



**The Draft Civil Contingencies Bill,  
Explanatory Notes,  
Regulatory Impact Assessment (Local Responders) and  
Regulatory Impact Assessment (Emergency Powers)**

**Cabinet Office**

Presented to Parliament by the Minister for the Cabinet Office and  
Chancellor of the Duchy of Lancaster, by Command of Her Majesty – June 2003

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# Draft Civil Contingencies Bill

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A  
**B I L L**

TO

Make provision about civil contingencies.

Date Of Enactment

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

**PART 1**

LOCAL ARRANGEMENTS FOR CIVIL PROTECTION

*Introductory*

**1 Meaning of “emergency”**

- (1) In this Part “emergency” means an event or situation which presents a serious threat to – 5
- (a) human welfare in a place in England or Wales,
  - (b) the environment of a place in England or Wales,
  - (c) the political, administrative or economic stability of a place in England or Wales, or 10
  - (d) the security of a place in England or Wales.
- (2) For the purposes of subsection (1)(a) an event or situation presents a threat to human welfare only if it involves, causes or may cause –
- (a) loss of human life,
  - (b) human illness or injury, 15
  - (c) homelessness,
  - (d) damage to property,
  - (e) disruption of a supply of food, water, energy, fuel or another essential commodity,
  - (f) disruption of an electronic or other system of communication, 20
  - (g) disruption of facilities for transport, or
  - (h) disruption of medical, educational or other essential services.

- (3) For the purposes of subsection (1)(b) an event or situation presents a threat to the environment if, in particular, it involves, causes or may cause –
- (a) contamination of land, water or air with –
    - (i) harmful biological, chemical or radio-active matter, or
    - (ii) fuel oils, 5
  - (b) flooding, or
  - (c) disruption or destruction of plant life or animal life.
- (4) For the purposes of subsection (1)(c) an event or situation presents a threat to political, administrative or economic stability if, in particular, it causes or may cause disruption of – 10
- (a) the activities of Her Majesty’s Government,
  - (b) the performance of public functions, or
  - (c) the activities of banks or other financial institutions.
- (5) For the purposes of subsection (1)(d) the following, in particular, present a threat to security – 15
- (a) war or armed conflict, and
  - (b) terrorism, within the meaning given by section 1 of the Terrorism Act 2000 (c. 11).
- (6) For the purposes of subsection (4) “public functions” means – 20
- (a) functions conferred or imposed by or by virtue of an enactment,
  - (b) functions of Ministers of the Crown (or their departments), and
  - (c) functions of persons holding office under the Crown.
- (7) A Minister of the Crown may make regulations providing that a specified event or situation, or class of event or situation, is to be treated as falling, or as not falling, within any of paragraphs (a) to (d) of subsection (1). 25
- (8) The power under subsection (7) –
- (a) may not be used to make provision which is contrary to subsection (2), but
  - (b) is not constrained by subsections (3) to (6).
- (9) The power under subsection (7) may be used, in particular, to provide that in relation to a person or body an event or situation is to be treated as an emergency only if or in so far as it affects or may affect – 30
- (a) the area for which the person or body is responsible, or
  - (b) a specified part of the area for which the person or body is responsible.
- (10) The event or situation mentioned in subsection (1) may occur or be inside or outside England and Wales. 35

### *Contingency planning*

## 2 Duty to assess, plan and advise

- (1) A person or body listed in Part 1 of Schedule 1 shall – 40
- (a) from time to time assess the risk of an emergency occurring,
  - (b) from time to time assess the risk of an emergency making it necessary or expedient for the person or body to perform any of his or its functions,

- (c) maintain plans for the purpose of ensuring, so far as is reasonably practicable, that if an emergency occurs the person or body is able to continue to perform his or its functions,
  - (d) maintain plans for the purpose of ensuring that if an emergency occurs or is likely to occur the person or body is able to perform his or its functions so far as necessary or desirable for the purpose of –
    - (i) preventing the emergency,
    - (ii) reducing, controlling or mitigating its effects, or
    - (iii) taking other action in connection with it,
  - (e) consider whether an assessment carried out under paragraph (a) or (b) makes it necessary or expedient for the person or body to add to or modify plans maintained under paragraph (c) or (d),
  - (f) arrange for the publication of all or part of assessments made and plans maintained under paragraphs (a) to (d) in so far as publication is necessary or desirable for the purpose of –
    - (i) preventing an emergency,
    - (ii) reducing, controlling or mitigating the effects of an emergency, or
    - (iii) enabling other action to be taken in connection with an emergency, and
  - (g) maintain arrangements to warn the public, and to provide appropriate advice to the public, if an emergency is likely to occur or has occurred.
- (2) A Minister of the Crown may make regulations about –
- (a) the extent of a duty under subsection (1);
  - (b) the manner in which a duty under subsection (1) is to be performed.
- (3) Regulations under subsection (2) may, in particular –
- (a) make provision about the kind of emergency in relation to which a specified person or body is or is not to perform a duty under subsection (1);
  - (b) permit or require a person or body not to perform a duty under subsection (1) in specified circumstances or in relation to specified matters;
  - (c) make provision as to the timing of performance of a duty under subsection (1);
  - (d) require a person or body to consult a specified person or body or class of person or body before or in the course of performing a duty under subsection (1);
  - (e) permit or require a county council to perform a duty under subsection (1) on behalf of a district council within the area of the county council;
  - (f) permit or require persons and bodies to collaborate, to such extent and in such manner as may be specified, in the performance of a duty under subsection (1);
  - (g) permit or require a person or body listed in Part 1 or 2 of Schedule 1 to co-operate, to such extent and in such manner as may be specified, with a person or body listed in Part 1 of the Schedule in connection with the performance of a duty under subsection (1);
  - (h) require a person or body listed in Part 1 or 2 of Schedule 1 to provide information on request to a person or body listed in Part 1 of the Schedule in connection with the performance of a duty under subsection (1);

- 
- (i) permit or require a person or body to perform (wholly or partly) a duty under subsection (1)(a) or (b) having regard to, or by adopting or relying on, work undertaken by another specified person or body;
  - (j) make provision about the extent of, and the degree of detail to be contained in, a plan maintained under subsection (1)(c) or (d); 5
  - (k) require a plan to include provision for the carrying out of exercises;
  - (l) require a plan to include provision for the training of staff;
  - (m) permit a person or body to make arrangements with another person or body, as part of planning undertaken under subsection (1)(c) or (d), for the performance of a function on behalf of the first person or body; 10
  - (n) make provision which operates wholly or partly by reference to the discretion of a Minister of the Crown or another specified person or body;
  - (o) make provision which has effect despite other provision made by or by virtue of an enactment; 15
  - (p) make provision which applies generally or only to a specified person or body or only in specified circumstances;
  - (q) make different provision for different persons or bodies or for different circumstances.
- 3 Section 2: supplemental** 20
- (1) A Minister of the Crown may issue guidance to a person or body about the matters specified in section 2(2) and (3).
  - (2) A person or body listed in Part 1 or 2 of Schedule 1 shall –
    - (a) comply with regulations under section 2(2), and
    - (b) have regard to guidance under subsection (1) above. 25
  - (3) A person or body listed in Part 1 of Schedule 1 may be referred to as a “Category 1 responder”.
  - (4) A person or body listed in Part 2 of Schedule 1 may be referred to as a “Category 2 responder”.
- 4 Advice and assistance to business** 30
- (1) A body listed in paragraph 1 or 2 of Schedule 1 shall give advice and assistance to the public in connection with the making of arrangements for the continuance of commercial activities by the public in the event of an emergency.
  - (2) A Minister of the Crown may make regulations about – 35
    - (a) the extent of the duty under subsection (1);
    - (b) the manner in which the duty under subsection (1) is to be performed.
  - (3) Regulations under subsection (2) may, in particular –
    - (a) permit a body to make a charge for advice or assistance provided on request under subsection (1); 40
    - (b) make provision of a kind permitted to be made by regulations under section 2(3)(a) to (f) and (m) to (q).
  - (4) Regulations by virtue of subsection (3)(a) must provide that a charge for advice or assistance may not exceed the aggregate of –

- (a) the direct costs of providing the advice or assistance, and
  - (b) a reasonable share of any costs indirectly related to the provision of the advice or assistance.
- (5) A Minister of the Crown may issue guidance to a body about a matter specified in subsection (2). 5
- (6) A body shall –
- (a) comply with regulations under subsection (2), and
  - (b) have regard to guidance under subsection (5).

*Civil protection*

**5 General measures** 10

- (1) A Minister of the Crown may by order require a person or body listed in Part 1 of Schedule 1 to perform a function of that person or body for the purpose of –
- (a) preventing the occurrence of an emergency,
  - (b) reducing, controlling or mitigating the effects of an emergency, or 15
  - (c) taking other action in connection with an emergency.
- (2) A person or body shall comply with an order under this section.
- (3) An order under this section may –
- (a) require a person or body to consult a specified person or body or class of person or body; 20
  - (b) permit or require persons or bodies to collaborate;
  - (c) permit or require a person or body listed in Part 1 or 2 of Schedule 1 to co-operate, to such extent and in such manner as may be specified, with a person or body listed in Part 1 of the Schedule in connection with a duty under the order; 25
  - (d) permit or require a person or body listed in Part 1 or 2 of Schedule 1 to provide information on request, in connection with a duty under the order, to a person or body listed in Part 1 of the Schedule;
  - (e) permit or require a person or body to make arrangements with another person or body for the performance of a function on behalf of the first person or body; 30
  - (f) make provision which operates wholly or partly by reference to the discretion of a Minister of the Crown or another specified person or body;
  - (g) make provision which applies generally or only to a specified person or body or only in specified circumstances; 35
  - (h) make different provision for different persons or bodies or for different circumstances.

**6 Disclosure of information**

- (1) A Minister of the Crown may make regulations requiring or permitting one person or body listed in Part 1 or 2 of Schedule 1 (“the provider”) to disclose information to another person or body listed in Part 1 or 2 of that Schedule (“the recipient”). 40

- (2) Regulations under subsection (1) may be made only for the purpose of or in connection with a function of the provider or of the recipient which, in the opinion of the Minister making the regulations, relates to emergency.
- (3) A person or body shall comply with regulations under subsection (1).

*General*

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**7 Urgency**

- (1) This section applies where a Minister of the Crown thinks that—
- (a) there is an urgent need to make provision of a kind that could be made by regulations under section 2(2), 4(2) or 6(1) or by an order under section 5, but
  - (b) there is insufficient time for the regulations or order to be made.
- (2) The Minister may by direction make provision of a kind that could be made by regulations under section 2(2), 4(2) or 6(1) or by an order under section 5.
- (3) A direction under subsection (2) may be written or oral.
- (4) Where a Minister gives a direction under subsection (2)—
- (a) he may revoke or vary the direction by further direction, and
  - (b) he shall revoke the direction as soon as is reasonably practicable (and he may, if or in so far as he thinks it desirable, re-enact the substance of the direction by way of regulations under section 2(2), 4(2) or 6(1) or by way of an order under section 5).
- (5) A provision of a direction under subsection (2) shall be treated for all purposes as if it were a provision of regulations under section 2(2), 4(2) or 6(1) or of an order under section 5.

**8 Monitoring by Government**

- (1) A Minister of the Crown may require a person or body listed in Part 1 or 2 of Schedule 1 to provide information about action taken by the person or body for the purpose of complying with a duty under this Part.
- (2) A requirement under subsection (1) may specify—
- (a) a period within which the information is to be provided;
  - (b) the form in which the information is to be provided.
- (3) A person or body shall comply with a requirement under subsection (1).

**9 Enforcement**

- (1) Any of the following may bring proceedings in the High Court in respect of a failure by a person or body listed in Part 1 or 2 of Schedule 1 to comply with section 2(1), 3(2), 4(1) or (6), 5(2), 6(3) or 8(3)—
- (a) a Minister of the Crown,
  - (b) a person or body listed in Part 1 of Schedule 1, and
  - (c) a person or body listed in Part 2 of Schedule 1.
- (2) In proceedings under subsection (1) the High Court may grant any relief, or make any order, that it thinks appropriate.

## 10 Provision of information

Regulations of the kind described in section 2(3)(h), 5(3)(d) or 6(1) may, in particular, include provision about –

- (a) timing;
- (b) the form in which information is provided; 5
- (c) the use to which information may be put;
- (d) storage of information;
- (e) disposal of information.

## 11 Amendment of lists of responders

- (1) A Minister of the Crown may by order amend Schedule 1 so as to – 10
  - (a) add an entry to Part 1 or 2;
  - (b) remove an entry from Part 1 or 2;
  - (c) move an entry from Part 1 to Part 2 or vice versa.
- (2) An order under subsection (1) –
  - (a) may add, remove or move an entry either generally or only in relation to specified functions of a person or body, and 15
  - (b) may make incidental or consequential provision (which may include provision amending this Act or another enactment).

