



House of Commons
Defence Committee

Draft Civil Contingencies Bill

Seventh Report of Session 2002–03



House of Commons
Defence Committee

Draft Civil Contingencies Bill

Seventh Report of Session 2002–03

*Report, together with formal minutes, oral and
written evidence*

*Ordered by The House of Commons
to be printed 2 July 2003*

The Defence Committee

The Defence Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Defence and its associated public bodies.

Current membership

Mr Bruce George MP (*Labour, Walsall South*) (Chairman)
Mr James Cran MP (*Conservative, Beverley and Holderness*)
Mr David Crausby MP (*Labour, Bolton North East*)
Mr Mike Hancock CBE MP (*Liberal Democrat, Portsmouth South*)
Mr Gerald Howarth MP (*Conservative, Aldershot*)
Mr Kevan Jones MP (*Labour, North Durham*)
Jim Knight MP (*Labour, South Dorset*)
Patrick Mercer OBE MP (*Conservative, Newark*)
Syd Rapson BEM MP (*Labour, Portsmouth North*)
Mr Frank Roy MP (*Labour, Motherwell and Wishaw*)
Rachel Squire MP (*Labour, Dunfermline West*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/defence_committee.cfm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Mark Hutton (Clerk), Steven Mark (Second Clerk), Simon Fiander (Audit Adviser), Dr John Gearson (Committee Specialist), Fiona Channon (Committee Assistant), Sue Monaghan (Secretary).

Contacts

All correspondence should be addressed to the Clerks of the Defence Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5745; the Committee's email address is defcom@parliament.uk

Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated by the page number as in 'Ev 12'.

Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
2 Work of the Committee	6
3 The draft bill	8
The Consultation Process	8
An enabling bill	8
Definition of emergency	9
4 Provisions relating to civil protection	11
Central Government	12
The Regional Tier	12
The Local Tier	14
<i>Local Resilience Forums</i>	14
<i>Local responder bodies</i>	16
<i>London</i>	18
<i>Scotland, Wales and Northern Ireland</i>	19
<i>Resources</i>	19
5 Provisions relating to emergency powers	22
The triple lock	23
Territorial extent	23
Human rights	24
6 Parliamentary oversight	25
7 Conclusion	27
8 Conclusions and recommendations	28
Witnesses	31
Written evidence	32
Unprinted written evidence	32
Formal minutes	33
Reports from the Defence Committee since 2001	34

Summary

We welcome the publication of the draft Civil Contingencies Bill. New legislation is urgently needed in this area. But we regret that progress with it has not been made sooner. In our report *Defence and Security in the UK*, published in July last year, we recommended that civil contingencies legislation should be introduced into Parliament in autumn 2002.

The current draft bill comes in two parts: civil protection and emergency powers.

The consultation document accompanying the draft bill sets out a new model for national **civil protection** organised in three tiers: national (ie central government), regional and local. Only the local tier is included in the draft bill. The Government must explain why it is right to impose statutory obligations on local authorities and local emergency services, but not on itself or on regional bodies.

The draft bill is an ‘enabling’ bill. It gives Ministers powers to make regulations to implement their proposals. But the Government has not described what use it will make of those powers, or what specific obligations it intends to impose on the bodies covered by the bill. We believe that it must do so before asking for parliamentary approval of the bill.

The **emergency powers** provisions in the bill allow the Government to declare an emergency and having done so introduce special legislative measures in order to deal with it. The powers themselves are similar to existing powers in legislation dating back to the 1920s, but the definition of emergency is much wider. The principal safeguards against the misuse of the powers are described by the Government as a ‘triple lock’: the emergency must be serious, the powers must be necessary and they must only be applied to those regions where they are needed. But these safeguards are not in the draft bill. We believe they should be.

The bill would also prevent any special legislative measures being struck down by a court as incompatible with the Human Rights Act. The Government will need to present a clear and compelling case for this provision. It has not yet done so.

