ANNEX M: FORM FOR RESPONDING TO THIS CONSULTATION

Please return this form to reach the Department of Health no later than Monday 25 June 2007. Responses can be:

- emailed to 1984Act@dh.gsi.gov.uk;
- posted to Jenny Harper, Department of Health, Wellington House, 135-155 Waterloo Road London SE1 8UG; or
- faxed to Jenny Harper on 020 7972 1008.

Respondent details Name: Professor Rod Griffiths CBE, President
Address: Faculty of Public Health, 4 St Andrews Place, London NW1 4LB
Telephone: 020 7935 0243
Email: policy@fph.org.uk
Fax: 020 7224 6973
If you are responding on behalf of an organisation, please give the name of the organisation and a brief account of its membership The FPH is the professional body for senior public health specialists in the UK who aim to advance the health of the population. It sets and maintains professional and educational standards, and advocates on key public health issues, including providing practical information and guidance for public health professionals. For further information visit the Faculty's website: www.fph.org.uk
Please see Annex B on disclosure of responses, and indicate if there is any information in your response that you do not wish to be disclosed.

Proposal 1: General approach

Should Part II of the Public Health (Control of Disease) Act 1984 be repealed and replaced by a new Part that would provide:

- some specific powers in primary legislation to require action of individuals;
- a general regulation-making power for the purposes of making provision to prevent, protect against, control and provide a public health response to, the spread of disease?

Yes

Please add any comments you wish to explain your answer.

The existing legislation is dated and based on conceptual approaches that are no longer appropriate or effective. When incidents occur it is sometimes difficult to know if the problem is caused by chemical or microbiological agents and while radioactive contamination is less common it too can mimic other hazards. We need an all hazards approach which can deal with new hazards as they occur.

Proposal 2: Guiding principles

Would it be helpful to set out, either in the new legislation or in guidance on its application, general principles that should be borne in mind in making use of powers to be provided under the new Part?

Yes

Please add any comments you wish to explain your answer.

It would be sensible in order to avoid confusion. Because this legislation has to draw a line somewhere between individual and collective rights and benefits it would make sense to set out the principles.

Do you support the principles suggested in paragraph 3.5?

Yes

Are there any other principles you suggest, and if so, what are they?

In addition it would be worth adding a principle that there should be a clear likelihood of benefit or reduction in harm to the population in general or an identifiable sub population. Whilst this might be covered by the statement that action should only be taken when it is needed it might be more explicit to spell out the population that is presumed to benefit.

Please add any comments you wish on your answer.

Is there a case for enabling the Secretary of State or some other body to issue guidance on which statements constitute appropriate advice?

Yes

Please add any comments you wish on your answer.

NICE would be an appropriate body as it already gives advice on public health matters. Clearly this would not be appropriate in an urgent situation but issues could be referred to NICE in order to build up a body of advice over time.

Proposal 3: Powers to cover contamination as well as infection

Should there be powers in the new Part of the 1984 Act to deal with contamination by radiation and chemicals as well as with infectious disease?

Yes

Please add any comments you wish on your answer.

This is essential because it can be very difficult sometimes to be sure what the cause of an incident is. As a recent example it was very late in the day that Polonium 210 was identified. How would that be classified, as a poison or a radioactive hazard? If the case had been a different heavy metal it would have been classified as a chemical attack.

In general, should the same powers be available both for contamination and for infectious diseases?

Yes

Please add any comments you wish on your answer.

Patients contaminated with chemicals or radio active substances can be just as dangerous to others as those carrying or exposed to micro organisms. Obvious examples: the Sarin incident in Tokyo, health care staff were injured by gas coming off the clothes of those who had been exposed in the tube. Another obvious clinical example is treatment of thyroid disease with radio active iodine, patients are kept segregated in the early phase of treatment because they would be a danger to others. If they were exposed to a similar hazard through an accident or deliberate poisoning similar measures would have to be taken.. In each of these cases the precautions that need to be taken are similar to those required for micro organisms.

We would welcome any examples you wish to provide of:

What legal powers local authorities and others currently use for dealing with contamination

What action in relation to contamination it might be desirable to take under the powers proposed for the 1984 Act (rather than under other powers)

and any suggestions on how to avoid an unnecessary or undesirable duplication of powers:

Proposal 4: Powers for disease generally or for specified diseases?

Do you support an approach that specifies individual diseases (infections/contaminations) in relation to which use of the proposed powers might be appropriate (or inappropriate) but which also allows the powers to be used in other circumstances?

/no

Or would you prefer powers to be available in relation to infections and contaminations generally?

Yes

Or only in relation to specified infections/contaminations?

no

Please add any comments you wish on your answer.