## 12 National Assembly for Wales

- (1) A Minister of the Crown shall consult the National Assembly for Wales before – 20
  - (a) making regulations under section 2(2), 4(2) or 6(1) which relate wholly or partly to Wales,
  - (b) issuing guidance under section 3(1) or 4(5) which relates wholly or partly to Wales, 25
  - (c) giving an order under section 5 which relates wholly or partly to Wales,
  - (d) giving a direction under section 7(2) which makes provision relating wholly or partly to Wales of a kind that could be made by regulations under section 2(2), 4(2) or 6(1),
  - (e) giving a direction under section 7(2) which makes provision relating wholly or partly to Wales of a kind that could be made by an order under section 5, 30
  - (f) bringing proceedings under section 9 in respect of a failure by a person or body where the failure relates wholly or partly to Wales, or
  - (g) making an order under section 11(1) in respect of a person or body with, or in so far as the person or body has, functions in relation to Wales. 35
- (2) A Minister of the Crown may not without the consent of the National Assembly for Wales –
  - (a) make regulations under section 2(2) or 6(1) or an order under section 5, or issue guidance under section 3(1), in relation to a body of the kind specified in paragraph 6 of Schedule 1 the functions of which include the provision of ambulance services in Wales, or 40
  - (b) give a direction under section 7(2) which makes provision in relation to a body specified in paragraph (a). 45

- (3) But—
- (a) a Minister of the Crown may disapply a requirement to consult under subsection (1)(d), (e) or (f) if he thinks it necessary by reason of urgency,
  - (b) a Minister of the Crown may disapply a requirement for consent under subsection (2)(b) if he thinks it necessary by reason of urgency, and 5
  - (c) a failure to satisfy a requirement under this section to consult or to obtain consent shall not affect the validity of any regulations, order, direction or guidance.
- 13 Regulations and orders**
- (1) Regulations and orders under this Part shall be made by statutory instrument. 10
  - (2) An order under section 5 or 11 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
  - (3) Regulations under this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (4) Regulations or an order under this Part— 15
    - (a) may make provision which applies generally or only in specified circumstances or for a specified purpose,
    - (b) may make different provision for different circumstances or purposes, and
    - (c) may make incidental, consequential or transitional provision. 20
- 14 Interpretation, &c.**
- (1) In this Part “function” means any power or duty whether conferred by virtue of an enactment or otherwise.
  - (2) In this Part—
    - (a) a reference to England includes a reference to any part of the territorial sea of the United Kingdom that is adjacent to England, and 25
    - (b) a reference to Wales includes a reference to any part of the territorial sea of the United Kingdom that is adjacent to Wales.
  - (3) The following shall have effect for the purpose of subsection (2)—
    - (a) an Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of territorial sea), 30
    - (b) an Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 47) (apportionment of territorial sea), and
    - (c) an order under section 155(2) of the Government of Wales Act 1998 (c. 38) (apportionment of territorial sea); 35
 but only if or in so far as it is expressed to apply for general or residual purposes of any of those Acts or for the purposes of this section.
  - (4) Subsections (1) and (5) of section 101 of the Local Government Act 1972 (c. 70) (local authority duty: discharge by delegate or by other authority, and joint discharge)— 40
    - (a) apply to a duty under section 2(1) or 4(1) (subject to section 101(1A)) except in so far as excluded by regulations under section 2(2) or 4(2), and

- (b) apply to a duty under an order made under section 5 (subject to section 101(1A)) except in so far as the order disapplies section 101(1) or (5).
- (5) Except in a case of contradiction, nothing in or done under this Part shall impliedly repeal or revoke a provision of or made under another enactment.
- 15 Repeals** 5
- The following shall cease to have effect –
- (a) the Civil Defence Act 1948 (c. 5), and
- (b) the Civil Protection in Peacetime Act 1986 (c. 22).
- 16 Extent**
- This Part shall extend only to England and Wales. 10
- PART 2**
- EMERGENCY POWERS
- 17 Meaning of “emergency”**
- (1) In this Part “emergency” means an event or situation which presents a serious threat to – 15
- (a) the welfare of all or part of the population of the United Kingdom or of a Part or region,
- (b) the environment of the United Kingdom or of a Part or region,
- (c) the political, administrative or economic stability of the United Kingdom or of a Part or region, 20
- (d) the security of the United Kingdom or a Part or region.
- (2) For the purposes of subsection (1)(a) an event or situation presents a threat to the welfare of a population if, in particular, it involves, causes or may cause – 25
- (a) loss of human life,
- (b) human illness or injury,
- (c) homelessness,
- (d) damage to property,
- (e) disruption of a supply of food, water, energy, fuel or another essential commodity,
- (f) disruption of an electronic or other system of communication, 30
- (g) disruption of facilities for transport, or
- (h) disruption of medical, educational or other essential services.
- (3) For the purposes of subsection (1)(b) an event or situation presents a threat to the environment if, in particular, it involves, causes or may cause – 35
- (a) contamination of land, water or air with –
- (i) harmful biological, chemical or radio-active matter, or
- (ii) fuel oils,
- (b) flooding, or
- (c) disruption or destruction of plant life or animal life.

- 
- (4) For the purposes of subsection (1)(c) an event or situation presents a threat to political, administrative or economic stability if, in particular, it causes or may cause disruption of –
- (a) the activities of Her Majesty’s Government,
  - (b) the performance of public functions, or
  - (c) the activities of banks or other financial institutions.
- (5) For the purposes of subsection (1)(d) the following, in particular, present a threat to security –
- (a) war or armed conflict, and
  - (b) terrorism, within the meaning given by section 1 of the Terrorism Act 2000 (c. 11).
- (6) In this Part –
- “Part” in relation to the United Kingdom means –
- (a) England,
  - (b) Northern Ireland,
  - (c) Scotland, and
  - (d) Wales,
- “public functions” means –
- (a) functions conferred or imposed by or by virtue of an enactment,
  - (b) functions of Ministers of the Crown (or their departments),
  - (c) functions of persons holding office under the Crown,
  - (d) functions of the Scottish Parliament or the Scottish Ministers,
  - (e) functions of the Northern Ireland Assembly, of the Northern Ireland Ministers or of the Northern Ireland departments, and
  - (f) functions of the National Assembly for Wales, and
- “region” means a region for the purposes of the Regional Development Agencies Act 1998 (c. 45).
- (7) The event or situation mentioned in subsection (1) may occur or be inside or outside the United Kingdom.
- 18 Royal proclamation**
- (1) Her Majesty may by proclamation declare herself satisfied that –
- (a) an emergency has occurred, is occurring or is about to occur, and
  - (b) it is necessary to make regulations under section 21 for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.
- (2) A proclamation under this section must state –
- (a) the nature of the emergency, and
  - (b) the Parts of the United Kingdom or regions in relation to which the regulations may have effect.
- 19 Declaration by Secretary of State**
- (1) The Secretary of State may by order declare himself satisfied that –
- (a) an emergency has occurred, is occurring or is about to occur,

- (b) it is necessary to make regulations under section 21 for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency, and
  - (c) it would not be possible, without a serious delay, to arrange for a proclamation under section 18. 5
- (2) An order under this section must state –
  - (a) the nature of the emergency, and
  - (b) the Parts of the United Kingdom or regions in relation to which the regulations may have effect.
- (3) In subsection (1)(c) “serious delay” means a delay that might result in serious damage of a kind that would or might be prevented or controlled if regulations were to be made under section 21 by virtue of this section. 10

## 20 Power to make emergency regulations

- (1) While a proclamation under section 18 is in force –
  - (a) Her Majesty may by Order in Council make regulations under section 21, and 15
  - (b) the Secretary of State may make regulations under section 21 if satisfied that it would not be possible, without a serious delay, to arrange for an Order in Council under paragraph (a).
- (2) While an order under section 19 is in force – 20
  - (a) Her Majesty may by Order in Council make regulations under section 21, and
  - (b) the Secretary of State may make regulations under section 21 if satisfied that it would not be possible, without a serious delay, to arrange for an Order in Council under paragraph (a). 25
- (3) In subsections (1)(b) and (2)(b) “serious delay” means a delay that might result in serious damage of a kind that would or might be prevented or controlled if the Secretary of State were to make regulations under section 21 by virtue of this section.
- (4) In this section – 30
  - (a) a reference to making regulations under section 21 includes a reference to amending or revoking regulations under that section, and
  - (b) in particular, regulations made by virtue of any provision of this section may be amended or revoked by regulations made by virtue of any other provision of this section. 35

## 21 Scope of regulations

- (1) Regulations under this section –
  - (a) may make provision only if and in so far as the person making the regulations thinks it necessary for the purpose of preventing, controlling or mitigating a serious aspect or serious effect of the emergency specified in the proclamation or order by virtue of which the regulations are made, and 40
  - (b) may make any provision which the person making the regulations thinks necessary for the purpose mentioned in paragraph (a).

- 
- (2) In particular, regulations may make any provision which the person making them thinks necessary for the purpose of –
- (a) protecting human life, health or safety,
  - (b) treating human illness or injury,
  - (c) protecting or restoring property, 5
  - (d) protecting or restoring a supply of food, water, energy, fuel or another essential commodity,
  - (e) protecting or restoring an electronic or other system of communication,
  - (f) protecting or restoring facilities for transport,
  - (g) protecting or restoring the provision of medical, educational or other essential services, 10
  - (h) preventing, containing or reducing the contamination of land, water or air,
  - (i) preventing, or mitigating the effects of, flooding,
  - (j) preventing, reducing or mitigating the effects of disruption or destruction of plant life or animal life, 15
  - (k) protecting or restoring activities of Her Majesty’s Government, or
  - (l) protecting or restoring the performance of public functions.
- (3) Regulations under this section may make provision of any kind that could be made by Act of Parliament or by the exercise of the Royal Prerogative; in particular, regulations may – 20
- (a) confer a function on a Minister of the Crown or other specified person, which may, in particular, be –
    - (i) a discretionary function;
    - (ii) a power to give directions or orders (whether written or oral); 25
  - (b) provide for or enable the requisition or confiscation of property (with or without compensation);
  - (c) provide for or enable the destruction of property, animal life or plant life (with or without compensation);
  - (d) prohibit, or enable the prohibition of, movement to or from a specified place; 30
  - (e) require, or enable the requirement of, movement to or from a specified place;
  - (f) prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times; 35
  - (g) prohibit, or enable the prohibition of, travel at specified times;
  - (h) prohibit, or enable the prohibition of, other specified activities;
  - (i) create an offence of –
    - (i) failing to comply with a provision of the regulations;
    - (ii) failing to comply with a direction or order given or made under the regulations; 40
    - (iii) obstructing a person in the performance of a function under or by virtue of the regulations;
  - (j) disapply or modify an enactment or a provision made under or by virtue of an enactment; 45
  - (k) require a person or body to act in performance of a function (whether the function is conferred by the regulations or otherwise and whether or not the regulations also make provision for remuneration or compensation);

- 
- (l) confer jurisdiction on a court or tribunal (which may include a tribunal established by the regulations).
- (4) Without prejudice to the generality of subsection (1)(a), regulations may not—
- (a) require a person, or enable a person to be required, to provide military or industrial service; 5
  - (b) prohibit, or enable the prohibition of, a strike or other industrial action;
  - (c) create an offence other than one of the kind described in subsection (3)(i);
  - (d) create an offence which is punishable—
    - (i) with imprisonment for a period exceeding three months, 10
    - (ii) with a fine exceeding the statutory maximum or level 5 on the standard scale, or
    - (iii) without trial before a magistrates’ court, the Crown Court, the district court or the sheriff;
  - (e) make provision of a kind which the person making the regulations believes is made by, or could be made by virtue of, a subsisting legislative provision, unless he also believes that use of the subsisting provision—
    - (i) would be insufficient for the purpose for which the person wishes to make the regulations, or 15
    - (ii) would occasion a serious delay, or 20
  - (f) make provision in relation to anything in, or done in, a Part of the United Kingdom or region not specified under section 18(2)(b) or 19(2)(b).
- (5) In subsection (3) “specified” means specified by, or to be specified in accordance with, the regulations. 25
- (6) In subsection (4)(e)(ii) “serious delay” means a delay which might result in serious damage of a kind that would or might be prevented or controlled by the regulations.
- 22 Regional and Emergency Coordinators 30**
- (1) Regulations under section 21 shall require the Secretary of State to appoint—
- (a) for each Part of the United Kingdom, other than England, in relation to which the regulations make provision, a person to be known as the Emergency Coordinator for that Part, and
  - (b) for each region in relation to which the regulations make provision, a person to be known as the Regional Nominated Coordinator for that region. 35
- (2) Provision made in accordance with subsection (1) shall, in particular, include provision about the coordinator’s—
- (a) terms of appointment, 40
  - (b) conditions of service (including remuneration), and
  - (c) functions.
- (3) The principal purpose of the appointment shall be to facilitate coordination of activities under the regulations (whether only in the Part or region for which the appointment is made or partly there and partly elsewhere). 45
- (4) In exercising his functions a coordinator shall—

- (a) comply with a direction of the Secretary of State, and
- (b) have regard to guidance issued by the Secretary of State.

## 23 Duration

- (1) A proclamation under section 18(1) shall lapse (together with any regulations made by virtue of it) at the end of the period of 30 days beginning with the date on which it is made. 5
- (2) An order under section 19(1) shall lapse (together with any regulations made by virtue of it) at the end of the period of 30 days beginning with the date on which it is made.
- (3) Subsections (1) and (2) shall not prevent the making of a new proclamation or order or new regulations. 10
- (4) Where –
  - (a) before a proclamation or order lapses under subsection (1) or (2) a new proclamation or order is made in respect of the same emergency, and
  - (b) regulations, which are in force when the new proclamation or order is made, could be made (by virtue of any provision of section 20) by virtue of the new proclamation or order, 15
 the regulations shall, unless revoked, continue in force as if made by virtue of the new proclamation or order (irrespective of the provision of section 20 by virtue of which they were made). 20

## 24 Parliamentary scrutiny

- (1) If Her Majesty makes a proclamation under section 18 the Secretary of State shall as soon as is reasonably practicable notify –
  - (a) the Speaker of the House of Commons, and
  - (b) the Lord Chancellor. 25
- (2) If the Secretary of State makes an order under section 19 he shall as soon as is reasonably practicable notify –
  - (a) the Speaker of the House of Commons, and
  - (b) the Lord Chancellor.
- (3) If when a proclamation is made under section 18 or an order is made under section 19 Parliament stands prorogued to a day after the end of the period of five days beginning with the date of the proclamation or order, Her Majesty shall by proclamation under the Meeting of Parliament Act 1797 (c. 127) require Parliament to meet on a specified day within that period. 30
- (4) If when a proclamation is made under section 18 or an order is made under section 19 the House of Commons stands adjourned to a day after the end of the period of five days beginning with the date of the proclamation or order, the Speaker shall arrange for the House to meet on a day during that period. 35
- (5) If when a proclamation is made under section 18 or an order is made under section 19 the House of Lords stands adjourned to a day after the end of the period of five days beginning with the date of the proclamation or order, the Lord Chancellor shall arrange for the House to meet on a day during that period. 40

- 
- (6) Where regulations are made under section 21 (by virtue of any provision of section 20) the Secretary of State shall as soon as is reasonably practicable lay them before Parliament.
- (7) Regulations laid under subsection (6) shall lapse at the end of the period of seven days beginning with the date of laying unless during that period each House of Parliament passes a resolution approving the regulations. 5
- (8) Subsection (7) shall not prevent the making of new regulations.
- (9) In subsections (4) and (5) a reference to the Lord Chancellor or the Speaker includes a reference to a person authorised by Standing Orders of the House of Lords or of the House of Commons to act in place of the Lord Chancellor or the Speaker in respect of the recall of the House during adjournment. 10
- 25 Human Rights Act 1998**
- For the purposes of the Human Rights Act 1998 (c. 42) an instrument containing regulations under section 21 shall be treated as if it were an Act of Parliament. 15
- 26 Consultation with devolved administrations**
- (1) Regulations under section 21 which relate wholly or partly to Scotland may not be made unless the Secretary of State has consulted the Scottish Ministers.
- (2) Regulations under section 21 which relate wholly or partly to Northern Ireland may not be made unless the Secretary of State has consulted the First Minister and deputy First Minister. 20
- (3) Regulations under section 21 which relate wholly or partly to Wales may not be made unless the Secretary of State has consulted the National Assembly for Wales.
- (4) But – 25
- (a) the Secretary of State may disapply a requirement to consult if he thinks it necessary by reason of urgency, and
  - (b) a failure to satisfy a requirement to consult shall not affect the validity of regulations.
- 27 Procedure** 30
- Regulations under section 21 shall be made by statutory instrument (whether or not made by Order in Council).
- 28 Interpretation**
- (1) In this Part – 35
- “emergency” has the meaning given by section 17,
  - “enactment” includes –
- (a) an Act of the Scottish Parliament,
  - (b) Northern Ireland legislation, and
  - (c) an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation, 40

- “Part” in relation to the United Kingdom has the meaning given by section 17(6),  
“public functions” has the meaning given by section 17(6), and  
“region” has the meaning given by section 17(6).
- (2) A reference in this Part to a Part of the United Kingdom or a region includes a reference to any part of the territorial sea of the United Kingdom that is adjacent to the Part or region. 5
- (3) The following shall have effect for the purpose of subsection (2) –
- (a) an Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of territorial sea), 10
- (b) an Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 47) (apportionment of territorial sea), and
- (c) an order under section 155(2) of the Government of Wales Act 1998 (c. 38) (apportionment of territorial sea);
- but only if or in so far as it is expressed to apply for general or residual purposes of any of those Acts or for the purposes of this section. 15
- 29 Repeals and amendments**
- (1) The following shall cease to have effect –
- (a) the Emergency Powers Act 1920 (c. 55), and
- (b) the Emergency Powers Act (Northern Ireland) 1926 (c. 8). 20
- (2) In paragraph 14 of the Northern Ireland Act 1998 (c. 47) (reserved matters) for “the Emergency Powers Act (Northern Ireland) 1926” substitute “Part 2 of the Civil Contingencies Act 2004”.
- 30 Extent**
- This Part extends to the whole of the United Kingdom. 25

### PART 3

#### GENERAL

- 31 Repeals and revocations**
- The enactments listed in Schedule 2 are hereby repealed or revoked to the extent specified. 30
- 32 Commencement**
- (1) The preceding provisions of this Act shall come into force in accordance with provision made by a Minister of the Crown by order.
- (2) An order under subsection (1) –
- (a) may make provision generally or for specific purposes only, 35
- (b) may make different provision for different purposes, and
- (c) shall be made by statutory instrument.