The draft bill is published for public consultation and for pre-legislative scrutiny. Although we would not wish to see this bill delayed any further, we believe that insufficient time has been allowed for the public consultation. Pre-legislative scrutiny is to be conducted by a specially appointed Joint Committee. It too is being asked to work to a very tight deadline. We hope that our report, which builds on experience gained in our earlier inquiries and on additional more recent evidence, will assist the Joint Committee in its work.

1 Introduction

1. In our inquiry into Defence and Security in the UK¹, which we began in January 2002, we examined, among other things, the Government's progress towards reforming the national emergency planning system. At that stage the Government had confirmed that it intended to legislate to replace the Civil Defence Act 1948. It had conducted a public consultation on its proposals (the Emergency Planning Review) which had straddled 11 September 2001. During the course of our inquiry it became clear that the Government had concluded, not least because of lessons learnt from the terrorist attacks in New York and Washington, that "whilst the questions and the scope of the Emergency Planning Review were wide,...there are some fairly fundamental deep-seated questions about how we embed resilience concepts into all our government structures much more."²

2. We would not dispute the need to examine these broader issues. Indeed many of them were the subject of our report. But we believed then and we still believe that that examination should have been conducted with greater urgency. We concluded in July 2002:

Ten months have now passed since the terrible attacks of 11 September and nearly a year since the publication of the emergency planning review document. We believe that the Government has had time enough to address the issues raised by the review. It should now as a matter of urgency publish its proposals for civil contingencies legislation, with the explicit aim of introducing that legislation in the 2002–03 parliamentary session.³

While we regret that that has not happened, **we welcome the publication of the draft Civil Contingencies Bill. We believe that the public consultation on and pre-legislative scrutiny of the draft bill should be followed by prompt introduction of a bill in the new parliamentary session.**

3. We had intended to examine any civil contingencies bill ourselves (whether it was published in draft or not). The Government, however, has proposed that the pre-legislative scrutiny of the draft bill should be conducted by a joint committee. The House of Lords has agreed to the establishment of a joint committee and that it should report by the end of October. As of 2 July, the necessary motions had not been tabled in the House of Commons. There are just seven sitting weeks between now and the end of October. Whether this timetable is reasonable will be a matter for the Joint Committee to decide, but it seems to us to be scant time for proper pre-legislative scrutiny of a draft bill which, as we shall see, is far from straightforward.

1 HC (2001–02) 518

2 *Ibid*, Q 1477

3 *Ibid*, paragraph 158

2 Work of the Committee

4. We published our report *Defence and Security in the UK* in July 2002. The Government replied in October.⁴ In March 2003 we decided to return to the subject, in order to examine what progress had been made since our report. We held three evidence sessions. As with our previous inquiry, these sessions covered a wide range of issues, many of them outside the scope of the draft bill. The first was with Sir David Omand, the Government's Security and Intelligence Co-ordinator, and Ms Susan Scholefield, Head of the Civil Contingencies Secretariat. The second was held in the headquarters of Portsmouth City Council and was from a range of witnesses representing the emergency services and other responding agencies in the Portsmouth area. The third session focused on security in the London area. The witnesses were Rt Hon Nick Raynsford MP, Minister for London, Assistant Commissioner David Veness, Metropolitan Police, and Mr Zyg Kowalczyk, Director of the London Resilience Team. We also wrote to those who had contributed to our earlier inquiry inviting them to update their original evidence. We have published as much of that evidence as we are able to with this report. We commend it to the Joint Committee.

5. We had intended to conclude our follow-up inquiry with evidence from the Home Secretary. That has not yet proved possible, but, in the light of the timetable which has been set for the Joint Committee, we have decided to publish this report before we have been able to hold that session. We have benefited in the evidence sessions and with the preparation of this report from the experience and expertise of our Specialist Advisers: Dr James Broderick, Mr Peter Clarke, Dr Andrew Rathmell, Mr Paul Read and Brigadier Austin Thorpe. We are grateful to them for their assistance. We hope that the Joint Committee will find our comments useful.

