

Explanatory Memorandum to The Public Health (Ships) (Amendment) (Wales) Regulations 2007

This Explanatory Memorandum has been prepared by Public Health and Health Professions Department and is laid before the National Assembly for Wales.

(i) **Description**

These 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 changes, intended to keep the regulations up-to-date, are being made at the same time, including altering the arrangements for setting charges for the inspection of a ship with a view to issuing a certificate.

(ii) **Matters of special interest to the Subordinate Legislation Committee**

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

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 (Retail Prices Index) inflation at September of the previous year.

The Public Health (Ships) (Amendment) (Wales) Regulations 2007 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.

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) (Wales) 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, or be levied so as to make a distinction between ships of different flags.

(iii) **Legislative Background**

The regulations take account of provisions in the International Health Regulations 2005, which globally replaced the International Health Regulations 1969 on 15

June 2007. The Public Health (aircraft) (Amendment) (Wales) Regulations 2007 also respond to provisions in the International Health Regulations 2005.

The principal regulations, the Public Health (ships) Regulations 1979, provided public health controls to ships arriving at or leaving ports apply in both England and Wales. This statutory instrument, which amends the principal regulations applies only to Wales. The Department of Health has made arrangements to amend the principal regulations in relation to England in the same way as is being done in Wales and laid their statutory instrument before Parliament on the 18th May 2007. These regulations came into force in England on 15 June 2007.

Section 13 of the Public Health (Control of Diseases) Act 1984 provides that regulations may be made in relation to public health matters and the control of disease. Functions under s.13 are exercisable by the Welsh Ministers under Government of Wales Act 2006.

This instrument is to be made using the negative resolution procedure.

(iv) **Purpose and intended effect of the legislation**

Policy Background

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. The United Kingdom (UK) is a member of WHO and is bound to introduce the requirements of the IHR. The Welsh Assembly Government has a duty under Section 82 of the Government of Wales Act to act in accordance with international obligations.

The original IHR (the IHR 1969) have recently been replaced (on 15 June 2007) by the IHR 2005. One of the ways in which the UK implemented the IHR 1969 was through the Public Health (Ships) Regulations 1979. For example, the IHR 1969 provided for certificates (deratting certificates), to confirm that ships were free of rats that might spread disease. The Public Health (Ships) Regulations 1979 implemented these provisions in England and Wales.

Over time, the need to update the IHR 1969 became clear. They dealt with, 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 did 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.

Accordingly, new IHR (the IHR 2005) were adopted by WHO in May 2005. Globally, the IHR 2005 came 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.

It is not currently possible to take full account of the IHR 2005 in public health legislation in Wales or in England. Therefore, the Department of Health in England set out proposals for updating the Public Health (Control of Diseases) Act 1984 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*). As the 1984 Act extends to England and Wales, but functions in relation to public health matters and control of disease in Wales have been delegated to Welsh Ministers, the Welsh Assembly Government published on 11 April 2007 a similar consultation document on this subject detailing the proposals for updating the Public Health (Control of Diseases) Act 1984 in Wales. The consultation paper *Review of Parts II, V and VI of the Public Health (Control of Disease) Act 1984: A Consultation*, is available on the Department's website at <http://new.wales.gov.uk/topics/health/ocmo/consultations/public-health-consultation/?lang=en>. The Welsh Assembly Government will take account of the responses to this consultation in deciding what changes should be made to the legislation in the medium term.

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

Ship sanitation certificates

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.

Other changes

In addition to making provision for ship sanitation certificates, the Public Health (Ships) (Amendment) (Wales) Regulations 2007 also make minor adjustments to the 1979 regulations. These include amending the arrangement under which fees for inspecting ships with a view to issuing certificates are set and removing or updating material that since the introduction of the IHR 2005 are now out of date.

Objective

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

- help ships' operators, by enabling them to obtain in Wales 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 Wales (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.

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. Deratting

certificates (as provided for in the IHR 1969) will become obsolete as the IHR 2005 are implemented globally.

(v) **Implementation**

From 15 June 2007, when the IHR 2005 globally came into force, ship sanitation certificates replaced deratting certificates as internationally recognised documents.

It is considered advantageous to introduce the changes to these regulations in Wales as soon after the 15 June 2007 as possible. This is because if ports in Wales cannot issue internationally recognised documents, they may lose business. The coming into force date for these regulations is therefore 1st August 2007.

Parallel legislation has been introduced in England. The Department of Health laid their statutory instrument before Parliament on the 18th May 2007, and the regulations came into force on 15 June 2007. The delay in introducing this legislation in Wales has in part, been due to the National Assembly for Wales elections and the subsequent political negotiation.

The provisions in the IHR 2005 on ship sanitation certificates build upon 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 has 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 Wales consider that they will not be able to make the necessary preparations by 1st August 2007, they are able to seek authorisation to issue (and extend the validity of) ship sanitation certificates from a later date.