**33 Short title**

This Act may be cited as the Civil Contingencies Act 2004.



PART 2

CATEGORY 2 RESPONDERS

*Utilities*

- |    |   |    |
|----|---|----|
| 9  | A person authorised to generate, transmit, distribute or supply electricity by virtue of a licence or exemption under the Electricity Act 1989 (c. 29). | 5  |
| 10 | A person authorised to undertake activity in relation to gas by virtue of a licence, exception or exemption under the Gas Act 1986 (c. 44).             |    |
| 11 | A water undertaker appointed under section 6 of the Water Industry Act 1991 (c. 56).  |    |
| 12 | A person who holds a licence under section 7 of the Telecommunications Act 1984 (c. 12) for the running of a telecommunications system.                 | 10 |

*Transport*

- |    |   |    |
|----|---|----|
| 13 | A person who holds a licence under section 8 of the Railways Act 1993 (c. 43) (operation of railway assets).    |    |
| 14 | An airport operator within the meaning of section 82(1) of the Airports Act 1986 (c. 31).                       | 15 |
| 15 | A harbour authority within the meaning of section 46(1) of the Aviation and Maritime Security Act 1990 (c. 31). |    |

*Miscellaneous*

- |    |                                  |    |
|----|----------------------------------|----|
| 16 | The Health and Safety Executive. | 20 |
|----|----------------------------------|----|

SCHEDULE 2

Section 31

REPEALS AND REVOCATIONS

PART 1

REPEALS AND REVOCATIONS HAVING THE SAME EXTENT AS THE PROVISION REPEALED OR REVOKED 25

<i>Short title and chapter</i>	<i>Repeal or revocation</i>	
The Emergency Powers Act 1920 (c. 55).	The whole Act.	
The Emergency Powers Act (Northern Ireland) 1926 (c. 8).	The whole Act.	30
The Emergency Powers Act 1964 (c. 38).	Section 1.	
The Emergency Powers (Amendment) Act (Northern Ireland) 1964 (c. 34).	The whole Act.	35

<i>Short title and chapter</i>	<i>Repeal or revocation</i>	
The Criminal Justice Act 1982 (c. 48).	Section 41.	
The Fines and Penalties (Northern Ireland) Order 1984 (S.I. 1984/703 (N.I. 3)).	Article 12.	5

PART 2

REPEALS EXTENDING ONLY TO ENGLAND AND WALES

<i>Short title and chapter</i>	<i>Repeal</i>	
The Civil Defence Act 1948 (c. 5).	The whole Act.	10
The Civil Protection in Peacetime Act 1986 (c. 22).	The whole Act.	
The Civil Defence (Grant) Act 2002 (c. 5).	The whole Act.	15





# Explanatory notes

## Introduction

1. These explanatory notes relate to the draft Civil Contingencies Bill as released for public consultation on 19 June 2003. They have been prepared by the Cabinet Office in order to assist the reader of the draft Bill and help inform debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

## Summary and background

### Part 1: Local arrangements for civil protection

3. The bill sets out new duties for those engaged in civil protection work at the local level. It would give organisations that form the core of the local response a clear and consistent set of expectations and responsibilities in relation to civil protection to ensure consistency of activity and deliver improvements in performance and communication. Local responders will deliver civil protection based on key themes – risk management, emergency planning, business continuity and warning and informing the public. The bill also provides for the setting out of the relationship between core responders and key co-operating bodies in both the private and public sectors. It provides for the establishment of arrangements for better communication, co-operation and information sharing, which will deliver real practical benefits.

### Part 2: Emergency Powers

4. The draft Bill modernises Emergency Powers legislation, the special legislative tool that allows the government to deal with the most serious emergencies.

it provides for greater flexibility, proportionality, deployability and robustness. The proposals would replace the existing legislation, the Emergency Powers Act 1920, and in Northern Ireland, the Emergency Powers (Northern Ireland) Act 1926, with definitions and procedures more suited to the nature of the possible risks and threats that the UK may face in the twenty-first century.

## Overview

5. The Bill is separated into two main parts. The first – local arrangements for Civil Protection – constitutes clauses 1 to 16. It is accompanied by schedule 1 at the end of the Bill. The second – Emergency Powers – constitutes clauses 17 to 30. Schedule 2 sets out repeals of existing legislation and is relevant to both main parts.

## Commentary on sections

### Part 1: Local arrangements for civil protection

#### Overview

6. This Part of the Bill places duties on a number of bodies (to be known as ‘Category 1 responders’) to undertake various measures in connection with the protection of the population and environment of England and Wales from emergencies. Bodies that are to be Category 1 responders at the outset include the emergency services, local authorities, certain National Health Service bodies, the Environment Agency and the Maritime and Coastguard Agency.
7. The Bill also establishes a second class of organisation (‘Category 2 responders’). These are listed in Part 2 of Schedule 1 to the Bill and initially include certain utility companies, companies in the transport sector and the Health and Safety Executive. The Bill places no duties on Category 2 responders directly but makes provision for regulations to do so.

8. Part 1 of the Bill establishes a framework for the imposition of duties on Category 1 and Category 2 responders for the purposes of civil protection. Imposing the same framework on organisations with different functions in different areas of responsibility has meant that the duties in Part 1 of the Bill have had to be formulated in a way that takes account of those differences. The approach adopted has been to express the duties in wide terms but include regulation making powers that enable the extent of the various duties to be clarified (and in some cases limited) in relation to each class of Category 1 or Category 2 responder as appropriate.

### Clause 1: Meaning of ‘emergency’

9. Clause 1(1) defines an ‘emergency’ as an event or situation which presents a serious threat to human welfare in, or to the environment, or to political, administrative or economic stability, or to the security of, a place in England or Wales.

10. In the case of human welfare clause 1(2) provides that an event or situation is only to be regarded as presenting a threat to human welfare if it causes or may cause any of the things listed. In the case of the other elements of the definition of ‘emergency’, clauses 1(3) to (5) respectively provide a list of non-exclusive examples of events or situations that are to be regarded as presenting a threat to the environment, political, administrative or economic stability or security. Events or situations referred to in clauses 1(2) to 1(5) inclusive would, however, only constitute an emergency if the threat they presented were sufficiently serious.

11. The definition of an ‘emergency’ includes a wide range of possible events or circumstances and clause 1(7) enables a Minister to clarify in regulations whether particular events or situations are or are not to be regarded as constituting an ‘emergency’ for this Part of the Bill. The geographical scope of the threat in the four components of the definition of ‘emergency’ in clause 1(1) is limited to England and Wales but clause 1(10) makes it clear that the relevant event or situation may occur inside or outside England and Wales. Clause 1(9) provides for regulations under clause 1(7) to relate the event or situation constituting the emergency to the area or part of the area for which a Category 1 responder is responsible. It may be appropriate in the case of a Category 1 responder whose area covers the whole of England and Wales to break that area into smaller units since a relevant event or situation would otherwise only constitute an

emergency for that Category 1 responder if it affected England and Wales generally.

### Clause 2(1): Duty to assess, plan and advise

12. Under clause 2(1)(a) each Category 1 responder is placed under a duty generally to assess the risk of an emergency occurring. This involves an identification of events or situations that would constitute an emergency if they occurred and an assessment of the likelihood of their occurring.

13. Clause 2(1)(b) obliges each Category 1 responder to assess the extent to which an identified emergency would require it specifically to exercise one of its functions to deal with the emergency. In order to avoid duplication of effort by Category 1 responders and to ensure that responders do not waste resources on assessing risks that fall outside their area of responsibility and expertise, regulations may in some cases require a Category 1 responder not to assess the likelihood of a particular emergency occurring but to discharge its duties under clause 2(1)(b) on the assumption that such an emergency is likely to occur or in reliance on a risk assessment carried out by a person qualified to undertake it. For example, Government may wish to issue guidance on a particular threat. The obligations under clauses 2(1)(a) and (b) are to be performed on a continuing basis to take account of changing awareness and circumstances.

14. Clause 2(1)(c) requires the development of business continuity plans which each Category 1 responder will rely on to ensure the continuity of its ability to discharge its functions in face of an emergency.

15. Clause 2(1)(d) requires the maintenance (including preparation) of plans by each Category 1 responder for performing its functions so far as may be necessary or desirable for certain specified purposes. As well as preventing the occurrence of emergencies, these include plans for responding to and recovering from an emergency. Plans may relate to specific types of emergency or establish general arrangements for dealing with emergencies.

16. Plans must be reviewed and updated as new risks are identified. Clause 2(1)(e) obliges a Category 1 responder to consider whether to change its plans as a result of a new risk assessment. This requirement is in addition to its responsibility to maintain (and if necessary modify) its plans under clauses 2(1)(c) and 2(1)(d).

**17.** The requirement to maintain plans may be further clarified by regulations. Clause 2(3)(j) provides for regulations to make provision about the content of plans and clauses 2(3)(k) and 2(3)(l) respectively provide for regulations to require plans to include provision for the carrying out of exercises and the training of staff. Regulations may also make provision for plans to include the contracting out of functions (clause 2(3)(m)).

**18.** Category 1 responders are required under clause 2(1)(f) to arrange to make certain information from risk assessments and plans available to the public. Published documents might be about the nature of the risks the community faces, the actions that the public might take to contribute to the prevention of an emergency, and what they should do if it occurs. The requirement to publish is limited by the proviso that publication is only required to the extent that it is necessary or desirable for the purpose of preventing or dealing with an emergency.

**19.** Clause 2(1)(g) requires Category 1 responders to maintain arrangements for warning the public if an emergency is likely to occur or has occurred and for providing them with advice (which may include general information) about the response to the emergency. In order to avoid possible duplication of systems for issuing warnings at the local level, clause 2(3)(f) makes provision for regulations to require Category 1 responders to collaborate with each other. Possible duplication is also limited by each organisation's assessment of the risk of an emergency and of the relevance or applicability of the risk to its functions.

### **Clause 2(2) – (3) Duty to assess, plan and advise**

**20.** Clause 2(2) gives wide powers to the Minister to clarify by regulations the extent of the obligations on Category 1 responders under clause 2(1) and the manner in which they are to be performed. Clause 2(3) gives examples of the types of provision that may be made by the Minister (of which some are referred to above) and provides for duties to be imposed on Category 2 responders.

**21.** The kind of emergency in relation to which a duty is to be performed, or not performed, may be prescribed under clause 2(3)(a). For example, Category 1 responders might be required to prepare a mass decontamination plan. Or they might be specifically required not to prepare a plan that the Minister thought was not needed, for example an earthquake plan.

**22.** Clause 2(3)(d) makes provision for regulations to require a Category 1 responder to consult with a specified person or class of persons in performance of a duty. Thus there might be a requirement to consult with the Meteorological Office in relation to certain weather emergencies.

**23.** Clause 2(3)(e) permits regulations to provide for the position in relation to civil defence planning under the Civil Defence Act 1948 to be replicated whereby county councils carry out planning on behalf of shire district councils. This would ensure that county councils would be carrying out emergency planning in relation to the totality of local authority functions within their area.

**24.** Clause 2(3)(g) enables regulations to set out the role of multi-agency forums on a local basis for the development of civil protection policies across the area. Category 1 responders are likely to take the lead in the business of these forums, which may meet every six months, with Category 2 organisations required to attend or to be represented as appropriate.

**25.** In order to perform their duties under the Bill Category 1 responders may need to obtain information from other Category 1 responders and from Category 2 responders, for example, about electricity companies' planning arrangements for restoring loss of supply. Clause 2(3)(h) enables regulations to provide for this.

**26.** Category 1 responders will be given some discretion in determining which risks they will address through preparing plans, or whether they will prepare a specific plan in face of an identified risk or rely on their general planning arrangements. Clause 2(3)(n) enables discretion to be delegated by regulations in these and other circumstances.

**27.** Given the wide range of organisation to which the Bill applies, regulations must be capable of being sufficiently flexible to differentiate between different bodies and different circumstances. This is provided for in clauses 2(3)(p) and 2(3)(q). For example, particular regulations might be developed for coastal areas, or for areas liable to flooding.

**28.** In addition, they permit the Minister to specify a threshold which defines a class of Category 2 responder to which the duties to share information and co-operate would then apply. For example, regulations

may be applied to harbour authorities (included by virtue of paragraph 15 of Schedule 1) only to the extent that the annual volume of passengers and freight handled by them exceeds a specified threshold.

### **Clause 3: Supplemental**

**29.** Clause 3 provides that, in addition to regulations, guidance may also be issued to Category 1 and 2 responders about the duty to assess, plan and advise and other matters referred to in clauses 2(2) and (3). Category 1 and 2 responders must have regard to any such guidance in performing their duties under the Bill.

