mail, no matter who carries it;

- but there might be a public health justification for using the powers in relation to one carrier (for example, because it was bringing mail from a dangerous location; or had a record of allowing its mail to become infested; or because there was evidence, visible to a public health officer inspecting the ship, of infection/contamination) and not in relation to another.

19. In their response to the consultation paper, Royal Mail Group argued that:

“One carrier may be disproportionately affected in circumstances where for example mail is carried from a particular point of danger. The Universal Service Provider Obligation carried out by Royal Mail makes it more likely that the affected courier would be Royal Mail rather than competitors. [...]

The proposals as outlined in the consultation paper have the potential to adversely impact on Royal Mail, largely due to the Universal Service Obligations carried out by Royal Mail. Other mail operators not subject to such regulation may simply decide to avoid carrying mail from higher risk areas to avoid the costs associated with these measures”.

20. We have considered carefully the points made by Royal Mail Group. We would emphasise that:

- the IHR envisage that *all* cargoes (whether mail or not) may be subject to inspection and to the application of control measures. Consequently, the issue of discrimination between different operators in a liberalised post market does not arise;
- potentially mail, like other cargoes, could spread infection or contamination;
- on public health grounds, therefore, there is no case for exempting mail from powers to inspect and apply control measures.

The Public Health (Ships) (Amendment) (England) Regulations 2007 do not discriminate against Royal Mail or any other postal operator: rather, they apply to all cargoes equally.

#### Charges outside England

21. One issue raised in the consultation exercise was the potential for different charges to be levied in different countries, which could lead to ships seeking certificates at cheaper ports. Some respondents to the consultation argued for standard charges to apply across the United Kingdom (UK) or even the European Union (EU). However, neither UK- nor EU-wide charges can be required under the powers under which the Public Health (Ships) Regulations are made; there could also be difficulties in setting a standard charge which takes account of different costs in all the different parts of the EU. Price competition will, however, be beneficial from the point of view of ship operators.

#### **Rural Proofing**

22. We envisage no adverse impact on rural areas as a result of these regulations.

#### **Enforcement, Sanctions and Monitoring**

23. Consistently with the proposals made in the consultation paper, the Public Health (Ships) (Amendment) (England) Regulations 2007 do not alter the arrangements for enforcement and sanctions that currently apply (although in future, if WHO proceeds with its plans to make information about authorised ports more readily available than in the past, it should be possible to establish more quickly whether certificates have been issued by authorised ports). In terms of monitoring, the regulations take forward the proposal, supported by the responses to the consultation, that authorities should inform the Health Protection Agency if they apply control measures such as isolation of ships.

#### **Implementation and Delivery Plan**

24. As explained above, the IHR 2005 come into effect on 15 June 2007. The provisions in the IHR 2005 on ship sanitation certificates build on those in the IHR 1969 on deratting certificates, and we therefore think that implementation will be a relatively straightforward matter for the bodies involved. Globally, the shipping industry have been aware since the

IHR 2005 were adopted in May 2005 of the requirements that will be set from 15 June 2007 under the IHR 2005. If local authorities in England consider that they will not be able to make the necessary preparations by 15 June 2007, they are able to seek authorisation to issue (and extend the validity of) certificates from a later date.

### **Post-implementation Review**

25. In addition to the UK Government's commitment to review all new legislation after three years, there is a requirement under the IHR to review our surveillance and public health capacities within two years of the IHR's coming into effect.

### **Summary and Recommendation**

26. For the reasons set out above, the Department of Health considers that the right option is Option 2, as reflected in the Public Health (Ships) (Amendment) (England) Regulations.

### **Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister Caroline Flint

Date 14<sup>th</sup> May 2007

### **Contact Point**

Jenny Harper at the Department of Health, [jenny.harper@dh.gsi.gov.uk](mailto:jenny.harper@dh.gsi.gov.uk), or 020 7972 4048.