6. One of the issues we have tried to tease out throughout our inquiries has been the importance of the legislative framework to the total effort to secure the UK's resilience and preparedness. On the one hand it seems self-evident that a system which relies on the Civil Defence Act of 1948 and Emergency Powers Acts from the 1920s must be in urgent need of overhaul, if it is to be able to respond to the threats of the twenty-first century. The deficiencies of the existing legislation have certainly been brought to our attention on many occasions during our inquiries. Indeed the consultation document, which accompanies the draft bill says, of the existing emergency powers legislation, that "as currently constituted the Act does not serve a useful function in the early twenty-first century."⁵

7. On the other hand a succession of government witnesses have assured us that they have been able to do all that they have needed to within the existing legislative framework. Most recently, Sir David Omand told us both that—

4 HC (2001–02) 1230

5 Consultation document, p27

We have now an organisation that is fit for purpose: we have the capacity in central government to respond swiftly and effectively to a range of disruptive challenges.⁶

And later that—

Operationally it is not essential to have this consolidated legislation.⁷

8. We consider the proposals in the draft bill in more detail below. We recognise that much has been done in the past few years and particularly since 11 September 2001 to improve emergency planning and to strengthen coordination between the key players. But these efforts have not been facilitated by the legislative framework; in some respects they have been made more difficult. There is for example no duty on local authorities to plan for emergencies. There is no duty on local agencies, including the emergency services to work together.⁸ So, although it is perhaps not surprising that government witnesses have tried to be reassuring, we have not been persuaded by their arguments.

6 Q3

7 Q75

8 Except in the limited context of the Control of Major Accident Hazard Regulations and the Radiation (Emergency Planning) (Public Information) Regulations.

3 The draft bill

The Consultation Process

9. The draft bill was published together with explanatory notes and a consultation document on 19 June. The public consultation period runs for twelve weeks from that date, ending on 11 September. Twelve weeks is described in the Government’s Code of Practice on Consultation as the “standard minimum period for a consultation.” The guidance notes to the code, however, make clear that that should be treated as a minimum. “Inadequate time for responses,” it states, “is the single greatest cause of complaint over consultation by government...An otherwise adequate period may be less so if a **substantial holiday period** falls within it.”

10. The results of the emergency planning review were published in February 2002. It has taken nearly 18 months since then for the draft bill and consultation document to be published. At the end of that period a bare 12 weeks, spanning the principal annual holiday period, is being allowed for public consultation. In March this year, we asked Sir David Omand why it was taking so long to produce a draft bill. He replied—

We have had a bill team working flat out on this but we have in the course of that work raised very fundamental issues, each one of which has required a lot of legal advice and a lot of consideration and consultation with the experts in the field. It has turned into a much bigger exercise perhaps than we had thought but it is important and we will get it done.⁹

On 13 February, however, Lord Filkin, Parliamentary Under-Secretary of State, Home Office, told the House of Lords—

We will bring forward an emergency civil contingencies Bill in good time. If the matter were of extreme urgency, we would have brought a Bill forward urgently.¹⁰

11. **We do not wish to add to the delay in making progress with this important legislation, but we are not persuaded that a draft bill could not have been produced soon enough to have provided for a consultation period which met the spirit of the Government’s Code of Practice on Consultation and allowed a fair and adequate time for interested parties to express their views. As it stands, however, and given that the Joint Committee has until the end of October to report, we believe that the public consultation period should be extended by three weeks (ie to the beginning of October).**

An enabling bill

12. As the consultation document acknowledges, the draft bill is largely an enabling bill. It has two parts, the first covering civil protection and the second emergency powers. In both

9 Q 79

10 HL Deb, 13 February 2003, col 824

parts Ministers are given wide-ranging powers to make regulations. The explanatory notes describe the extent of those powers and give some examples of how they might be used. In many areas, however, they do not set out how the Government intends in practice to use its powers. The document states—