### **Clause 4: Advice and assistance to business**

**30.** Local authorities in Category 1 are required by clause 4 to give advice and assistance to the public in relation to the continuance of commercial activities by them in the event of an emergency. This duty is directed towards the promotion by local authorities of business continuity management ('BCM') to those in the commercial sector. Local authorities promoting BCM will be permitted to charge for advice or assistance that is provided on request. The extent of the duty will be further clarified by regulation and guidance.

### **Clause 5: General measures**

**31.** To give further flexibility and to accommodate new policy developments, the Minister is also given power in clause 5 to impose new civil protection duties by order on Category 1 responders in future. Those duties may only relate to the manner in which existing functions are performed by the organisation and may only be imposed for one of the purposes specified in relation to an emergency. An order under clause 5 is subject to the Parliamentary affirmative resolution procedure. Clause 5(3) provides for an order to make provision similar to that which may be made by regulations under clause 2(3).

### **Clause 6: Disclosure of information**

**32.** Category 1 and 2 responders may have obligations under other legislation in relation to emergencies. Clause 6 enables the Minister by regulation to provide for the disclosure of information between the various permutations of Category 1 and Category 2 responder in connection with functions under other legislation that he considers relates to emergencies.

### **Clause 7: Urgency**

**33.** Clause 7 enables the Minister in cases of urgency to make by direction the kind of provision that could be made under the Bill by regulation or order. Directions may be written or oral but must be replaced as soon as reasonably practicable by regulations or an order as the case may be.

### **Clause 8: Monitoring by Government**

**34.** Clause 8 enables the Minister to require Category 1 and Category 2 responders to provide him with information in relation to the performance of their duties under the Bill. The purpose of this is to provide for monitoring of performance of the duty, if required, and to assess consistency of approach throughout England and Wales.

### **Clause 9: Enforcement**

**35.** Responders that are not public authorities would not necessarily be subject to proceedings for judicial review in relation to alleged breaches of their duties under the Bill. Clause 9 expressly provides for the Minister and Category 1 and Category 2 responders to enforce duties under the Bill by action in the High Court.

### **Clause 11: Amendment of lists of responders**

**36.** Clause 11 enables the Minister by order to add entries to the lists of Category 1 and Category 2 responder in Schedule 1 and move a responder from one category to the other. Any such order would be subject to the Parliamentary affirmative resolution procedure.

### **Clause 12: National Assembly for Wales**

**37.** This clause requires the Minister to consult the National Assembly for Wales or obtain its consent in certain circumstances before making certain secondary legislation or issuing guidance under the Bill that relates to Wales or certain Welsh organisations. Provision is made for these requirements to be disapplied in specified circumstances for reasons of urgency.

### **Clause 14: Interpretation**

**38.** Clause 14(4) provides that provisions of section 101 of the Local Government Act 1972 relating to the discharge by one local authority of functions on behalf of another and joint arrangements for discharge of functions by local authorities apply to duties under the Bill. This is subject to the provisions of the Local Government Act 2000 relating to the position where local authorities have an elected executive.

**39.** Clause 14(5) reflects the intention that the framework created under Part 1 of the Bill should not generally prejudice obligations under other legislation relating to emergencies or emergency planning.

**Clause 15: Repeals**

**40.** The concept of ‘civil defence’ is now regarded as being out of date following the end of the Cold War and the Bill repeals the Civil Defence Act 1948. Duties in relation to civil defence planning under the 1948 Act will be replaced by generic emergency planning duties under the Bill. The Civil Protection in Peacetime Act 1986, which permits local authorities to use civil defence resources in relation to emergencies generally, is also to be repealed.

**PART 2: Emergency Powers**

**Clause 17: Meaning of ‘Emergency’**

**41.** This section defines the circumstances under which an emergency can be declared and emergency regulations may be made. It seeks to address a much wider range of circumstances than those addressed by the present legislation, reflecting the different risks and threats now faced by society. It is based around four key concerns – the welfare of the people, the environment, the political, administrative and economic stability and the security of the United Kingdom. It is designed to be highly inclusive, encompassing circumstances as diverse as severe flooding, a major chemical attack, disruption of fuel supplies and epidemics. The circumstances in this section are not circumstances where emergency regulations will definitely be made but only those where they **may** be made if the seriousness of the situation warrants it.

**Clause 18: Royal Proclamation**

**42.** This clause allows The Queen to proclaim that special legislative measures are necessary, in the form of emergency regulations, if the circumstances mentioned in clause 17 have occurred, are occurring or are about to occur and such regulations are, in her view, necessary. The Queen must specify the nature of the emergency and the areas of the country in which such regulations may have effect.

**43.** Under the existing legislation such a proclamation, and therefore the regulations, could only have applied to the whole of Great Britain, or if made by the Secretary of State for Northern Ireland, to Northern Ireland. The Bill allows for the proclamation, and therefore emergency regulations made following it,

to be made to apply to one or more of the English Regions and/or one or more of the devolved territories or the UK as a whole. This will allow emergency powers to be directed at the area where they are needed, leaving areas where they are not needed free from their effects. This will allow response efforts to be targeted and proportionate.

**Clause 19: Declaration by Secretary of State**

**44.** In the midst of some emergencies it might be difficult to observe the formalities associated with making a Royal Proclamation. This could result in a delay in making emergency regulations, which could in turn diminish the effectiveness of the response. Clause 19 allows a Secretary of State to declare himself satisfied by order that emergency regulations are necessary, in such circumstances. The order must specify the nature of the emergency and the areas of the UK it applies to. This fallback option is available only in the unlikely event that the making of a Royal Proclamation would cause serious delay. Serious delay is delay which might result in serious damage which might be prevented or controlled by making emergency regulations immediately.

**45.** Where a Royal Proclamation is in force, or alternatively an order made under clause 19, emergency regulations may be made by Order in Council. Again, if making an Order in Council would cause serious delay, resulting in serious damage which might be prevented or controlled by the Secretary of State making the emergency regulations himself, he or she may make them.

**46.** Emergency regulations may be made as soon as a Royal Proclamation comes into force, or immediately that an order by the Secretary of State under clause 19 comes into force. They may be made, amended or revoked from time to time so long as the Proclamation or order remains in force. There may be more than one set of regulations at any time. Unless making them by Order in Council would cause serious delay all regulations must be made by The Queen in Council, whether or not there has been a Royal Proclamation or order under clause 19, and whether or not any previous or other regulations have been made by Order in Council or by the Secretary of State.

**Clause 21: Scope of Regulations**

**47.** Once a proclamation has been made The Queen, or where she is unavailable the Secretary of State, may make regulations aimed at dealing with the emergency. Clause 21 sets out the nature and width

of this power to make regulations alongside safeguards in the form of specified prohibitions. The power is wide in scope as it may be called upon to achieve a very wide range of outcomes running across a range of policy sectors. These may range from temporarily suspending statutory requirements which may inhibit response and recovery work to restricting travel in the event of a serious outbreak of disease, from evacuating and decontaminating an area affected by a chemical attack or accident to restoring and allocating disrupted water, gas or electricity supplies. The intention is that the Government must be able to respond effectively to any possible emergency.

**48.** Prohibitions found in the Emergency Powers Act 1920 on the use of military or industrial conscription have been preserved, as has the prohibition on regulations preventing strikes or industrial action (though action to mitigate the effects of strikes is permitted). The regulations may create an offence of failure to comply with the regulations, imprisonment not to exceed 3 months and a fine not to exceed the statutory maximum or level 5 on the standard scale. No other offence may be created.

#### **Clause 22: Regional and Emergency Co-ordinators**

**49.** This clause requires a 'Regional Nominated Co-ordinator' to be appointed for each of the English Regions to which a proclamation or order made by the Secretary of State extends. The Regional Nominated Co-ordinator would act as a link between central Government and events on the ground, sitting at a regional level to enable effective co-ordination of response efforts supported by local knowledge and exercising specific powers that may be granted to him or her to facilitate the most effective and efficient response to the emergency at hand. A similar postholder is required to be appointed for each of the devolved territories, if the relevant proclamation or order extends to any of them, who will be called the 'Emergency Co-ordinator'.

#### **Clause 23: Duration**

**50.** This section stipulates that a proclamation made under clause 18 and any order made under clause 19, together with any emergency regulations made under them, lapse after 30 days. This does not preclude a new proclamation or order being made before the 30 day period expires, which would see a new 30-day period begin. In such a case existing emergency regulations would be preserved for the new period, and new regulations could be made during it.

#### **Clause 24: Parliament**

**51.** The clause requires that Parliament must be notified as soon as possible once a proclamation or order has been made under clauses 18 or 19. It stipulates that regulations should be laid before Parliament as soon as is practicable. Parliament would then have seven days to approve the regulations; if no approval is obtained the regulations would lapse. This allows Parliament not only to approve or reject the regulations but to discuss them in full, which could lead to the Government withdrawing the regulations and laying amending regulations which meet the concerns which have been expressed. It is a vital safeguard against the possible misuse of what is a wide-ranging power to make temporary new legislation very rapidly.

**52.** Please note that the references to the Lord Chancellor in this clause may change once the machinery of government changes are fully realised.

#### **Clause 25: Human Rights Act 1998**

**53.** This stipulates that emergency regulations made under the legislation should be treated as if they are an Act of Parliament for the purposes of the Human Rights Act. This means that they could not be suspended or struck down by a Court if challenged on human rights grounds. Instead any challenge would lead only to a declaration that they are incompatible with the claimant's Convention rights. This provides a measure of legal protection to the decision to use the Powers and to the emergency regulations themselves, in circumstances in which swift and certain response is essential. Those acting under emergency regulations must still do so in a way compatible with Convention rights, unless the regulations require action which is not compatible. Any failure to so act could result in a legal challenge which may lead to suspension or quashing.

#### **Clause 26: Consultation with the devolved administrations**

**54.** The existing legislation dates from 1920 and therefore makes no reference to the devolution settlement. Clause 26 seeks to ensure that, where possible, the views of the devolved administrations are considered where the UK Government wishes to make emergency regulations which apply to one or more of the devolved territories. If the need for speed prevents consultation it may be dispensed with, and in this circumstance the validity of the emergency regulations will not be affected.

**Clause 28: Interpretation**

**55.** The definition of ‘enactment’ ensures that emergency regulations may disapply or modify, for the period that the regulations are in force, provisions not only of United Kingdom legislation but also of Scottish and Northern Ireland legislation.

**56.** The definition of ‘Part’ or ‘region’ ensures that emergency regulations may apply to the territorial seas of the United Kingdom adjacent to the relevant Part or region.

**Schedule 2: Repeals – Military Aid in civil emergencies**

**57.** Schedule 2 to the Bill repeals existing Emergency Powers legislation with the exception of section 2 of the Emergency Powers Act 1964 (C.38). Section 2 of this Act does not relate to Emergency Powers but provides the legislative underpinning for Military Aid to Government Departments.

**Financial and public service manpower effects of the Bill**

**58.** The draft Bill’s provisions have negligible expenditure provisions for Government Departments and negligible impact on public sector manpower.

**Summary of the Regulatory appraisal**

**59.** RIAs for each part of the Bill have been published separately and can be found at [www.ukresilience.info/cbill](http://www.ukresilience.info/cbill). The regulatory impact is assessed to be negligible.

**European convention on Human Rights**

**60.** Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provision of the Bill with the Convention (as defined by section 1 of that Act). The statement has to be made before second reading.

**61.** The Government does not believe that there is anything in the draft Bill that conflicts with the Convention and will prevent such a statement being made.

**Commencement**

**62.** Arrangements to be confirmed.

**Comments**

**63.** The draft Bill will now be subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. Any enquiries or comments relating to the scrutiny procedure should be addressed to:

The Civil Contingencies Bill Team  
Cabinet Office  
First Floor  
10 Great George Street  
London SW1P 3AE  
E-mail: [ccbill@cabinet-office.x.gsi.gov.uk](mailto:ccbill@cabinet-office.x.gsi.gov.uk)



# Partial Regulatory Impact Assessment on the Draft Civil Contingencies Bill (Local Responders)

## 1. The current working title is ‘the Draft Civil Contingencies Bill’

## 2. Purpose and intended effect of measure

### (i) The objective: enhancing the local response and mitigation capability

*‘The Government is committed to the introduction of civil contingencies legislation to enhance the safety and security of the UK... The **objective will be to create a modern framework for contingency planning and response.**’*  
– Lord Macdonald, Minister for the Cabinet Office, July 2002.

1. The Modernising Government White Paper stated that the Government wants to deliver policies, programmes and services that will make us more secure and **better equipped to tackle the challenges we face**. Following the events of 11 September 2001 the Home Secretary made it clear that the Government’s **‘objective is to do everything that can be done to enhance our resilience’**<sup>1</sup>. The Bill’s overall policy objective is to support this objective by laying the foundations for enhanced resilience to incidents at the local level while enhancing regional capacity and ensuring central Government has the powers necessary to deal with the most extreme of disruptive challenges.

2. The aim of building resilience is to reduce susceptibility to incidents by reducing the probability of their occurrence and their likely effects, responding effectively and efficiently when they occur and building institutions and structures in such a way as to minimise the possible effects of disruptions upon them. Such incidents exist along a spectrum of severity ranging from local flooding to massive terrorist attack.

3. Recent wide area disruptive challenges have exposed shortfalls in response capabilities in England and Wales when incidents go beyond the local level and pose unexpected challenges. Flooding, FMD and the fuel crisis are key examples of this. The capacity to deal with this type of situation has been identified as a key priority in building enhanced resilience and new government resources are being devoted through ODPM to develop an enhanced regional capability through the Government Offices for the Regions.

4. In the context of such initiatives and as a further, vital piece of the resilience jigsaw, the new civil contingencies legislation will enhance preparations to withstand all threats – whether from natural, accidental, or deliberate causes. This is the next logical step in the Government’s drive to enhance the safety of the public and the national infrastructure. The Bill’s key objectives are therefore:

- To create a modern framework for co-ordinating contingency planning and response at the local level, codifying existing arrangements.
- To enhance co-operation and understanding in support of a regional level capability.
- To modernise the legislation under which the Government can respond to extreme emergency situations to turn it into a usable tool fit for the twenty-first century.

5. This RIA focuses exclusively on the first objective, that is, proposals designed to create a modern framework for co-ordinating contingency planning and response at the local level. Proposals are consistent with other government policies and initiatives, including the following:

- The Civil Contingencies Committee’s endorsement of the **capabilities driven approach** to making UK government and society more resilient to disruptive challenges.

<sup>1</sup> Hansard 28 Nov 2001: Col.102

- The White Paper on regional governance, **'Your Region – Your Choice: Revitalising the English Regions'**, May 2002.
- The White Paper on local government, **'Strong Local Leadership – Quality Public Services'** and the Government's wider **modernising local government** programme.
- **The Government's commitment to** Principles of Good Regulation.

