

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

2007 No. 1447

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The regulations amend the Public Health (Aircraft) Regulations 1979, primarily to take account of provisions in the International Health Regulations (IHR) 2005 of the World Health Organization. Some other minor changes are made at the same time.

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

3.1 None.

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 (Ships) (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 (Aircraft) 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.

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 (Aircraft) Regulations 1979.

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) 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 (Aircraft) Regulations 1979 to take account of the IHR 2005 and of other material that has become out of date.

8. Impact

8.1 A Regulatory Impact Assessment is at Annex A 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, or 020 7972 4048.

ANNEX A: REGULATORY IMPACT ASSESSMENT

Introduction

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

Purpose and Intended Effect

Objectives

2. The regulations are consistent with provisions in the IHR 2005. This should 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.

Consultation

Within Government

5. The measures involved are generally minor adjustments to existing provisions (for example, to take account of the fact that certain concepts used in the IHR 1969 will cease to have meaning when the IHR 2005 come into force on 15 June 2007). They have been discussed within the UK Government by departments with an interest. 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

6. 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.

7. 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)

dealt primarily with changes to the Public Health (Ships) Regulations to take account of the introduction of ship sanitation certificates. However, it also invited views on the “saving for mail” in the Public Health (Aircraft) Regulations. 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 the attached regulatory impact assessment for the Public Health (Aircraft) (Amendment) (England) Regulations 2007.

Options

8. Two main options have been identified in order to take account of the entry into force of the IHR 2005:

Option 1 – do nothing

This option would entail making no changes to the Public Health (Aircraft) Regulations 1979, despite the replacement of the IHR 1969 of which they take account with the IHR 2005.

Option 2 – make some changes to the Public Health (Aircraft) Regulations 1979 with effect from 15 June 2007

This option would entail making some changes to the Public Health (Aircraft) Regulations 1979 consistent with the IHR 2005 from the date the IHR 2005 come into force.

Costs and Benefits

Sectors and Groups Affected

9. The changes made by the Regulations will affect:

Directly

- the local authorities responsible for putting the Public Health (Aircraft) Regulations into effect;
- airlines, and potentially air travellers, to whom the Public Health (Aircraft) Regulations apply;
- the Health Protection Agency, which as National IHR Focal Point will under regulation 13(3C) receive information from local authorities if they apply additional health measures;

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

10. 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 provisions in the IHR 2005. The UK Government works closely with those bodies.

Benefits

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

Option 1 – Do Nothing

There are no benefits.

Option 2 – make some changes to the Public Health (Aircraft) Regulations 1979 with effect from 15 June 2007

The benefits of this option are that:

- from the date the IHR 2005 come into effect globally the related legislation in England will be updated for consistency with the IHR 2005;
- this makes the regulations easier to understand, which benefits those affected by the regulations. (For example, they will be able to refer to legislation which links directly to the IHR 2005, not to the IHR 1969 which will have ceased to apply);
- it also removes some burdens which were created to take account of the IHR 1969 but which are no longer required or relevant. (For example, as a result of the repeal of regulation 6, local authorities will no longer be required to maintain a list of “infected areas”. Crawley Borough Council, which has responsibilities at Gatwick airport, has drawn attention to the difficulty of meeting this requirement);
- it provides an opportunity to simplify and clarify some provisions. (For example, regulation 12 of the Public Health (Aircraft) Regulations 1979 in its original form implies that the commander of an aircraft should be able to judge whether a person is suffering from tuberculosis or from some other infectious disease. It is unrealistic to expect a commander to make such a judgement, and regulation 12 as amended takes account of this).

Costs

12. We have identified that the general costs of each option are as follows:

Option 1 – Do Nothing

There are no costs.

Option 2 – make some changes to the Public Health (Aircraft) Regulations 1979 with effect from 15 June 2007

In principle, there could be some administrative costs, for example to a local authority and the Health Protection Agency if under regulation 13(3C) the application of additional health measures is reported to the Health Protection Agency as National IHR Focal Point. However, these costs are likely to be small and to arise rarely; they are necessary to achieve compliance with the IHR 2005, and are likely to be more than offset by the removal of the requirement, for example, to maintain a list of infected areas.

Equity and Fairness Including Race Equality Assessment

13. In terms of equity and fairness, it is worth noting that the regulations include provisions, based on those in the IHR 2005, limiting charges that may be made by local

authorities to no more than the actual cost of the service provided and preventing discrimination in charges, for example between aircraft of the basis of their ownership. In terms of race equality, different measures might be taken in relation to different aircraft, 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

14. We have not identified any small firms issues.

Competition Assessment

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

Royal Mail

16. In informal discussions before publication of the consultation paper on ship sanitation certificates, 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.

17. 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”.

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

Rural Proofing

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

Enforcement, Sanctions and Monitoring

20. The Public Health (Aircraft) (Amendment) (England) Regulations 2007 do not alter the arrangements for enforcement and sanctions that currently apply. In terms of monitoring, the regulations take forward the requirement in the IHR 2005 that authorities should inform the National IHR Focal Point if they apply additional health measures to aircraft.

Implementation and Delivery Plan

21. As explained above, the IHR 2005 come into effect on 15 June 2007. The provisions in the IHR 2005 build on those in the IHR 1969 and we therefore think that implementation will be a relatively straightforward matter for the bodies involved. Globally, the aircraft 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.

Post-implementation Review

22. 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

23. For the reasons set out above, the Department of Health considers that the right option is Option 2, as reflected in the Public Health (Aircraft) (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 14th May 2007

Contact Point

Jenny Harper at the Department of Health, jenny.harper@dh.gsi.gov.uk, or 020 7972 4048.