...the regulation making powers as currently set out in the bill are wide ranging. They are intended to allow the Government to set out expectations and limitations to ensure the consistency across agencies that is so vital in dealing with emergencies.¹¹

13. We obviously do not expect the Government to be in a position to foresee all the eventualities with which it might be faced, but we do expect that before asking Parliament to give them these powers Ministers should describe in considerably more detail than is currently the case how they expect to use them. **In the case of Part I we believe that the Government should aim to make drafts of the principal regulations available to the Joint Committee to assist its deliberations. In the case of Part II, we believe that the Joint Committee would find it helpful to have drafts of illustrative regulations available.**

Definition of emergency

14. The term emergency is defined twice in the bill, at the beginning of each part. The definitions are virtually identical in substance, the principal distinction being that Part I applies only to England and Wales, whereas Part II applies to the United Kingdom as a whole. We will treat them as a single definition. An emergency is “an event or situation which presents a serious threat” to human welfare, the environment, political economic or administrative stability, or the security of the UK or part of it. It “includes a wide range of possible events or circumstances.”¹² The term “serious threat” is not defined.

15. The Government’s current guidance on civil contingency planning is the publication *Dealing with Disaster*, a revised version of which was published on the same day as the draft bill. That document uses the term ‘major emergency’ which it defines as—

Any event or circumstance (happening with or without warning) that causes or threatens death or injury, disruption to the community, or damage to property or to the environment on such a scale that the effects cannot be dealt with by the emergency services, local authorities and other organisations as part of their normal day-to-day activities.¹³

16. The key difference is that the latter definition requires that an event must be of a certain scale before it can constitute a major emergency (ie to exceed the normal everyday capacities of the responding agencies). For the purposes of Part I of the bill, a Minister may make regulations which define in more detail whether certain events or situations are or are not to be regarded as ‘emergencies.’ Since Part I deals with planning against the possibility of emergencies, the absence of a scale threshold, while potentially inconvenient and

11 Consultation document, p18

12 Explanatory Notes, paragraph 11

13 *Dealing with Disaster*, paragraph 1.5

unhelpful to the bodies on which duties are to be placed, may not otherwise be a serious matter.

17. For Part II, however, no equivalent regulation-making power is included. As a consequence there are no statutory provisions relating to scale. Given that this is a bill which allows Ministers to declare a state of emergency this is a matter of some concern. We discuss this issue in more detail below (see paragraphs 63-64).

18. As we have noted, Part I of the bill extends only to England and Wales, whereas Part II extends to the UK as a whole. The differences in the definitions of emergency in each part are intended to reflect this. Oddly, however, the National Assembly for Wales is explicitly referred to only in the Part II definition. And on a more parochial note, neither definition refers explicitly to Parliament, although not only the National Assembly but also the Scottish Parliament and the Northern Ireland Assembly are included in the Part II definition. In fact, it is not clear to us whether the United Kingdom Parliament is included in either definition. **We recommend that the Joint Committee clarify this point.**

4 Provisions relating to civil protection

19. Clause 2 of the draft bill requires certain persons and bodies—

- to assess the risks of an emergency occurring;
- to maintain plans to ensure both that they can continue to perform their functions and that they can respond effectively in the event of an emergency;
- to inform the public about those assessments and plans (as far as is appropriate); and
- to maintain arrangements for warning and informing the public in the event of an emergency occurring.

The persons and bodies concerned are listed in Schedule 1 of the draft bill and described as Category 1 Responders. They are, in summary, local authorities, the emergency services (police, fire and ambulance), the Environment Agency and, for maritime and coastal matters, the relevant Secretary of State.

20. The draft bill also defines what are called ‘Category 2 Responders.’ These are described in the consultation document as “key co-operating bodies in both the public and private sectors.”¹⁴ These bodies are the utility companies, rail and air operators, harbour authorities and the Health and Safety Executive.