The local response capability already works well, but there are some weaknesses. The current framework is inconsistent in places, and local responders have to rely on a range of permissive powers and mixed funding streams. To address that, the policy objective of the local responders proposals is to effectively codify existing arrangements and improve consistency of approach. This demands not only a stronger focus on risk as the basis for emergency preparedness but also a single framework to manage approach and performance across a wide range of local responder bodies in all parts of England and Wales.

## (ii) Background

7. Following the fuel crisis and the severe flooding in the autumn and winter of 2000, the Deputy Prime Minister, John Prescott, announced a review of emergency planning arrangements in England and Wales. The Government concluded that existing legislation, which was introduced soon after the end of World War II and focuses primarily on arrangements for dealing with hostile attack, no longer provides an adequate framework for modern emergency planning and that new legislation is needed.

8. The review consulted widely among local authorities and other interested parties before making recommendations to Ministers. The consultation document, published in August 2001, invited responses from these key stakeholders. Almost 270 responses were received. A full discussion of the results of the consultation and the consultation

document can be found at

<http://www.ukresilience.info/epr/index.htm>.

The review drew a number of clear conclusions, and identified next steps in a number of areas:

- Policy: introducing a partnership duty for local authorities and other agencies within the context of a national framework for emergency planning.
- Legislation: putting local partnership working on a statutory basis, provision for addressing national emergencies in 'abnormal' times, and ensuring that account is taken of a range of existing complementary legislation.
- Capacity: an assessment of the impact of the new policy proposals for central government, government offices for the regions, local government, and local responder organisations.
- Funding: an assessment of where potential new burdens may be anticipated.

9. These were analysed and Ministers agreed that the Cabinet Office, in consultation with other government departments and stakeholders, should prepare a set of proposals for new legislation for introduction as soon as parliamentary time allows. It was concluded that a key focus of resources at central government level should be to audit and provide practical support to government departments in helping them develop sound arrangements in relation to their Lead Government Department responsibilities; that additional resources should be devoted at a regional level through ODPM to ensuring a sound response capability; and that, in the short-run, the priority at local responder level was to introduce the new framework, which would then support a possible assessment of the need for greater capacity. New burdens, not falling upon businesses, charities or the voluntary sector, were accordingly identified at the regional level, but were not felt to be significant at other levels.

10. The local responder proposals which are the subject of this RIA apply to England and Wales only.

## (iii) Risk assessment

Risk	Problem	Solution
The occurrence and effects of a disruptive challenge.	Exposure to unnecessary level of risk through insufficient co-ordination and management of capabilities at the local level.	Facilitate improved co-ordination of efforts and communication between organisations at the local level.

## The risks in question

**11.** The risks in question relate to the regularity with which serious incidents occur and the damaging nature of their effects, together with the possibility of a major disruptive challenge and its possible catastrophic impact. All such challenges fall along a spectrum ranging from local flooding to catastrophic terrorist attack. Potential costs to the community and to business therefore range along a spectrum from short disruptions, for example, to transport or minor physical damage, to loss of life and the complete destruction of homes and premises. The probability of some events, such as flooding, occurring may be estimated with some statistical reliability based on past experience. Other events, such as Chemical, Biological, Radiological or Nuclear (CBRN) attack, nuclear accident etc. are of such a serious nature that, even where their probability may be slight, arrangements must be in place to allow effective response and recovery. Annex A gives examples of the type of risks in question, their potential effects, costs and what can be done to reduce them.

**12.** Intervention where possible to reduce risks is common sense. Expenditure on risk reduction is more likely to fall under existing safety legislation, but – with its focus on planning for prevention of emergencies – the Bill is likely to encourage such initiatives. These can be seen as an investment against future losses (not just financial) when the potential losses outweigh the costs of the actions required. Where the potential risk and losses are calculable, a simple cost-benefit analysis is used to determine whether such investment should be made – as, for example, in constructing flood defences (and these investments may be encouraged by the Bill). Where risks and losses are not so easily identifiable and calculable the emphasis must be placed on building capabilities to deal with a range of conceivable risks and maintaining the organisational resilience necessary to respond and recover as needs dictate. This is where the Bill is directly relevant. It is these types of risks that the local responder proposals are designed to address.

**13.** The effects of a disruptive challenge upon businesses and the community can be vast. Rebuilding work following the Manchester bomb cost around £1bn,<sup>2</sup> most of which came from the private sector, with 250 companies going out of business within 6

months of the blast. Prevention is obviously the key consideration, but so too must be effective preparedness to respond – just in case – to help minimise the devastating impact. Research suggests 70% of organisations experiencing a disaster cease trading within 18 months (Butler Cox Survey). In the real world, it is extremely difficult to demonstrate what the quantifiable value added by emergency and business continuity plans may be. In the case of the Manchester bomb, planning arrangements were in place and may be assumed to have reduced the cost in lives and the disruption to business caused – but no-one would argue that there were not lessons to be learned and various improvements to be made.

**14.** Experience and research demonstrate that active intervention can reduce the risks businesses face and the effects of disruptive challenges should they occur. The World Bank and US Geological Survey calculate that economic losses world-wide from natural disasters in the 1990s could have been reduced by \$280 billion if \$40 billion had been spent on preparedness, mitigation and prevention strategies. The Environment Agency point out that anecdotal evidence from Selby in North Yorkshire shows that about £5million was spent on emergency response during the November 2000 floods and that this expenditure was thought to have saved about £30million worth of flood damage.

**15.** Businesses are of course hugely affected by disasters and can reasonably be expected to act themselves to reduce the possible effects of such challenges, rather than simply relying on the authorities. Community resilience envisages each organisation separately and jointly taking responsibility to minimise the effects of disruptions on themselves and their communities. This is why the bill proposes that local authorities should have a duty to promote business continuity management across their areas. Local authorities are likely to pursue this task alongside work to assist businesses facing threats such as terrorism or flooding, where many organisations, possibly the whole local community, are affected.

**16.** While businesses should work internally to plan for their own continuity, some risks go beyond the capacity of individual businesses to effectively address. Risk reduction then becomes a community-wide concern as such risks can only be addressed effectively in co-operation with other businesses and

<sup>2</sup> <http://www.rebuilding-manchester.co.uk/articles/1996/9620.shtml>

public and voluntary organisations. The development, or consolidation, of emergency planning arrangements by police forces, local authorities and other responder bodies to address such contingencies will be delivered through the Bill.

**17.** The Bill envisages co-operation between the public organisations mainly responsible for dealing with emergencies. It includes in a secondary or co-operative capacity, some businesses which perform functions vital to the life of the community, such as transport and utilities. These businesses are key parts of the local infrastructure which maintain the life of the community. Co-operation is of course beneficial to the companies involved and an essential means of ensuring that vital services can be maintained in emergency situations. The continued ability of the transport companies and utilities to provide a service is of course vital to other businesses that rely upon them for everything from electricity to transporting goods. Thus the Bill encourages co-operation in identifying and managing risk across the whole community.

### Improved risk management – justifying intervention

**18.** Risk awareness provides a vital underpinning to resilience. Currently, risk assessment tends to be a separate activity for each organisation. Often it is a specialist activity geared to hazards for which the organisation as an operator is itself responsible (such as industrial processes) or to risks to the community where the organisation has a functional responsibility (for example, the fire service assessment of fire risk). To ensure an effective response capability across the local area to all hazards it is vital that the findings and lessons each organisation discovers through its risk assessment work are shared and acted upon by all those with responsibilities for emergency response and preparedness in the area. Information-sharing and co-operation are the foundations of enhanced resilience.

**19.** At present, there are no requirements for such joint management of risk to be undertaken and generally such a systematic, joint approach, as a basis for preparing planning arrangements does not exist. Individual organisations already act to reduce risks in their operational area and plan their own response. The Bill aims to improve matters by requiring a systematic and holistic approach that will help ensure

that local resources can be used in the most effective and efficient way based upon the risks of emergency identified throughout the local area.

### Improving risk management

**20.** Intervention through the proposed legislation is justified because:

- The principles and practice for ensuring that local response arrangements work smoothly have been developed and, in most essentials, proven over many years. However, various examples of wide area, or catastrophic, emergencies which fall outside or go beyond the established practice have shown up weaknesses. Greater confidence in emergency preparedness can be achieved when planning systematically addresses this higher or unusual level of risk.<sup>3</sup>
- Despite the achievements of the current permissive or voluntary system at ensuring preparedness at the local level, performance in risk assessment, planning and response varies considerably between and within different areas. Greater reliability and consistency of performance will be possible and will be easier to demonstrate when all the responder organisations in all areas share a similar, clearly understood, framework.<sup>4</sup>
- There is inconsistency and a shortfall in the basic approach to civil emergency planning, which needs to be broadened to develop a standard framework of activities, from assessment to recovery, in accordance with the national goal of resilience. Adoption of the resilience agenda as a standard approach will make it possible to demonstrate that relevant risks are being addressed in all parts of England and Wales to an appropriate level.<sup>5</sup>
- Partnership working is vital to successful risk assessment and mitigation, planning, response and recovery. It is already strong in many areas, but would benefit from a more reliable guarantee of direct co-operation between responder bodies and, in certain respects, from a more consistent pattern of multi-agency groups across the country. The formal adoption of partnership working across England and Wales on a statutory basis will give

<sup>3</sup> See Cabinet Office, *Effectiveness of Present LA Contingency Planning Arrangements, April 2002, and EPS and others, Gaps in Current Arrangements (forthcoming)*

<sup>4</sup> See *EPS and others and London Resilience Team, London Local Authorities, 2002*

<sup>5</sup> See Cabinet Office, *Results of EP Review, January 2002 and EPS and others*

the Government greater assurance that its own efforts to improve are supported by improved co-operation and communication at, and with, the local level.<sup>6</sup>

#### (iv) Business sectors affected

**21.** Organisations covered by the proposals will be divided into two categories. Those in Category 1 will be placed under seven specific duties relating to emergency preparedness and response. These duties relate to:

- Risk Assessment.
- Planning arrangements.

Category one responders	Category two responders
County Councils	Electricity suppliers*
Metropolitan District Councils	Gas suppliers*
London Borough Councils	Water undertakers*
Unitary Councils	Telecommunications operators*
Shire District Councils	Railway operators*
Police forces	Airports*
Fire Authorities	Harbours*
Ambulance Trusts	Health and Safety Executive
Environment Agency	
Maritime and Coastguard Agency	
	*as defined in the Draft Bill and in regulations made under it once enacted.

**23.** The overall effect of the proposals is likely to reduce the possibility and severity of potential incidents. The result will benefit all businesses in all sectors that may otherwise, if hit by the effects of an incident, face disruption or worse, together with associated financial losses. The new framework, by reducing uncertainties and inconsistencies and building an enhanced capacity to mitigate the risk and effects of incidents, may help to enhance local business confidence which can only enhance opportunities for investment and growth.

#### (v) Issues of equity and fairness

**24.** The proposals aim to reduce the likelihood and impact of incidents equally across the local community. If enacted, they would improve work across the spectrum of resilience activities to the benefit of all inhabitants in, and visitors to, England and Wales. It is not thought that any inequality or unfairness would result from their implementation, indeed their aim of increasing consistency and ensuring high

- Business Continuity Planning.
- Warning and Informing.
- Sharing Information.
- Co-operation.
- Promotion of Business Continuity Management (Local Authorities only).

**22.** Those in Category 2 will be under a duty to co-operate with these organisations and to share information with them only. Category 1 will not contain any businesses, charities or organisations from the voluntary sector. The following types of organisations fall into the two categories:

standards will help remove current inequalities, which are unfair, in terms of the adequacy of contingency planning, co-ordination and response arrangements in different parts of England and Wales.

**25.** Generally, the greater the risk, the tighter the regulation – as with nuclear power stations and major hazard sites. But the Bill is not aimed at tightening safety regulations, just with strengthening the framework for co-operation in emergencies between responder bodies. Those private organisations, such as utilities and transport companies, that will be involved in the proposed Local Resilience Forums will be so because of the nature of their role in the local area, that is the provision of services vital to the community and to businesses. Their participation is therefore proportionate to their role in potentially causing and preventing, or mitigating, incidents. Both the wider community and those organisations affected by the proposed duty will benefit equally from its consequences.

<sup>6</sup> See Cabinet Office, *Survey of Multi-Agency Groups, and Results of EPR*

### 3. Options

**26.** The Government is committed to enhancing resilience at the local level by enhancing the co-ordination of local responder organisations. In looking at how to meet the Government's publicly stated policy objectives in this area, the following options were identified in consultation with stakeholders:

#### Option 1: Continuation of current permissive regime

**27.** The main local responder organisations – emergency services, local authorities, environment agency, maritime and coastguard agency – largely carry out their planning and response duties at present on the basis of permissive powers. There are

also a few statutory obligations under health and safety at work legislation in relation to particular types of hazard. Policy would focus on promoting voluntary good practice. This option is unlikely to meet the policy objective as it would leave in place the very problems that need to be dealt with if the policy objective is to be achieved.

#### Option 2: Duty on a limited range of organisations

**28.** Under option 2, the Bill will deliver a variable duty, reflecting the different involvement of core and co-operating responders in local civil protection. The table below sets out the proposed membership of the two categories.

Category one responders	Category two responders
County Councils	Electricity suppliers*
Metropolitan District Councils	Gas suppliers*
London Borough Councils	Water undertakers*
Unitary Councils	Telecommunications operators*
Shire District Councils	Railway operators*
Police forces	Airports*
Fire Authorities	Harbours*
NHS Ambulance Trusts	Health and Safety Executive
Environment Agency	
Maritime and Coastguard Agency	
	*as defined in the Draft Bill and in regulations made under it once enacted.

**29.** Option 2 would oblige Category 1 organisations to carry out the full spectrum of civil protection activities – assessment, prevention, planning (for emergency response and business continuity), response and recovery:

- Risk Assessment
- Planning arrangements
- Business Continuity Planning
- Warning and Informing
- Sharing Information
- Co-operation
- Promotion of Business Continuity Management (Local Authorities only)

**30.** The organisations in Category 2 will only be under a duty to share information and to co-operate in maintaining preparedness for possible emergencies affecting their areas of operation. This reflects the

importance that these organisations have in terms of potentially being the cause of an emergency situation and in aiding response and recovery in liaison with the emergency services. Annex B sets out how they would be affected by these requirements.

**31.** It is likely, although the legislation would not specify it, that Local Resilience Forums (LRFs) would be formed to provide a forum for discussion and action. It is likely that if formed they would meet biannually and at times of emergency, while a number of smaller working groups of limited life span may be formed to take forward specific issues. This would rationalise many of the relationships and discussions that already take place.

**32.** This option would meet the policy objective by removing the problems reported by practitioners which stand in the way of improvement, namely, insufficient information sharing and co-ordination and a lack of consistency between areas.