(vi) **Consultation**

From January 2007 to March 2007, Public Health and Health Professions Department consulted publicly on how to provide for ship sanitation certificates in Wales. Full details of the consultation are included in paragraph (e) of the Regulatory Impact Assessment.

(vii) **Regulatory Impact Assessment**

A Regulatory Impact Assessment is included in this Explanatory Memorandum. A draft version of this Regulatory Impact Assessment was included in the public consultation and covers the impact of the legislation on business and the public sector.

Regulatory Impact Assessment

a) **Options (for achieving the policy objective – as set out in paragraph (iv) of Part 1 above)**

Two 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 with effect from 1st August 2007

This option would entail implementing the ship sanitation provisions as soon as possible after the date the IHR 2005 generally come into force.

Sectors and Groups Affected

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 in its capacity as designated IHR National Focal point, 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.

Equity and Fairness Including Race Equality Assessment

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.

b) **Benefits**

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

Option 1 – Do Nothing

There are no benefits.

Option 2 – Implement provisions from 1st August 2007

The benefits of this option are that from 1st August 2007:

- ships' operators will be able to obtain in Wales 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 Wales 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.

One respondent to the consultation exercise noted that these benefits would be maximised if the World Health Organization maintained an international database containing the details of all ports designated to issue ship sanitation certificates (as we understand it plans to do).

c) **Costs**

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 Wales, ports in Wales will become less attractive to ships engaged on international voyages, since they will not be able to obtain in Wales 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 Wales 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);
- 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;
- 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 Port of Cardiff, which handled 592 ship arrivals in 2006/7, made 161 general inspections and identified no ships that needed 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 Public Health (Ships) (Amendment) (Wales) Regulations 2007 do not require authorities to use environmental health officers, but instead officers with appropriate expertise).
- local authorities applying to the Welsh Assembly Government 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 1st August 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.

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, one of the respondents emphasised they were keen this should happen.

d) **Competition Assessment**

We do not consider that there are competition issues.

Royal Mail

In informal discussions between the Royal Mail and the Department of Health before publication of the ship sanitation certificates consultation paper in England, 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.

In their response to the Department of Health 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”.

The Department of Health have considered carefully the points made by Royal Mail Group. The Department of Health emphasises 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) (Wales) Regulations 2007 do not discriminate against Royal Mail or any other postal operator: rather, they apply to all cargoes equally.

Charges outside Wales

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, as some respondents to the Department of Health consultation, 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.

e) **Consultation**

Within Government

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.

Public Consultation

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.

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 by the Department of Health on 20 December 2006 (now available on the Department of Health website at http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_063679). This public consultation exercise ran for thirteen and a half weeks until 23 March 2007 and attracted twenty-three responses.

The Public Health and Health Professions Department also consulted publicly for eleven and a half weeks from January 2007 to March 2007 on how to make provision for ship sanitation certificates in Wales. Detailed information about the proposals in the consultation paper and the background to them is in the consultation paper (available on the Public Health and Health Professions Department website at <http://new.wales.gov.uk/topics/health/ocmo/consultations/ship-sanitation/?lang=en>).

The consultation paper detailed the proposals that the Welsh Assembly Government planned to introduce in order to provide ship sanitation certificates in Wales and aimed to collect stakeholders comments on these proposals. The consultation paper did not include a draft Statutory Instrument for stakeholders to comment on. The proposals were chiefly of interest to local authorities and to the ports and shipping industry, rather than to the public at large. The public consultation in Wales attracted three comments. A summary report on the three responses received to the consultation is at Annex A to this explanatory memorandum. A more detailed report is available on the Department's website.

Both consultation papers 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.

f) **Post implementation review**

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.

g) **Summary and recommendation**

For the reasons set out above, the Welsh Assembly Government considers that the right option is Option 2, as reflected in the Public Health (Ships) (Amendment) (Wales) Regulations 2007.

ANNEX A: SUMMARY REPORT ON CONSULTATION ON HOW TO PROVIDE IN WALES FOR SHIP SANITATION CERTIFICATES CONSULTATION IN WALES

1. The Welsh Assembly Government published a consultation paper in January 2007 on how to provide in Wales for the ship sanitation certificates required by the International Health Regulations (IHR) 2005 of the World Health Organization (WHO). Three responses to the consultation paper were received. One of these came from a group, the Wales Port Health Technical Panel, that represents all local (including port health) authorities with port health responsibilities in Wales, and two came from the owner/operators, The Port of Mostyn Ltd and UK Dredging & Associated British Ports, of privately run ports in Wales. The paragraphs below summarise the comments made in the responses and set out the action that the Welsh Assembly Government is now taking. A more detailed report is available on the Welsh Assembly Government website.

Proposal 1: Form of the Ship Sanitation Certificate

2. The three 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) (Wales) Regulations 2007, now provide for this to be the form used in Wales.