21. Although we can assume that the Category 1 Responders will be principally responsible for civil contingency planning, the relationship between the two categories is far from clear. No provisions are contained in the bill itself which either give Category 2 Responders specific roles or responsibilities or set out how they should work with Category 1 Responders. Instead all these matters will be the subject of later regulations. The consultation document states—

Regulations to be made under the bill will consolidate the emphasis on partnership working already established at the local level, and the common interest in and approach to civil protection of local response organisations in all areas.¹⁵

According to the Partial Regulatory Impact Assessment which accompanies the draft bill—

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.¹⁶

22. The Government’s intention is that the draft bill should “establish a new framework to reinforce partnership working and inter-agency co-operation at the local level.” The

¹⁴ Consultation document, p17

¹⁵ *Ibid*, p17

¹⁶ Partial Regulatory Impact Assessment, p36

Government will do this by “seeking to encourage the creation of Local Resilience Forums” (see paragraph 34 below).

23. The consultation document also contains proposals for arrangements at the national and regional levels and it is to those that we turn first.

Central Government

24. Central government’s roles and responsibilities are not included in the draft bill. There is no mention of the Civil Contingencies Secretariat in the Civil Contingencies Bill. The consultation document states that all government departments have a responsibility to plan, prepare, train and exercise for handling incidents and emergencies that might occur within their field of responsibility. The principal purpose of Part I of the draft bill is to create a statutory basis for a similar responsibility in respect of local organisations including the emergency services. The result seems to be that the Government is seeking to impose statutory obligations on local authorities, emergency services and others, while being unwilling to see any imposed upon itself. **The Government should explain why the draft bill does not include provisions relating to central government’s national responsibilities for civil protection.**

The Regional Tier

25. During our inquiry into Defence and Security in the UK last year, we encountered a fair degree of scepticism, notably from the Association of Chief Police Officers,¹⁷ over the proposal that came out of the Emergency Planning Review for a greater role for the Government Offices of the Regions (GORs) in emergency planning. The Government, however, was clearly committed to the regional tier having a significant role. As part of the NHS reforms which led to Primary Care Trusts taking responsibility for emergency planning, the Department of Health introduced “strong regional public health groups, co-located in the nine Government Offices of the Regions [which] will have important functions in ensuring protection of health across each region including emergency and disaster planning and management.”¹⁸ On 3 March 2003 the Home Secretary announced that regional resilience teams would be in place in each GOR by 1 April. They would be “dedicated units, similar to the London Resilience team but on a smaller scale, to enhance regional civil contingency planning, including dealing with terrorist threats.”¹⁹ Additionally the Government’s recent white paper *Our Fire and Rescue Service* states in its proposals for reforming the national, regional and local responsibilities of the service, “The regional level is acknowledged to be the right operational level for many functions, in particular securing the safety of the community in the event of terrorist attack or other major emergencies.”²⁰

26. The consultation document describes the roles now proposed for the regional tier. The arrangements are not simple. In addition to the Regional Resilience Teams (RRT), there will be Regional Resilience Forums (RRF), which will “bring together key players including

17 See HC (2001-02) 518, paragraph 277

18 *Ibid*, Ev 201

19 HC Deb, 3 March 2003, col 76WS

20 Cm 5808, paragraph 4.14

central government agencies and the Armed Forces, and representatives of local responders.”²¹ The RRTs will be facilitators in their regions and advocates for their regions in Whitehall. The RRFs will initially map resilience capabilities in their areas and will then focus on capability planning “in close co-operation with local responder organisations.”²² They would not, however, have a role in the response to any emergency. For that a separate committee, the Regional Civil Contingencies Committee (RCCC), would be formed “to co-ordinate the regional response.”²³ The membership of the RCCC would be broadly the same as that of the RRF; other organisations might be invited to attend depending on the circumstances.