### Option 3: Duty on larger range of organisations – with co-ordination ensured by a statutory partnership

**33.** This would be as Option Two but would:

- (i) include a larger range of organisations within Category 1, including all or most (certainly the utility companies) of the businesses in Category 2, as listed in Option Two.
- (ii) bring a larger range of groups within the second ‘co-operator’ category, including large charity and voluntary organisations such as the Salvation Army and RAYNET.
- (iii) place the LRF on a statutory basis, based on police boundary areas bringing all the key partners together by law, which would permit Category 1 and two organisations to co-ordinate planning initiatives within their area at a strategic level.

**34.** This would also meet the policy objective by removing the problems reported by practitioners which stand in the way of improvement, but would in all likelihood impose greater statutory burdens on all groups, including the private companies covered.

## 4. Benefits

### Option 1: Continuation of current permissive regime

**35.** This would continue to allow all the various local bodies to make their own decisions in relation to emergencies, without any new legislative requirements. Some organisations already have adequate arrangements in place and practice may be expected to continue to improve on a permissive basis. Those that do not would remain free of further obligations and costs.

### Option 2: Duty on a limited range of organisations

**36.** Businesses affected, as defined in the Bill and by accompanying regulations:

Type	No. companies
Water	22
Gas	1
Electricity	12
Telecoms	18
Network Rail	1
Rail Operators	25
Harbour Authorities	259
Airports	21
Total	359

**37.** Annex C gives an indicative list by name of those businesses which are most likely to be affected directly. The precise numbers will not be determined until regulations are agreed.

**38.** This would deliver an enhancement of local emergency response planning arrangements. They would be based firmly on accurate knowledge of potential local sources of emergencies through active engagement with utility and transport companies and therefore what will be needed in the event of, for example, an emergency affecting or caused by gas or water supplies. Companies sharing information about their risk assessments might make each other aware of other risks that they weren’t previously aware of, enhancing resilience. They may conclude that some of the risks they face are identical or inter-related and can be more effectively and more efficiently addressed through joint or co-operative measures, alongside sharing of expertise and knowledge.

**39.** The weaknesses and failings identified in the current system have suggested that a statutory duty to encourage consistency and co-ordination across all the partners at all levels and in all parts of England and Wales is needed, and will be generally welcomed by those affected. A statutory approach would strengthen the co-operation already substantially achieved on a voluntary basis, but which the main partners wish to have strengthened by a consistent framework covering them all. It would provide a foundation on which best practice can be built as responsibilities would be properly defined, with guidance, monitoring and audit to help ensure compliance.

**40.** The scope of the duty would include assessment and prioritisation of risk and, through promotion of risk awareness, would help to reduce the possibility of preventable incidents, including major disruptive challenges. It may also lessen the effects of those that do occur, reducing their severity and length and therefore the risk and scale of casualties, expenditure and damage. This option will achieve the government’s policy objectives in the area of local civil protection without imposing significant new burdens on the relevant organisations in either the public or private sectors.

**41.** It is not possible to estimate by what percentage risk will be reduced in terms of loss of life etc. as the nature and occurrence of incidents is by its very nature unpredictable. However, even if the measures only secured a very small percentage reduction, this would have a very considerable impact. For example,

a one- percent reduction in the direct costs incurred through the Manchester Bomb, due to improved co-ordination and co-operation, would have resulted in a saving of approximately £1 million. The Foot and Mouth outbreak also offers an illustration of the potential scale of the benefits from enhanced resilience (see annex A1). Unfortunately, no estimate is available of what the relative costs might have been of an outbreak where the response was speedier and better co-ordinated, that is to say, one in which these proposals were in place.

**42.** The potential benefits for the companies within Category 2 and their customers are considerable. For example, anecdotal information from the electricity industry suggests the benefits of improved emergency planning by electricity companies can be measured in reduced numbers of days without electricity as a result of an incident. In recent incidents, better performance might have restored power one or two days sooner, thus saving customers inconvenience, enhancing the company's reputation and reducing the costs of penalty payments. Better risk awareness and information-sharing may well have enabled such benefits to be reaped. Consumer watchdog Energywatch has estimated that power companies face compensation claims of more than £4m following a power cut at the end of October 2002 affecting over two million homes, some of which were without electricity for over a week.<sup>7</sup> This would clearly have been lower had power been restored one or two days earlier.

### **Option 3: Duty on larger range of agencies – with co-ordination ensured by a statutory partnership**

**43.** The benefits of this approach might be greater than those of Option Two because of the greater number of organisations covered and the existence of a LRF with powers to direct members to ensure co-operation and consistency.

**44.** If businesses were made part of Category 1 they would be involved directly in the detailed discussion and operational planning that under Option Two would fall to public organisations only. This would bring some benefits in terms of greater familiarisation with the conditions in which they operate between themselves and public organisations and mean that they were covered by a more robust set of requirements with which they would have to comply. This could

bring benefits in terms of assurance of co-operation and compliance and compel businesses to undertake additional research into areas of concern to other Category 1 organisations.

## **5. Costs for business, charities and voluntary organisations**

### **(i) Policy costs**

#### **Option 1: Continuation of current permissive regime**

**45.** There would be no additional cost to business, charities or voluntary organisations and no potential reduction in the costs they may face in the event of a disruptive challenge taking place. The cost of lack of awareness of risk and inconsistency in arrangements to deal with it caused by the lack of a statutory underpinning of activities would remain.

#### **Option 2: Duty on a limited range of organisations**

(see too 'Costs for a typical business' section below).

**46.** The businesses in Category 2 would be likely to have to:

- share information and co-operate where requested with those organisations in Category 1;
- attend a LRF and meet formally around twice a year with both Category 1 and 2 organisations in attendance (NB: Arrangements will be determined locally);
- attend working groups set up to look at specific issues, meeting perhaps fortnightly or monthly for a certain period. These will be set up depending on the local risk assessments, and it is unlikely that Category 2 organisations will be formal members of these but may be asked to contribute; and
- comply with ad hoc requests for information-sharing that may be made.

**47.** Annex B sets out how they would be affected by these requirements.

**48.** Compliance costs for business would be minimal. It is thought that each business in Category 2 will in practice need at most one day a month of the time of a relatively senior manager to comply with the proposals. This is a maximum estimate based upon the likely amount of requests for information and

<sup>7</sup> <http://news.bbc.co.uk/1/hi/business/2385731.stm>

possible attendance at meetings of working groups alongside an expected maximum of 48 hours of exercises per year. It is likely that, in practice, based upon anecdotal evidence from those working for some of the organisations concerned, the actual time spent would be substantially less than this. Many suggest they currently spend in the region of 5 – 10 staff days a year engaged in existing voluntary multi-group work and exercises. It would be for the businesses themselves to determine who this should be and their wages will vary depending on this decision. It is likely they will fall into the range designated by the New Earnings Survey (NES)<sup>8</sup> as ‘Managers and Senior Officials’. The NES suggests a likely average weekly wage for such people of (including non wage labour costs, which include NICs, pension costs etc.), around £1040. This suggests a likely cost for each of the businesses in Category 2 of approximately £208 a month, £2496 a year. In addition, based on current equivalents, somewhere in the region of £1000 would likely be expended to cover attendance at the proposed biannual meetings of the LRF. This gives a likely maximum total in the region of £3496 a year.

**49.** These are purely indicative costs, the exact figures will depend upon the internal decisions of the businesses involved and upon the nature of arrangements determined locally. It is likely that for most businesses these will not be new costs as the new arrangements will simply replace work that is already going on on a voluntary basis at present. The exact nature of the work currently undertaken on a voluntary basis varies across the country and from business to business, that is why a statutory framework is being introduced. It is not therefore possible to give a figure for how much businesses currently spend, but anecdotal evidence suggests somewhere in the region of 5 – 10 staff working days are currently expended in such activities. This suggests average costs in the region of £1004 – £2008, based on the NES figure, for those businesses engaged effectively in such work. Such work largely consists of bilateral and multi-lateral meetings with other organisations designed to share concerns and strategies. Such work would be subsumed and rationalised into the proposed new arrangements. This suggests that, based on this analysis, of the estimated total cost of the new framework of around £3496 a year additional new costs for Category 2 businesses could in fact, at the maximum, be in the range of £1461 – £2492. If this was multiplied by the total number of companies the

total policy costs would be in the region of £524499 – £894628 per annum.

**50.** Category 2 organisations include businesses in the transport and utilities sectors. The utilities already devote resources to emergency planning, in particular the Water Companies, and for them there are unlikely to be any new costs as a result of the proposals. For many, as a consequence of the conditions of their operating licenses, regular sharing of information and co-ordination with response services are routine. Some electricity and transport companies tend to have less developed liaison arrangements with partners at a local level. For them, the costs are likely to include attending meetings more regularly than they do at present. Under the this option all Category 2 organisations would have to undertake the work outlined above, but in many cases it is work that is currently already being undertaken. The costs will therefore not change for companies in a local area irrespective of which sector they operate in.

**51.** In the event of an actual emergency occurring it is likely that the business would expend more resources for its duration as greater co-operation and more regular meetings etc. would be necessary. This would, of course, happen at present under the voluntary system too.

**52.** Category 2 organisations will receive occasional visits from emergency planning officers from partner organisations seeking to co-ordinate plans more closely, be asked to supply information about some of their own planning arrangements and their assessments of risk, and possibly to take part in some joint training events and exercises. The nature and regularity of these additional demands will be determined locally to meet local needs. Local risk assessments will determine which of these companies is most likely to be involved in any particular event. Again, most businesses are already engaged in similar activities on a voluntary basis and therefore costs are unlikely to be new for most. To maintain a general level of awareness the time commitment is likely to be 3-5 days a year training. Emergency planning training typically costs £150 a day per person (Source: Emergency Planning College). It is likely that for a Category 2 business between two and five people may undertake such training, at a cost per annum of approximately £900 – £1500. Typical involvement for a business in exercising procedures is likely to be in the region of

<sup>8</sup> [http://www.statistics.gov.uk/downloads/theme\\_Labour/NES2002\\_Analyses\\_By\\_Occupation\\_using\\_soc2000\\_codings/NES2002\\_Analyses\\_By\\_Occupation\\_using\\_soc2000\\_codings.pdf](http://www.statistics.gov.uk/downloads/theme_Labour/NES2002_Analyses_By_Occupation_using_soc2000_codings/NES2002_Analyses_By_Occupation_using_soc2000_codings.pdf)

up to 48 hours of exercising a year per local area (so 2 days at the new earnings survey rate). Again, most businesses are already engaged in similar activities on a voluntary basis and therefore costs are unlikely to be new for most. This cost is absorbed into the 'one day a month' total indicated above i.e. 2 days a year spent exercising and the other 10 spent engaged in sharing of information and possibly contributing towards the work of working groups if required.

**53.** As some Category 2 businesses are organised upon differing geographical boundaries, some on a regional basis, a number of police boundary areas will fall within their area of operations. They will therefore need to meet the requirements in a number of separate geographical areas. The costs would be the number of police boundary areas multiplied by the suggestive average indicative cost. The variation in the costs incurred by Category 2 businesses in each of the regions means that it is not possible to quantify the exact cost.

**Option 3: Duty on larger range of agencies – with co-ordination ensured by a statutory partnership**

- This would include all the costs indicated for Option 2 but falling on a larger number of businesses.
- It is likely it would see some or all of the utilities and transport companies being brought into Category 1, placing additional costs upon them.

Summary of possible costs:

Option	Possible cost p.a. for transport and utility companies	Indicative total costs per annum
1	£0.	0
2	£1461 – £2492 plus £900 – £1500 in training costs = £2361 – £3996.	£847599 – 1434564
3	£4744 plus £900 – £1500 in training costs = £5644 – £6244.	N/A

**(ii) Implementation costs**

**Option 1: Continuation of current permissive regime:**

**56.** There would be no additional implementation costs.

**Option 2: Duty on a limited range of organisations.**

**57.** Category 1 organisations do not include private business, but the proposed duty includes a requirement on local authorities, as one of the Category 1 groups,

It is difficult to estimate these but they are likely to be in the region of double or triple the figure indicated for Option Two as they are likely to see the organisations take up formal roles within working groups, leading to a greater number of meetings, preparation and research.

- Additional private businesses, would be brought into Category 2. These may include operators of large local sports venues, representatives of retail centres, airline operators and operators of COMAH sites. It might include in Category 2 a range of charities and voluntary agencies some of which are regularly involved with emergencies.

**54.** A larger number of organisations would lead to greater complexity and represent a larger regulatory and bureaucratic burden, likely leading to more meetings and greater exchanges of paperwork. It is likely that the need to deal with a wider range of organisations may cost those businesses that were Category 2 organisations under Option Two, at the very most, an additional half a day a month in staff time, an additional cost of around £1250 a year.

**55.** If the organisations in Categories 1 and 2 were required to form a statutory partnership then these groups would probably need to be given powers to determine or influence the policies of their members. Local partners could face potential additional costs imposed by an overzealous strategic committee at the local level.

to promote Business Continuity Management (BCM) in the community. This may be associated with emergency planning for city centre evacuations and flooding, and the promotion of BCM elements will constitute an additional cost on local authorities, which they may seek to defray by charging local businesses who respond to the initiative. These costs to business, which are entirely voluntary, are likely to be those of attending an annual seminar, buying in a consultant and implementing any proposed procedures. For example, the costs of attending a local authority

BCM seminar might be in the range of £100 to £2000 per company; and those for hiring a consultant to prepare a BCM plan might be £1,000 per day (Source: Emergency Planning College).

**58.** It would be for the local authority to determine costs and events. It is hoped that all Category 2 businesses would attend an annual seminar, if one were instigated. But these costs are of course entirely a matter for the company and not required by the Bill – and they might vary depending on the size of the company and the complexity and detail of the BCM plan required and choices made by the local authority in question. All Category 2 businesses should already have established business continuity plans and therefore it is likely that the outcome of advice from local authorities will be small improvements and additions to these plans. As this is down to individual companies it is not possible to make a judgement as to the cost but it is expected to be minimal.

**59.** For Category 2 businesses guidance will have to be digested and contacts made with other local partners. The costs will depend on which level of seniority the business involved chooses for the staff assigned to these tasks. Since most of the businesses involved already undertake many of the activities that will be required of them on a voluntary or permissive basis, the costs are likely to be insignificant. Guidance will be prepared and issued by the Cabinet Office, supported by some of the national stake-holders, including professional bodies. It will set out the responsibilities of the organisation and the basic principles underlying them. The cost of familiarisation with this is absorbed into the one day a month figure.

**Option 3: Duty on larger range of agencies – with co-ordination ensured by a statutory partnership**

Implementation costs will be similar to those in Option 2 – but increased significantly to the extent that there would be a greater number of organisations and as a result of the greater complexity of guidance needed for involvement in a statutory partnership.