Proposal 5: The scope and purpose of the legislation

Should the scope and purpose of the new Part be to prevent, protect against, control, and provide a public health response to, the spread of disease (with "disease" defined, as in the International Health Regulations 2005, as "an illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans")?

Yes

Please add any comments on your answer. (For example, would this make the new powers too broad, or too narrow? Are there any actions that it might be desirable to take for which this approach would not allow? How might the suggested approach be modified to deal with this? Should the legislation make clearer provision than at present for action in relation to animals as well as people, human remains, premises and things?).

In general it is better for the powers to be set generally on the face of the bill and allow for regulations where more specific actions are needed. Progress in medical science is rapid and very specific measures may be overtaken by events.

Proposal 6: Decisions on individuals to be taken by a justice of the peace
As a general rule, should a justice of the peace, rather than a local authority, take the decision to require action of an individual person or in relation to individual premises or things?

Yes

Please provide any comments on your answer.

It would be sensible to give designated proper officers the power to take action for a limited period provided that a court, whether magistrate of other court reviewed the decision within a designated time period, say 48 hours. There are bound to be circumstances where an individual might try to escape quarantine, for instance, by absconding before a magistrate could hear a case. If a proper officer had power of immediate action, subject to review then that problem could be avoided.

Proposal 7: Who should be able to apply to a justice of the peace for an order?
Should the power to apply to a justice of the peace for an order rest with a local authority?

Y/no

Please add any comments on your answer. (For example, are there other public bodies that should be involved in the decision to apply for an order, and if so, how? Does any provision need to be made to guard against the risk that a body that has the power to act might fail to do so where there is a compelling case for action?).

The bill should give the secretary of state power to make regulations in relation to any public body. There have been too many reorganisations for it to be safe to assume that there may not be another. In the 1974 changes there was significant confusion

about powers for medical officers of health who were moved into the NHS, some powers were neglected. This confusion was one of the reasons why the Acheson committee (1988) recommended that the legislation be revised.

Proposal 8: Circumstances in which a justice of the peace can require action
Should the circumstances in which a justice of the peace may require action generally be limited to those where the subject of the order poses or may pose a risk to others?

Yes

Please provide any comments on your answer. (For example, might such an approach mean it would not be possible to require some action that it would be desirable to be able to require?).

Public health legislation is not like mental health legislation where compulsory treatment may be specified where a patient is likely to do harm to themselves or others. Public health laws are to protect the population. If compulsion was introduced for individual treatment it would step over a new boundary. Could a smoker be compelled to give up, after all there is a 50% chance that the behaviour will kill anyone who persists in doing it. At the moment the laws on smoking are there to protect the population. Similar considerations should apply to all hazards.

Proposal 9: Procedure when making orders
Should it be possible for a justice of the peace to act, if he deems it necessary, without the person who might be the subject of the order being present?

Yes

Please provide any comments on your answer.

This is particularly important in the event of an individual absconding. There should be powers to identify an individual who absconds so that they can be identified in the media.
The powers also need to cover the possibility where it would not be safe for an individual to be in open court. Powers to hear evidence by video should be included.

Proposal 10: Costs and compensation
In general, should the costs of action required by an order be met by the person who is the subject of the order, with no compensation being provided by the local authority for any loss sustained in having to take such action?

no

Should there be some standard exceptions to this? (For example, NHS input should be provided free of charge).

Yes

Is there a case for giving the justice of the peace power to apportion costs between the person who is the subject of the order and the body applying for the order in cases where otherwise particular hardship might result?

Yes/no

Please add any comments on your answers.

Compensation is essential, as is provision for providing food and other necessities if people are quarantined. If there is no compensation an individual is bound to be tempted to abscond or not comply, particularly if they have a business to run. In the small pox outbreak in Birmingham some of those quarantined were not provided with food and eventually had to go out shopping. I had worked in the relevant department in the university up to 2 weeks before the outbreak, I was vaccinated but allowed to remain at liberty but I actually met former colleagues of mine in local shops when they ran out of food.
The idea that the cost should fall on the individual who is probably an innocent victim of a potentially serious disease is unjust. If society is to be protected then the costs must fall on society.

Proposal 11: Review of orders
Should it be possible to seek a review of an order where there are reasonable grounds for contesting the decision taken?

Yes

Please provide any comments on your answer.

Provided that the order remains in force while the appeal is held.

Should limits be placed on the period that may be covered by an order, and if so what, and why?

Limits could be defined by the incubation period of the disease.

Should it be possible to apply for a further order (for example if the initial order proves insufficient to deal with the problem)?