27. The RCCCs will meet at three different levels. A first level meeting would be called where there was the threat or prospect of an emergency. A second level meeting would be called in the event of “a wide area disruptive challenge in the region.”²⁴ A level three meeting could only be called following the formal declaration by the Government of a decision to take special legislative measures under the powers in Part II of the draft bill.

28. The final piece of the regional jigsaw is the Regional Nominated Co-ordinator (RNC). RNCs “would be senior individuals, capable of exercising clear leadership and dealing directly with the media.”²⁵ They would be formally appointed only if special legislative measures were to be taken. Different RNCs would be appointed for different types of emergency. Candidates would be pre-nominated by the organisations represented on the RRFs. This approach deliberately mirrors the lead government department concept which is at the heart of the Government’s national response arrangements. That concept is based on the principle that the Government needs to have available to it a broad range of capabilities owned by different departments. The lead department, for any particular emergency, is responsible for co-ordinating the Government’s response, including obtaining the relevant resources and co-ordinating the support needed from other government departments and agencies, and for taking whatever executive decisions and actions are needed to handle the emergency from the centre.²⁶

29. In *Defence and Security in the UK* we questioned whether the lead government department concept was appropriate for major emergencies, particularly one following a large scale terrorist attack. Many of our witnesses told us that the existence of different lead departments led to confusion as to who to contact in central government in particular circumstances. They wanted a single central co-ordinating body, in other words a one-stop shop. We were also concerned that spreading responsibility across different departments would dilute the expertise in, and experience of, actually handling emergencies to an extent that could undermine an effective response.

30. We are concerned that the proposals for Regional Nominated Co-ordinators risk repeating those problems. They also place greater emphasis on specialist expertise than on the ability to provide leadership in times of crisis. A Regional Director of Public

21 Consultation document, p23

22 *Ibid*

23 *Ibid*

24 *Ibid*

25 *Ibid*, p24

26 *Dealing with Disaster*, p58–59

Health, for example, may well be an expert in the spread of infectious diseases, but that does not automatically make him or her the best person to lead a co-ordinated cross-agency response to a catastrophic flu pandemic. A widely recognised lesson of the foot and mouth crisis of 2001 was that an effective response depended above all on the sort of leadership qualities which, in that event, were provided by the Armed Forces.

31. The RNCs are the only element of these elaborate regional arrangements which is explicitly provided for in the draft bill. Whenever Ministers invoke the emergency powers in Part II a RNC must be appointed for each region to which the special legislative measures introduced under those powers apply. Curiously the RNC is also expected to chair level 2 meetings of the RCCC, even though by definition those meetings can only take place before his or her formal appointment.²⁷

32. The omission of the remaining regional tier arrangements from the draft bill is not explained. The consultation document simply states—

This activity is non-statutory and is not addressed by the Civil Contingencies Bill.²⁸

At present, of course, most of the activity undertaken at all levels is non-statutory. The purpose of the draft bill is ostensibly to “provide the framework to replace the Civil Defence Act, and also reduce the reliance on permissive powers.”²⁹ The Civil Defence Act, it should be noted, contributes very little to the work done at local level on civil contingency planning other than the payment of the salaries of some local authority emergency planning officers, through the Civil Defence Grant.

33. **We believe that the decision not to include the regional tier in the framework established by the draft bill requires a proper explanation.** The consultation document, for example, makes no reference to the possible role of regional assemblies, although the Government White Paper *Your Region, Your Choice: Revitalising the English Regions*, envisages the assemblies taking on the main co-ordination role in regional contingency planning. It is not clear whether this would require legislation.

The Local Tier

Local Resilience Forums

34. There is no mention of Local Resilience Forums in the draft bill, but as we noted above, the Government intends to encourage their creation. In the Government’s view, local response capabilities are the building blocks of our ability to deal with emergencies.³⁰ The LRFs will be the means to bring those local capabilities together. One is to be established for each police force area.