**Costs for a typical business**

**61.** Category 2 organisations will be limited to co-operating and sharing information with Category 1 and other Category 2 organisations. Their level of activity will therefore be dependent on the decisions made locally. It will therefore vary according to the identified risks in a local area and the nature of the role the Category 2 organisations play within the locality. It will be dependent too upon the individual internal decisions of the companies involved.

**62.** A reasonable estimate would suggest that the suggested LRF would meet twice a year in full at a relatively senior level, in all likelihood with a number of working groups on specific issues meeting more frequently as dictated by local conditions. Initial consultation with some of the Category 2 businesses in question suggest it may cost them around £600 to £1000 p.a. to take part in these full LRF meetings. These figures are based upon the cost of taking part in similar multi-agency forums. Whether any Category 2 businesses will be involved in working groups set up will be a matter for local determination. It is likely however that their role will be restricted to supplying information as and when requested and co-operating if particular issues are raised in which they have an important role to play. These possible costs have been included in the ‘one day a month’ figure.

**63.** Possible policy costs per Police Force Boundary Area for Category 2 organisations:

Activity	Cost p.a.	Comments
Full LRF meeting, say, twice a year.	£600 – £1,000	Likely to be biannual at a cost of £300 – £500 per meeting
Supply of information and co-operation throughout the year on the assumption this, plus training and exercise will amount to, at most, one staff day a month.	£2,361 – £3,996	Will depend entirely on the nature of activities, working groups and LPC identify as areas for work.
<b>Possible total:</b>	<b>£2,961 – 4,996</b>	This is purely indicative as the total will vary depending on locality and the resources any particular company decides to commit to these functions.

#### (iv) Other costs

**64.** Under the New Burdens procedure, the Cabinet Office will be responsible for finding the resources to transfer into the appropriate local government finance settlement as reimbursement to local authorities for the costs of their statutory role in emergency planning. At present the cost of compliance for Local Authorities is paid out of the Civil Defence Grant. Some local authorities have chosen to fund the activity above the level of grant for many years, and this is likely to continue. Other responder bodies, such as the emergency services, tackle emergencies as part of their normal operational remit and have not received additional or special funding for these tasks. It is not proposed to change this situation.

#### (v) Total Costs

**65.** Based on the analysis above, the total maximum indicative costs of option 2 are in the range of £847,599 – £1,434,564.

### 5. Consultation with small business: the 'Small Firms Impact Test'

**66.** Civil protection does not directly impact on small businesses beyond the general public good that is obtained through having fewer emergencies in society. The proposals, under any of the options do not affect small businesses. For example, small businesses may not because of business pressures be able to attend planning meetings for city or town centre evacuation in face of possible terrorist bombs or flooding – but more systematic arrangements covering neighbouring companies in their area (and, in particular, warning and informing arrangements) may be anticipated to extend to them and to include them on a 'good neighbour' basis. These improved arrangements may be negotiated by the Category 1 responder bodies with local chambers of trade or other business forums (for example, local networks of bars and public houses) on which the smaller companies are represented.

### 6. Competition assessment

**67.** The proposed legislation will affect a number of separate markets (e.g. utilities, transport, and broadcasting). However, in response to a request to consider the potential impact, the Office of Fair Trading (OFT) have been unable to identify any markets that are likely to be significantly affected. Given that compliance costs for business are expected to be

negligible, and to have no significantly disproportionate impact on the businesses affected, it is not anticipated that there will be any (or any appreciable) impact for competition. Information will be welcome from consultees on any possible impacts of which they may be aware.

### 7. Enforcement and Sanctions

**68.** The certainty provided by the new framework provides the basis for robust performance management of civil protection activity to ensure operational effectiveness and financial efficiency. While consideration has been given to establishing a new mechanism for performance management, perhaps through an inspectorate, the Government believes that the use of existing mechanisms achieves its aims of ensuring consistency of performance and bringing civil protection into the mainstream.

**69.** The new framework will feed into established processes through bodies such as the Audit Commission, the emergency services inspectorates and the utility regulators. And in common with other areas of policy, the means are already in place to allow the Minister to monitor performance and take effective action in the event of poor performance or non-compliance.

### 8. Monitoring and Review

**70.** Monitoring is expected to rely on the existing monitoring regimes covering each of the different Category 1 and 2 responder organisations. For example, local authorities are subject to the Best Value and Comprehensive Performance Assessment regime operated by ODPM, which also relies on the Audit Commission. The emergency services have their own inspectorates. Most of the utilities and transport companies are subject to regulators or ministerial direction. Monitoring under the Bill will build on these arrangements, subject to any additional requirements from time to time of the designated minister in the Cabinet Office. The Cabinet Office will of course issue guidance and – where relevant and after consultation with the appropriate ministries, regulators and stakeholders – standards and performance indicators.

**71.** The operation of the local-level proposals will be reviewed by the Cabinet Office and evaluated within 3 years of coming into force. The framework of the draft Bill, with the allocation of responsibilities across two categories of responder organisation, has been designed to permit movement between the categories

(or out of both) if this is deemed to be desirable. This flexibility means that the operation of the proposed new framework can be changed appropriately and as necessary.

## 9. Consultation

**72.** The following consultation has taken place on the proposals:

### (i) Within Government

Policy has been formulated from the outset with the close co-operation of, amongst others, ODPM, the Home Office, DEFRA, DTI, the Regulatory Impact Unit, MoD, DfT, DoH, HMT, HSE, the Environment Agency, and the Devolved Administrations. Other interested parties have been kept informed of progress and emerging proposals in what has been an open and inclusive policy-making process.

### (ii) Public Consultation

The Emergency Planning Review in the summer and autumn of 2001 formed the starting point for work on the Bill. The issuing of the consultation paper was accompanied by a series of seven public seminars for structured discussions with stakeholders throughout England and Wales. The proposals now being taken forward have been developed with the close involvement of bodies representative of stakeholder groups, including professional and representative associations such as the Association of Chief Police Officers, the Local Government Association, the Chief and Assistant Chief Fire Officers Association, the Emergency Planning Society, the Society of Local Authority Chief Executives, the Ambulance Services Association, Welsh Local Government Association, and Water UK. Final proposals were approved by a policy steering group consisting of stakeholders, Government Departments and the Devolved Administrations.

## 10. Summary and Recommendation

**73.** The policy objective is to enhance local resilience by improving the local capacity to detect, reduce and handle risks through enhanced co-ordination and clarity of roles and planning assumptions.

**74.** The results of the cost-benefit analysis for Option 1 are neutral, no additional costs will be incurred and no additional benefits delivered. For Option 2 additional costs per private sector organisation subject to the

duty of £2961 – £4996 are possible but, in the view of the Government, the benefits of improved co-ordination and more effective and efficient planning and response arrangements more than outweigh this. Option 3 would place costs of around £5644 – £6244 upon an extended list of Category 2 organisations and perhaps double that on those subsumed into Category 1. It would likely bring additional benefits of greater integration of planning activity.

### Option 1: Continuation of current permissive regime

**75.** This would not meet the policy objective of establishing resilience systematically and with confidence at a local level across England and Wales. It would not address sufficiently the problems of ensuring better preparations at a local level in future for wide-area and catastrophic emergencies. It would not do enough to address the inconsistencies of present arrangements. It would most likely leave a greater risk of emergencies occurring, with all the attendant potential costs to the local community, including local businesses, charities and the voluntary sector.

### Option 2: Duty on a limited range of organisations

**76.** By establishing a firm basis for co-operation in civil protection at a local level, Option 2 meets the policy objective of building local Resilience. It relies on a core of public bodies (Category 1) already considerably involved in emergency planning and in emergency response accepting a duty to co-operate more systematically and effectively. Because they are already engaged in this activity, the additional costs to these bodies will not be great, and their representative bodies have welcomed the firmer foundation proposed. This option will also place a requirement on a second category of co-operating organisations (Category 2) – which includes some private companies, such as utilities and transport companies – which will be required to co-operate by providing information to the other partners, attending some meetings and taking part in occasional joint training and exercise events. Many already undertake such work and any additional costs will therefore be minimal.

**77.** The proposals meet the Prime Minister's commitment to 'getting the balance right between the benefits which regulation provides and any additional burdens that might be imposed'.

**Option 3: Duty on larger range of agencies – with co-ordination ensured by a statutory partnership**

**78.** By including a larger number of organisations in Categories 1 and 2 and by establishing a new statutory strategic body at a local level to implement the new policy principles, Option 3 would also meet the local resilience objective. However, it would do so at the cost of new statutory burdens on a wider range of organisations, including a greater number of private businesses, charities and voluntary organisations, with associated costs. It would also give local strategic groups based on police boundary areas new powers to co-ordinate all the groups covered by the duty within their areas. Inevitably, this would lead to the new bodies claiming some rights of ‘jurisdiction’ over the activities of member organisations and it could lead to greater ‘diligence’ in some parts of the country and a ‘light touch’ in others, with greater costs incurred in the former areas.

**12. Declaration**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Signed** .....

this remains blank until the legislation is to be sent to Parliament; it then becomes a Full RIA

**Date** .....

Douglas Alexander MP

Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster





# Partial Regulatory Impact Assessment

## Draft Civil Contingencies Bill (Emergency Powers)

### Title of proposal

1. Modernisation of Emergency Powers legislation.

### Purpose and intended effect of measure

#### (i) The objective

2. To replace existing Emergency Powers legislation with a modern framework. The function of this legislation is to allow the making of temporary special legislation aimed at resolving a serious emergency. The objective is to provide the Government with the powers needed to deal most effectively with major emergencies by making the legislation more appropriate to the possible risks and threats facing society in the twenty-first century. The proposals extend to the whole of the UK.

#### (ii) The background

3. The current legislation dates back to 1920. Its definition of the circumstances in which Emergency Powers can be used reflects assumptions regarding the services needed by society at the time that are no longer appropriate in the much more integrated and technologically dependent twenty-first century. The definition is too narrow and does not cover circumstances in which the making of Emergency Regulations may offer the most effective response to an emergency. The current definition would, for example, not allow the powers to be used in the event of mass technological failure, electronic attack, environmental disaster or an 11 September style attack. Modernisation of the legislation is a natural part of the Government's commitment to enhancing the resilience of the UK against disruptive challenges, be they natural, accidental or deliberate in origin and flows naturally from the Emergency Planning review of 2001.

### (iii) Risk assessment

4. The proposals are designed to facilitate the most rapid and effective response to a catastrophic emergency. The risk is a possible inability to respond in the most effective way in an emergency situation due to insufficient, or lack of, legal authority or right to do so. It is not possible to quantify the effects of this risk, only to recognise that it may delay or otherwise impede response and recovery in the event of a disruptive challenge which, depending on the nature of that challenge, may have very serious consequences for public safety and welfare.

### Benefits

5. The proposals will modernise the list of circumstances under which Emergency Powers may be used to ensure that current and future potential emergency scenarios are covered. The new framework will allow a more proportional response to catastrophic emergencies by allowing Emergency Powers to be used on a sub-UK basis for the first time. Through the creation of the posts of Regional Nominated Co-ordinators and Devolved Emergency Co-ordinators it will put in place the organisational framework to ensure the most effective delivery of emergency response on the ground. For the first time the devolution settlement will be recognised in this policy area.

### Costs and sectors affected

6. The proposals constitute a piece of enabling legislation that does not affect any individual and organisation in itself but enables emergency regulations to be made to facilitate the most effective response to a major emergency situation. Emergency regulations can be used to do anything that might be done by enactment or Royal Prerogative. As a result it is not possible to be specific at this stage about the potential regulatory impact if they are used.

7. Regulations made under it may affect businesses, charities and the voluntary sector but their nature and coverage would depend entirely upon the nature and scale of the emergency in hand and the response and recovery strategy adopted. The powers will only ever be used in extreme circumstances where any costs will be justified by the need to respond most effectively to threats to public safety and welfare. The proposals allow the Powers to be used on a much more targeted and proportional basis than the existing legislation which will mean only those organisations which genuinely need to be affected by regulations will be.

### Consultation

#### Within government

8. Policy has been formulated from the outset with the close co-operation of ODPM, the Home Office, the Privy Council Office, DEFRA, DTI, MoD, DfT, DoH, HMT, HSE, the Environment Agency, and the devolved administrations and territorial departments. Other interested parties have been kept informed of progress and emerging proposals in what has been an open and inclusive policy-making process.

#### Public consultation

9. This is the first time that the proposals have been set out before the general public. The proposals have however been developed with the close involvement of stakeholder groups, including professional and representative associations such as the Association of Chief Police Officers, the Local Government Association, the Chief and Assistant Chief Fire Officers Association, the Emergency Planning Society, the Society of Local Authority Chief Executives, the Ambulance Services Association and the Welsh Local Government Association. Final proposals were approved by a policy steering group consisting of external stakeholders, Government Departments and the devolved administrations before collective Ministerial approval was sought.

### Declaration

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

**Signed** .....

(This remains blank until the legislation is to be sent to Parliament. It then becomes a final RIA)

**Date** .....

Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster.

### Contact point

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## Annex A

Type of risk	Frequency	Likely effects	Indicative costs	Mitigation practices	Examples of risk reduction	Impact of Bill
<b>Flooding.</b> Around 5 million people, in 2 million properties, live in flood risk areas in England and Wales	Annual in some areas	Destruction of property. Closure of businesses, schools etc. Increased insurance premiums.	Variable, but estimated in 1999 at around £600 million per annum (NAO) <sup>9</sup>	Town Planning. Flood defences. Evacuation. Issuing of warnings.	Current inland and coastal flood defences are estimated to reduce the annual cost of damage from flooding by over £2 billion as compared to the annual investment by flood defence bodies of some £400 million. <sup>10</sup>  Business Continuity Management (BCM) by companies exposed to possible flooding.	New statutory framework supports Environment Agency, Police and local authorities in preparing consistent and effective flood planning arrangements in vulnerable areas throughout England and Wales.  Promotion of BCM by local authorities to the commercial sector.
<b>Severe storms</b>	Rare	Destruction of property. Closure of businesses, schools etc.	The UK storms of January 1990 caused insurance losses of £500 million.  Costs to the USA of weather-related disasters between 1988–1997 were approximately US\$140 billion. August 1992 – May 1997 saw 911 deaths as a result of such incidents (FEMA).  World-wide weather-related financial losses reached US\$38 billion in 1995, winter floods in Europe accounting for US\$3.5 billion (US Dept. of Energy.)	Issuing of warnings. Temporary re-housing.	Business Continuity Planning by companies vulnerable to severe weather effects.	LRFs work with Met Office to ensure sound incorporation of National Severe Weather Warnings into local planning arrangements.  Promotion of BCM by local authorities to the commercial sector.