Yes

Please provide any comments on your answer.

In any outbreak there is a tendency for the incubation period to appear longer as the outbreak progresses, presumably because the earliest cases are in the most susceptible people. Early assumptions about quarantine periods might have to be revised, particularly in an emerging new infection where little is know at the start. It would be wise therefore to have provision to be able to extend powers.

Proposal 12: Detailed matters associated with orders

If detailed matters about orders need to be specified in legislation, should this be done in secondary legislation (regulations) rather than in primary legislation (the Act), so that they can more easily be kept up to date?

Yes

Please give any comments on your answer.

This allows a certain amount of future proofing. It should be obvious from the previous legislation that over detailed specifications are overtaken by events.

Proposal 13: Power to require medical examination

Should it be possible for a justice of the peace to require a person to undergo medical examination?

Yes

Please give any comments on your answer.

Without this power it might still be possible to contain an outbreak by measures such as quarantine but information about symptoms and progress would develop more slowly and it might be necessary to constrain those who refused to be examined. If they were also able to seek compensation because their liberty had been restricted there would obviously be a perverse incentive.

Is there a need to exclude certain procedures from, and/or to include others in, what could be required as part of a medical examination? If so, why, and what would these procedures be?

Proposal 14: Power to require risk-reduction measures

Should it be possible for a justice of the peace to require measures to reduce risk where a person poses, or may pose, a risk of infecting or contaminating others?

Yes

Please provide any comments you wish on your answer.

Clearly the whole purpose of this legislation is to achieve an optimum balance between individual liberty and public protection. Measures to reduce risk may have to be taken by some individuals in order to protect others. In essence that is the point of society.

Proposal 15: What risk-reduction measures might be required?

We would welcome comments on what risk-reduction measures it might be appropriate to require.

Restriction on movement and contact with others is the most obvious but simpler steps like staying away from work while infectious, not engaging in certain occupations, like food handling or carting for others are other examples.

Do you agree that it should not be possible to require a person to undergo treatment or vaccination or prophylaxis?

Yes

But that it should be possible to require a person to undergo some other procedures that should be counted as treatment?

No

Please provide any comments on your answer.

Individuals have to be free to put themselves at risk but only in ways that do not put others now or in the future at risk.

Proposal 16: Combined orders, conditional orders and group orders
Should it be possible to apply for and have orders made under more than one order-making power at a time?

Yes

Please provide any comments on your answer.

Simply on grounds of practicality. As a general rule it is better to be more cautious and hence secure a wider range of powers early in an outbreak. Catching up is much more difficult and powers that are taken as a precaution do not have to be used. Assuming that those who use powers have to account for their use after the event and have a limited time period for their powers there should be adequate safeguards. Early in an outbreak avoiding delay is more important than procedural niceties.

Should it be possible to make conditional orders?

Yes

Please provide any comments on your answer.

This simply makes possible a more flexible response and hence might be expected to preserve a wider range of liberties.

Proposal 17: Power to require action in relation to premises, human remains and things
Should there be powers for justices of the peace to require action in relation to premises and articles where they pose a risk of infection or contamination?

Yes

Please provide any comments on your answer.

The ability to close premises or restrict their use or require decontamination is basic to control of a hazard.

Proposal 18: What action should it be possible to require in relation to premises etc?
We would welcome examples of the kind of action it might be desirable to require in relation to premises, articles, etc, taking account of any relevant powers that may already be provided under other legislation.

Closure, decontamination , limitations on use, both in purpose and numbers of people allowed in a building, requirements that those involved use suitable protective clothing or are immunised.

Proposal 19: Powers to require the provision of information

Should the (piecemeal) information provisions in Part II be replaced with new powers to require the provision of information in order to help prevent, protect against, control, and provide a public health response to the spread of disease?

Yes

Please provide any comments you wish on your answer.

It is difficult to see how we can meet our IHR requirements if agencies or organisations are able to suppress information.

Proposal 20: Information requirements set at national level

Should there be some standing information requirements set at national level by the Secretary of State?

Yes

Please provide any comments you wish on your answer. (For example, we would welcome comments on what information requirements it might be desirable to have).

Proposal 21: Information requirements to be applied at local level

Should regulations made by the Secretary of State set out circumstances in which local authorities would be able to require the provision of information in order to help prevent, protect against, control, and provide a public health response to, the spread of disease?

Yes

Please provide any comments you wish on your answer. (For example, we would welcome comments on what information there might be a case for requiring, and in what circumstances, under this power).

Proposal 22: Limits on information powers

Do any limits need to be put on the powers to require information, and if so what and why, and how might this be done?