Proposal 2: Supply of the certificate

3. The three respondents thought that there should be a central supply point from which those responsible for issuing certificates could obtain forms for the certificates. The respondents favoured supplying forms electronically, 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 make electronic versions of the forms available to local authorities in Wales.

Proposal 3: Period of validity

4. The three respondents agreed that certificates in Wales 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) (Wales) Regulations 2007 provides for this.

Proposal 4: Who should issue certificates?

5. The three respondents agreed that local authorities (including port health authorities) should issue ship sanitation certificates in Wales (as they currently do deratting certificates) and regulations 18A-D of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (Wales) Regulations 2007 provide for this.

6. The Wales Port Health Technical Panel expressed support for the issue of certificates by Ministry of Defence ports, and this practice will continue.

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

7. The three 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). However, one respondent added that in addition to EHOs, a appropriately qualified person competent in ship inspection could undertake inspections.

8. All three 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, although one respondent added that an appropriately qualified person could undertake the inspections. 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) (Wales) Regulations 2007 do not require EHO involvement in these two tasks: it is instead for local authorities to ensure that appropriate expertise is involved.

9. The Wales Port Health Technical Panel recommended guidance to state qualifications or competency requirements for those issuing certificates should be issued. In response to the English consultation, 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. The Department of Health has encouraged 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?

10. The three respondents agreed that in Wales 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”. The three 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) (Wales) Regulations 2007 provides for this.

11. One respondent 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 two did not. Consistently with the approach taken at paragraph 8 above, the Public Health (Ships) (Amendment) (Wales) Regulations 2007 leave it to the authority concerned to ensure 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.

12. The consultation paper asked if circumstances could arise in Wales in which there might be a case for extending the validity of a certificate without inspecting the ship. One respondent answered no, but two answered yes and 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, the Public Health (Ships) (Amendment) (Wales) Regulations 2007 provide 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

13. The three 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 as National IHR Focal Point, 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) (Wales) Regulations 2007, and the latter by the Health Protection Agency.

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. One respondent commented, generally emphasising that there had been difficulties in the past in obtaining accurate information on those ports authorised to issue deratting certificates and that information should be available more readily in future. The Department of Health are encouraging 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 it must then 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.

The three respondents indicated agreement with this proposal, and regulation 18B of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (Wales) Regulations 2007 takes it forward.

17. The consultation paper also explained that we 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.

The three respondents supported this proposal, and regulation 18C(3) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (Wales) Regulations 2007 takes it forward.

Proposal 10: Charges for issuing certificates and applying control measures

18. The consultation paper proposed that, as now, ships' operators should meet the costs inspecting ships with a view to issuing certificates. The three respondents agreed to this proposal and Regulation 38 of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (Wales) 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. The three respondents did not agree on the basis that they would prefer standard charges to apply throughout the UK. However, UK wide charges can not be required under the powers under which the Public Health (Ships) Regulations are made. The Welsh Assembly Government 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) (Wales) 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, three respondents thought that it would. In answer to a question about who might produce this, the bodies suggested were central government (the Welsh Assembly Government or the Department of Health) or environmental health departments. The Department of Health has 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 we proposed that bodies authorised to issue certificates should publish their charges at least ten days in advance. Two respondents agreed that they should, one thought that ten days was insufficient. We have considered the responses but believe ten days is reasonable notice. 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) (Wales) 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 UK armed forces may be issued with a certificate by that authority. The three respondents agreed with this proposal, and regulation 3(2) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (Wales) 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. The three respondents favoured repeal. In response to the Department of Health consultation, Royal Mail Group did not favour repeal. The Department of Health have considered the concerns raised by Royal Mail Group carefully, but believe that several of the 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) (Wales) 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. The three respondents offered comments. We will take these comments 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 29th 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. Two respondents commented, generally noting that forgery is not common and suggesting easily accessible, updated information on those ports worldwide that are authorised would assist officers to minimise forgery.

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: the three respondents agreed that they should. The period for which respondents suggested copies should be retained ranged from one year to two years. Regulation 18D(3) of the Public Health (Ships) Regulations as amended by the Public Health (Ships) (Amendment) (Wales) 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 appraisal. The three 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) (Wales) 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. The three respondents favoured June 2007, and therefore we have decided that the Public Health (Ships) (Amendment) (Wales) Regulations should come into force as soon after the 15 June 2007 as possible. Ideally, the Welsh Assembly Government would have liked to meet the IHR introduction date of the 15 June 2007, but due to the National Assembly for Wales elections in Wales, this has not been possible. The coming into force date for the introduction of the regulations is 1st August 2007. Globally, the 15 June 2007 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 Welsh Assembly Government 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 Wales should recognise a deratting certificate, unless there is evidence of a public health risk. The three respondents supported this. Regulation 33 of the Public Health (Ships) (Amendment) (Wales) 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 however, deratting certificates will cease to be valid from 15 December 2007, six months after the IHR 2005 implementation date. This is in accordance with the Department of Health's procedures.