35. At present, bodies analogous to the proposed LRFs exist in the majority, if not all, of the 47 police force areas in England and Wales. They are not uniform in composition, or in capability, and they are called by different names, although, following a recommendation

27 Consultation document p23

28 *Ibid*, p22

29 *Ibid*, p16

30 *Ibid*, p16

for their establishment in the 2nd edition of *Dealing With Disaster*, most are known as Strategic (Emergency Planning) Coordination Groups. The majority are chaired by a chief constable or senior police officer, some by a local authority chief executive, and most cover the proposed Category 1 Responders, usually with the addition of a military representative. These bodies represent a major building-block of planning for and mitigation of major incidents.

36. As we have already stated, this is an enabling bill. The detail of what will be required of the bodies which make up the LRFs will be spelt out in regulations. The consultation document does not describe what is intended, although the Explanatory Notes to the draft bill do quote a few examples of what might be specifically included or excluded. So Category 1 Responders, on the one hand, might be required to prepare plans for mass decontamination and, on the other, might be required not to prepare an earthquake plan. **We believe that the Government must provide much more detailed information on the content of the regulations which Ministers propose to make under the draft bill. Without that information it is impossible to judge to what extent the Government intends to do more at local level than entrench existing best practice.**

37. Clause 2(3)(n), for example, provides that regulations “may make provision which operates wholly or partly by reference to the discretion of a Minister of the Crown or another specified person or body.” The Explanatory Notes do not explain what use this power is intended to be put to, but, on the face of it, it appears to offer the possibility of providing Ministers with undefined, if not unlimited, discretionary powers. And Clause 2(3)(o) allows Ministers to make regulations which have effect despite other provision made by or by virtue of an enactment. Thus by secondary legislation Ministers may amend or replace primary legislation. This is what is known as a ‘Henry VIII clause’. We expect that the Joint Committee will wish to explore the reasons for the inclusion of these two provisions.

38. Although the consultation document describes the roles of each respective tier, it does not, in our view, justify the need for each. In particular it does not answer the question posed by the Chief Constable of Hampshire Police Force—

what would a regional tier add in terms of value? If it adds value, I would welcome it enthusiastically but if it is simply another bureaucratic level I would not. If I am being asked a question by a senior civil servant in London, I do not want a middle-ranking civil servant in Guildford to be asking me the same question, particularly if we are in a crisis situation.³¹

On the contrary it seems rather to substantiate the fear of Hampshire’s Chief Fire Officer—

What we are frightened of is another tier of meetings, another tier of bureaucracy coming in where we have already got enough of that.³²

39. The Government clearly believes that genuine resilience can only be secured by contributions from the local, regional and national levels. They have described the

31 Q 194

32 Q 196

structures by which they expect it to be delivered. They must now demonstrate not only that each is needed but also that the elaborate machine which they have designed will work efficiently and will deliver a level of resilience significantly greater than could be achieved by the ad hoc, but often effective, arrangements which these proposals replace.

Local responder bodies

40. Schedule 1 of the draft bill lists the bodies to be included in each of the two categories of responder. The consultation document canvases views on the content of those lists, and in particular on whether other NHS bodies should be included. These are issues which we are sure the Joint Committee will want to explore with the bodies concerned. We have a number of suggestions. In some cases the bodies we put forward may be represented on the proposed Regional Resilience Forums. But in the absence of any statutory entrenchment of RRFs we have not taken that as a reason for excluding them from LRFs. Under the bill as it is currently drafted inclusion as a local responder body is also the only way in which such bodies can be given a statutory responsibility to co-operate in civil contingency planning.

41. We find it surprising that Primary Care Trusts are not included, since responsibility for emergency planning in the NHS rests with them. We would also have expected the Health Protection Agency to be in Category 2. Its core functions are—

- Surveillance of infectious diseases and of chemical and radiation hazards;
- Support for services provided at local level, principally through assistance to the primary care trust; and
- Advice and support at the national level, for example on health emergency planning policy.

There may also be arguments for including certain relevant specialist hospitals in Category 2.