There should not be limits but it might be possible to differentiate between what might be required under normal surveillance conditions and what might be needed in an outbreak. For instance it should not normally be necessary to declare negatives but there might be circumstances where that would be helpful.

Should the legislation make it possible for local authorities, in appropriate circumstances, to access information already held by, or on behalf of, other public sector bodies?

Yes

Please provide any comments you wish on your answer.

There should be transparency between agencies, ideally in real time when needed.

Proposal 23: Power to make payment for information

Should information needed to prevent, protect against, control, and provide a public health response to, the spread of disease in general be provided without payment?

Yes

Should there nevertheless be a power to arrange for payment in some circumstances?

Yes

Please provide any comments you wish on your answer.

There should be a duty to provide normal information flows but in times of

heightened surveillance or where additional work was necessary then payment could be a useful option.

Proposal 24: Criminal offences

Should the provisions in Part II on criminal offences be replaced with primary legislation that provides for two criminal offences of:

- knowingly or recklessly putting others at risk of infection or contamination contrary to provisions made in or under the Act;
- failing to comply with a requirement created in or under the Act?

(Behaviours that would count as putting others at risk for the purpose of the first offence could be identified in regulations).

Yes

Please provide any comments you wish on your answer. (For example, we would welcome comments on what behaviours might count as the criminal offence of putting others at risk of infection or contamination).

Proposal 25: Penalties and sanctions more generally

Should the maximum financial penalty on summary conviction for the offences suggested above generally be a fine of £5,000?

Yes

Is there also a case for providing for: fixed penalty notices?

Yes

Additional daily penalties for continuing offences?

Yes

An exceptional summary maximum penalty?

Yes

And/or powers to order remediation?

Yes

Are there any other approaches considered in the Macrory review that might be useful in the context of the 1984 Act?

Yes/no

Please provide any comments you wish on your answer. (For example, if you have answered "yes" to additional daily penalties for continuing offences and/or to an exceptional summary maximum penalty, it would be helpful to have comments on circumstances in which such penalties might be appropriate, and what their maximum level might be. If you have answered "yes" to powers to order remediation, it would be helpful to know in what circumstances you think this power might be useful).

Proposal 26: Secretary of State regulation-making power

Should there continue to be a general regulation-making power for the Secretary of State, which might be used in the ways considered in paragraph 9.4? (See also proposal 1).

Yes

Please provide any comments you wish on your answer.

Proposal 27: Specific power for a local authority to request a person to stop work

Should there be a specific power for a local authority to request a person to discontinue work?

Yes

Please provide any comments you wish on your answer.

It seems irrational to deny compensation. An alternative might be to pay compensation to the employer so that they could continue to pay the person. Usually when a person contracts an infectious disease it is difficult to prove that they have been at fault in doing so. If they are then prevented from working it provides a stron incentive for the individual to conceal their illness. It makes more sense for society to pay.

Proposal 28: Specific power for a local authority to require a child not to attend school

Should there be a specific power for a local authority to require a child not to attend school?

Yes

Please provide any comments you wish on your answer.

Proposal 29: Other powers for local authorities

Are there other kinds of action that it should be possible for a local authority (rather than a justice of the peace) to be able to request or require in relation to individuals o individual premises or things, and if so what? Should the power to restrict the movement of a dead body stay with local authorities?

It seems sensible to leave the power about bodies with local authorities, going to a JP would add another layer of burocracy without any particular gain. If added safety is needed there could be a provision to appeal to a JP.

Proposal 30: Disinfecting

Should local authorities have a broader power than at present offer to disinfect and decontaminate and to take action conducive to that?

Yes

Please provide any comments you wish on your answer.

Again the previous legislation makes it obvious that narrow and over specified powers do not offer a safeguard, it is better to have wide powers with opportunities for appeal as a means of protecting civil liberties.

Proposal 31: Common lodging-houses

Do you agree that provision should no longer be made in primary legislation for common lodging-houses?

Yes

Please provide any comments you wish on your answer.

This again makes the point about over specification. Language and usage of premises change.

Proposal 32: a further existing provision on public conveyances

Should section 34(2), which permits the owner or driver of some kinds of public conveyance to refuse to convey any person suffering from a specified disease in certain circumstances be repealed?

Yes

Please provide any comments you wish on your answer.

Proposal 33: Special considerations at borders

We would welcome comments on special considerations relating to borders that might need to be taken into account, and on whether (and if so how) the principles considered at Proposal 2 might need to be modified to take account of this.

An important issue here is public perception. Although many people travel and hence have direct experience, they still seem to assume that diseases can be recognised and persons restrained at borders. Clearly for many diseases this is not possible, screening tests do not exist that are sufficiently rapid and accurate. When one considers the number of people passing through places like Heathrow each day it would be very difficult to test everyone even if a test could be done in a few minutes.