<sup>9</sup> [http://www.nao.gov.uk/publications/nao\\_reports/00-01/0001299.pdf](http://www.nao.gov.uk/publications/nao_reports/00-01/0001299.pdf)

<sup>10</sup> "Inland Flood Defence", 15 March 2001, NAO.

Type of risk	Frequency	Likely effects	Indicative costs	Mitigation practices	Examples of risk reduction	Impact of Bill
<b>Large-scale terrorist incident</b>	Very rare	Loss of life. Injuries. Destruction of property. Closure of businesses, schools, etc.	<p><b>Manchester Bomb:</b> £100 million plus 250 companies going bust within 6 months.</p> <p><b>11 September, USA:</b><sup>11</sup> Estimated cost of attacks to US based solely on property losses and insurance costs: US\$21billion. Estimated total losses to the world insurance market from the World Trade Centre: £25bn–£50bn. Estimated number of jobs lost in lower Manhattan area: 100,000. Number of jobs it has been estimated will be lost in the US as result of the attacks by the end of 2002: 1.8m. Amount it has been estimated that US commercial insurance premiums will rise by to cover the potential cost of future terrorism between 2002 and 2004: 50%.</p>	Police operations. Evacuations. LA actions e.g. CCTV, parking restrictions etc. Security and screening arrangements.	Temporary closure of airports. Vigilance at ports and airports. High alert security status. CBRN alert. Increased patrols and intelligence activity. Design of buildings and car parks. Use of CCTV cameras. Strengthened doors and windows. Warning systems. Evacuation plans. Business Continuity Planning.	Local forum (the LRFs) for strengthening co-operation between local responders across all police force areas in England and Wales. Support for improved multi-agency working, including risk assessment, specific plans for this type of event, training of key staff and regular exercises of joint planning arrangements. Improved warning systems and arrangements for developing public awareness of risk and of actions to take in an emergency. Development of recovery plans for the community, including business, and including capabilities to respond effectively to massive disaster.
<b>Foot and Mouth Disease (FMD)</b>	Historically twice in last 50 years	Death and destruction of livestock. Knock on effects across rural and tourist sectors. Business failures. Closure of businesses, schools, etc.	Estimated by the National Audit Office as £3 billion direct costs to agriculture and £5 billion indirect costs to other sectors, such as tourism.	Controls on movement of livestock. Closure of footpaths.	Measures put in place by DEFRA to prevent new outbreaks. Business Continuity Planning.	National framework – local, regional and national – improves co-ordination and communication between responders at all levels. LRFs support regional arrangements and familiarise all responder groups with each other and with planning arrangements. Appropriate partner bodies develop and keep up to date specific planning arrangements.

<sup>11</sup> <http://www.observer.co.uk/Print/0,3858,4483780,00.html>

## Annex A1

### FOOT AND MOUTH: AN EXAMPLE

The overall costs of the Foot and Mouth outbreak have been estimated by the National Audit Office as £3 billion direct costs to agriculture and £5 billion indirect costs to other sectors, such as tourism. The net costs to the economy, when offset against increased spending elsewhere, they estimate at £2 billion. (National Audit Office, 'The 2001 Outbreak of Foot and Mouth Disease', 2002).

It is not clear by how much such losses might have been reduced by the implementation of proposals such as those contained in the Bill. The Anderson report ('Foot and Mouth Disease 2001: Lessons Learned Inquiry') suggests that not only should the farming industry be made less vulnerable to disease (which is not a matter for this Bill) but that, if an outbreak does occur, the impact should be minimised (which is where the proposals in this Bill may help). According to Anderson, improved planning at the local level and between national and local levels will achieve a swifter and better co-ordinated response. Four relevant points in the 'Lessons learned' section of the report are as follows:

- 'Be prepared with comprehensive contingency plans, building mutual trust and confidence through training and practice.

- 'React with speed and certainty to an emergency or escalating crisis by applying well-rehearsed crisis management procedures.
- 'Explain policies, plans and practices by communicating with all interested parties comprehensively, clearly and consistently in a transparent and open way.
- 'Respect local knowledge and delegate decisions wherever possible, without losing sight of the national strategy.'

All these points are consistent with the thrust and objectives of the policy proposals.

The Anderson report contrasted efforts in England and Wales to those in Scotland, where the effectiveness of response was achieved by good co-ordination between the levels of government and where the local authority played a central role, concluding that south of the border the expertise of local authorities was not as effectively sought out and deployed by other agencies.



# Annex B

## CATEGORY 2 ORGANISATIONS: POTENTIAL IMPACT OF THE 7 ELEMENTS OF THE DUTY

DUTY	1 Risk Assessment	2 Planning Arrangements	3 BCP	4 Warn and Inform	5 Share Information	6 Co-operate	7 Promote BCM
<b>CATEGORY 2 RESPONDER</b>	<i>As part of column 5:</i>  Likely to be asked to provide information re risks from their perspective	<i>As part of columns 5 and 6</i>  May be asked to “dovetail” their own planning arrangements with local partners. May be asked to take part in occasional tabletop or live exercises when the scenario relates to their role.	<i>As part of column 5</i>  Might be asked to provide information about the security or resilience of their services under BCP	<i>As part of column 6</i>  Might be asked to co-operate in warnings related to their areas of responsibility	<i>See also, columns 1, 2 and 3</i>  Information sharing is likely to be by correspondence	<i>See also, columns 2 and 4</i>  Co-operation is likely to be by <ul style="list-style-type: none"> <li>attending multi-agency meetings once or twice a year,</li> <li>taking part in exercises (table top) once a year; (live) once every 3 years</li> <li>receiving visits from EPOs, 3 times per year</li> </ul>	  Might be invited by local authority to attend BCM seminar

NB. Most companies are doing much of this already. Therefore, additional costs are likely to be minimal. E.g. “This does not seem to be unduly burdensome. It appears in many respects simply to put on a legislative footing the sort of information sharing and co-operation exemplified by BAA in respect of the recently threatened strikes at their airports.”



## Annex C

### INDICATIVE LIST OF BUSINESSES AFFECTED BY THE PROPOSALS

Businesses in Category 2 will gain a duty to co-operate and share information. To reduce the possible burden on businesses – and to make the LRF meetings manageable in areas where an inconveniently large number might otherwise be required to attend – companies will be permitted to nominate an industry representative to attend meetings on their behalf. The final list will be set out in regulations once settled.

#### Utility companies

<b>Gas</b>			
<ul style="list-style-type: none"> <li>• Transco</li> </ul>			
<b>Electricity</b>			
<ul style="list-style-type: none"> <li>• Aquila Networks</li> <li>• BNFL Magnox Generation</li> <li>• British Energy LE Group</li> </ul>	<ul style="list-style-type: none"> <li>• National Grid</li> <li>• Northern Electric Distribution</li> <li>• Powergen UK</li> </ul>	<ul style="list-style-type: none"> <li>• Scottish and Southern Energy</li> <li>• SEEBOARD</li> </ul>	<ul style="list-style-type: none"> <li>• TXU Energy</li> <li>• United Utilities</li> <li>• Western Power Distribution</li> </ul>
<b>Water</b>			
<ul style="list-style-type: none"> <li>• Anglian Water Services</li> <li>• Northumbria Water</li> <li>• Severn Trent Water</li> <li>• Southern Water Services</li> <li>• South West Water Ltd</li> <li>• United Utilities Water Ltd</li> </ul>	<ul style="list-style-type: none"> <li>• Welsh Water (Dwr Cymru Cyfyngedig)</li> <li>• Wessex Water</li> <li>• Yorkshire Water Services</li> <li>• Bournemouth and West Hampshire Water</li> <li>• Bristol Water</li> <li>• Cambridge Water</li> </ul>	<ul style="list-style-type: none"> <li>• Cholderon and District Water Company</li> <li>• Essex and Suffolk Water</li> <li>• Folkestone and Dover Water</li> <li>• Hartlepool Water</li> <li>• Mid-Kent Water</li> <li>• Portsmouth Water</li> </ul>	<ul style="list-style-type: none"> <li>• South Water</li> <li>• South Staffordshire Water</li> <li>• Sutton and East Surrey Water</li> <li>• Tendring Hundred Water</li> <li>• Three Valleys Water</li> <li>• Dee Valley Water</li> </ul>
<b>Telecoms</b>			
<ul style="list-style-type: none"> <li>• BT</li> <li>• Cable &amp; Wireless</li> <li>• COLT</li> <li>• Crown Castle (broadcast transmission)</li> <li>• Energis</li> </ul>	<ul style="list-style-type: none"> <li>• Global Crossing</li> <li>• Hutchison 3G</li> <li>• Kingston Communications</li> <li>• NTL (PTO) and broadcast transmission)</li> </ul>	<ul style="list-style-type: none"> <li>• Mmo2 (formerly cellnet)</li> <li>• Orange</li> <li>• SSE Telecoms Ltd</li> <li>• T Mobile</li> <li>• Telewest</li> <li>• THUS</li> </ul>	<ul style="list-style-type: none"> <li>• Vodafone</li> <li>• Worldcom</li> <li>• Your Communications</li> </ul>

## Transport companies

### Network Rail and Train Operating Companies

- |  |                                   |                                 |   |
|--|-----------------------------------|---------------------------------|---|
| • Network Rail<br>(formerly Railtrack) | • Chiltern Trains                 | • First North Western<br>Trains | • Virgin Trains (Cross<br>Country Trains Ltd) |
| • Anglia                               | • Connex South Eastern            | • ScotRail                      | • Virgin Trains (West<br>Coast Trains Ltd)    |
| • Arriva Trains<br>Merseyside          | • Gatwick Express                 | • Silverlink                    | • Wales and Borders                           |
| • Arriva Trains<br>Northern            | • First Great Eastern             | • South Central                 | • WAGN  |
| • c2c                                  | • Great North Eastern<br>Railways | • South West Trains             | • Wessex Trains                               |
| • Central Trains                       | • First Great Western             | • ThamesLink                    |   |
|  | • Island Line                     | • Midland Mainline              |   |

### Airports

- |                   |  |
|-------------------|--|
| • London Heathrow | BAA plc                                  |
| • London Gatwick  | "  |
| • London Stansted | "  |
| • Southampton     | "  |
| • Luton           | London Luton Airport Ltd                 |
| • Cardiff         | TBI plc                                  |
| • Manchester      | Manchester Airport plc                   |
| • Liverpool       | Peel Holdings Ltd                        |
| • Newcastle       | Newcastle International Airport Ltd      |
| • Leeds/Bradford  | Leeds Bradford International Airport Ltd |
| • Teesside        | Teesside International Airport Ltd       |
| • Humberside      | Manchester Airport Group                 |
| • Sheffield City  | Tinsley Park Ltd/Peel Holdings           |
| • Bristol         | McQuarie and CINTRA                      |
| • Exeter          | Exeter and Devon Airport Ltd             |
| • Newquay         | MoD                                      |
| • Plymouth        | Sutton Harbour Holdings Ltd              |
| • Bournemouth     | Bournemouth International Airport Ltd    |
| • Birmingham      | Birmingham International Airport Ltd     |
| • East Midlands   | Manchester Airport Group                 |
| • Coventry        | Air Atlantique Group                     |

### Ports

The focus in emergency planning work would be on Harbour Authorities (which deal with navigation on the various stretches of water). There are 259 Harbour Authorities in England and Wales.

## Annex D

### **COSTING THE PROPOSALS FOR CATEGORY 2 ORGANISATIONS**

Research has revealed that the companies involved are currently already engaged in co-operation and the sharing of information with partner agencies such as local authorities and the Emergency Services. Indeed organisations such as telecoms operators are required to do so by their operating licences. The new duties will in practice replace some of these activities, meaning the costs they will incur will not be entirely new.

#### **Utility Companies**

##### **Gas**

Transco are the sole gas distribution company in England and Wales.

##### **Electricity**

The Electricity Association is setting up a Practice Group to review the costs and benefits of emergency planning. A DTI consultant with long commercial experience considered membership of Category 2 as 'low cost' and involving activities which most companies would want to do or are already engaged in. He added that taking part in exercises might involve larger expenditure, but again there were significant business benefits.

##### **Water**

Water companies are already tightly regulated under the Water Act Security and Emergency Management Direction, which requires them to liaise with partners and to respond to emergencies. According to the Chair of Water UK, which represents the companies, there are unlikely to be additional costs to them.

##### **Telecoms**

Oftel chairs a Telecommunications Industry Emergency Planning Forum whose members are the companies listed in Annex C above. They are operators of dialtone services (fixed line and mobile) which qualify them as key members of the telecommunications national infrastructure.

These companies already have conditions imposed on their business which are quite extensive, requiring them to make and maintain emergency response plans and to talk to local responders. Initial discussions with a BT manager indicates that the additional costs of providing information for emergency planning purposes and of taking part in occasional meetings will not be significant.

#### **Transport Companies**

##### **Rail**

DfT and the Strategic Rail Authority are not aware of formal liaison between train operating companies (TOCs) and local authorities (LAs). But a substantial amount of local level co-operation already takes place. A Train Operating Companies Emergency Planning Forum has been established nationally, which together brings planners from all the TOCs.

The Category 2 requirements might impose additional costs on the TOCs (whose routes may cross a considerable number of police boundary areas) if they were obliged to attend a large number of regular meetings. However, there is already co-operation between TOCs, so that the lead company based in a particular area will attend and act for the others. It is proposed in the draft bill to permit Category 2 companies to be represented at meetings by another industry member.

Network Rail have said that they envisage no problems or additional costs from the proposals.

Contact with Arriva Trains Northern has confirmed that they already hold regular meetings with the majority of the local authorities that lie within their areas of operation. In their case, this includes the whole of Yorkshire and parts of Lancashire, Cumbria, Northumberland, Teesside, Durham, Scotland and Lincolnshire, as well as parts of Nottinghamshire and Derbyshire. Additional costs are therefore likely to be minimal.

### **Air**

Most aircraft accidents occur within a few miles of an airport. Several UK airports have Standing Emergency Planning Groups which may meet annually or six monthly. The groups bring together all the partner agencies involved in emergency response, including the emergency services. As a result of the Bill more of these committees may be established, but they are not a requirement of the Bill.

Since airport operators are obliged under their license from the Civil Aviation Authority to hold a major 'live' exercise once every two years, they are already involved on a regular basis in multi-agency planning for these events, which may take several months of preparation. So the additional costs, if any, are likely to be negligible.

### **Ports**

The DfT is actively pursuing the question of costs and benefits for ports and harbours of emergency planning and how much of this activity they already undertake. A DfT team is currently visiting ports as part of a costings exercise. They have been unable to assess at this stage what the additional cost of providing information and attending meetings might be at this time.

However, contact with a Harbourmaster and Port Manager in Southampton suggests the additional costs will be minimal there, since both the Harbour and Port authorities are already involved in liaison meetings with local partners, such as the Maritime and Coastguard Agency, the police and local authorities.