It is possible that very rapid tests might be invented in the future, dip sticks, chemiluminescence etc might produce something. It would therefore be useful to have within the act powers that would allow authorities to use very rapid tests if they became available.

At the same time we have to assume that most protection against incoming infection will rest with the identification of much smaller numbers of high risk individuals who might be detained or followed up. The main protection will come through giving good information to travellers and masking NHS service easily available to them so that if they become ill they seek diagnosis and care.

Proposal 34: Power for local authority to require action in relation to people at borders

Should it be possible for local authorities to require action in relation to people at borders?

Yes

Please provide any comments you wish on your answer.

The SARS outbreak demonstrated some value in taking temperatures of people before travel, for instance.

Proposal 35: What action should the power in relation to people at borders cover?

We would welcome comments on what actions it might be appropriate to have powers to require, and what limitations on that power there might need to be.

The steps that were taken in Singapore where persons were required to stay in a residence and present themselves to an online camera from time to time offer some interesting prospects, as does electronic tagging. It should be possible to create form of surveillance which restrict people to some extent while being less intrusive than detaining them. The new act ought to have some provisions that allow it to take advantage of new technology as it emerges.

Proposal 36: Power for local authorities to require action in relation to things at borders

Should there be a power for local authorities to require action in relation to things at borders?

Yes

Please provide any comments you wish on your answer.

Proposal 37: What action in relation to things at borders should the power cover?

We would welcome comments on what actions it might be appropriate to have powers to require, and what limitations on that power there might need to be.

Provided that 'things' are paid for the local authority ought to be able to whatever seems necessary with them.

Proposal 38: Power for the Secretary of State to require local authorities at borders to act

Consistently with Proposal 26, should it be possible for the Secretary of State to require local authorities at borders to act?

Yes

Please provide any comments you wish on your answer.

Whilst it makes sense for most powers to be devolved it ought to be possible for the Secretary of State to require action. It could be, for instance that a national organisation like the Health Protection Agency sees some overall pattern that requires action from Local Authorities which they are reluctant to take because they can't see the whole picture. The HPA could ask the Secretary of State to intervene, this would give some protection against the HPA being overbearing while allowing the possibility of action.

These powers ought also to allow the Secretary of State to require local authorities to accept outside assistance. There have been examples in the past where local responses have been less than adequate while the authority has sought to cover up its inadequacies by refusing help.

Proposal 39: Review of requirements imposed by local authorities at borders
Should it be possible for those affected by a requirement imposed by a local authority at an international border to seek review of that requirement?

Yes

Please provide any comments you wish on your answer.

Proposal 40: Repeal section 54
Should section 54 be repealed?

Yes

Please provide any comments you wish on your answer.

Information is important but general powers would be better.

Proposal 41: Repeal section 55
Should section 55 be repealed?

Yes

Please provide any comments you wish on your answer.

Proposal 42: Repeal section 56(1)
Should section 56(1) be repealed?

Yes

Please provide any comments you wish on your answer.

Proposal 43: Right to prosecute
Should the provision in section 64(1) for people other than a person aggrieved, a local authority or a body responsible for enforcing a provision of the Act to bring a prosecution be removed?

Yes

Should the provision in section 64(2) on byelaws be removed?

Yes/no

Please provide any comments you wish on your answers. (For example we would welcome comments on whether there are still any byelaws in place to which section 64(2) currently might apply).

Proposal 44: Repeal section 68
Should section 68 be repealed?

Yes

Please provide any comments you wish on your answer.

Proposal 45: extend protection provided by section 69
Should the protection provided by section 68 be extended to other bodies that might take action under the Act?

Yes

Please provide any comments you wish on your answer.

Proposal 46: Local Inquiries
We would welcome comments on whether section 70 should be repealed.

There is some value in being able to hold lower key enquiries after significant event. When I was RDPH for the West Midlands I held peer reviewed debriefs after all significant events. If this sort of enquiry was possible it could be used more often. I suspect that it has not been used in the past because no-one knew the power was there.

Proposal 47: Default powers of the Secretary of State

Do you agree that section 71 should not apply to the new Part of the Act (the Part that will replace Part II)?

no

Please provide any comments you wish on your answer. (For example, we would welcome comments on whether section 71 needs to be retained in relation to other parts of the Act).

I suspect that it has not been used because it is there, take it away and you may regret it.

Regulatory impact assessment

We would welcome any comments on the Partial Regulatory Impact Assessment at Annex L.

Thank you for taking part in this consultation.