42. Voluntary organisations are not included, because, in the words of the consultation document, they “rely on the goodwill of their members and supporters to provide the services that they do, and because those services are not in themselves based on statutory obligations.”³³ We accept that voluntary organisations should not be Category 1 Responders, but the option of including certain of them in Category 2 should be further explored. Several of the larger organisations, such as the Salvation Army, St John’s Ambulance and the Women’s Royal Voluntary Service, are capable of providing a valuable and predictable level of support in response to emergencies. As we have noted, the roles of Category 2 Responders are to be defined in regulations. We believe that it would be possible to draft those regulations so that they allowed relevant voluntary organisations to be involved in civil contingency planning without placing any unreasonable burdens upon them. **We recommend that the Joint Committee explore this issue with the organisations concerned.**

43. The Armed Forces will be represented at the regional tier. This seems logical since the Civil Contingency Reaction Forces (CCRF) are being established in each regional Brigade area and those areas with two exceptions match the Government Office regions which will be the basis for the regional tier. Similarly the improved mechanisms for contingency planning, liaison and command and control will be placed in regional Brigade headquarters. On the other hand, if the CCRFs are to be, as we described them in our report *A New Chapter to the Strategic Defence Review*, the “predictable element” of military assistance to the civil authorities, there would be an argument for including Armed Forces representation also in the LRFs where local plans are to be prepared. The Armed Forces are also, as we have seen, regularly involved in the existing local arrangements. Also, if military assistance were to be required during an emergency, particularly if that emergency was the result of a terrorist attack, the request for assistance would normally come from the local chief police officer. If chief officers are to know what resources the military may be able to provide, there would seem to be sense in having the military present on planning bodies which are after all to be based on police force areas. **We believe that there are strong arguments for including the Armed Forces on Local Resilience Forums.**

44. The private sector bodies listed in Category 2 are those “such as utilities and transport companies that will be involved...because of the nature of their role in the local area, that is the provision of services vital to the community and to businesses.”³⁴ In some cases, such as the water and electricity companies, we would expect them in practice to assess risks and draw up plans in much the same way as will be expected of Category 1 Responders. We can understand that they might be reluctant to have such tasks made a statutory obligation, but we would expect Ministers to make clear in the regulations setting out their responsibilities as Category 2 Responders that they will be required to be active partners with the Category 1 Responders and to play a full part in the Local Resilience Forums.

45. Category 2 Responders “will be under a duty to co-operate with [Category 1 Responders] and to share information with them only.”³⁵ The practical extent of that duty will presumably be defined in the regulations. As we have noted, the consultation document describes this happening through the Local Resilience Forums which will “bring together core and co-operating responders.”³⁶ The implication is that the membership of the forums will include all the locally appropriate Category 1 and 2 Responders. If that is the intention, there may be an argument for limiting the number of bodies included: too many and the forums may become unwieldy and inefficient. Equally there will presumably be no obstacle to forums inviting other bodies to attend their meetings. Indeed the existing multi-agency groups, from which the forums are in many cases expected to develop, operate entirely on the basis of such informal co-operation. The purpose of the draft bill, however, is to give the “organisations that form the core of the local response a clear and consistent set of expectations and responsibilities in relation to civil protection”³⁷ which is intended to “ensure consistency of activity across the local response capability, delivering

34 Partial Regulatory Impact Assessment, paragraph 25

35 *Ibid*, paragraph 22

36 Consultation document, p19

37 *Ibid*, p17

improvements in performance and communication, which in turn will deliver practical benefits.”³⁸

46. In our view there are strong arguments for substantially increasing the membership of Category 2, although it might not be necessary that all the additional bodies be members of Local Resilience Forums. A wide range of companies in the private sector, for example, might be expected to play an important part in the civil contingency planning process. The consultation document states that LRFs will be expected to determine what relationship they want with existing, statutory arrangements for managing major accident hazards at industrial sites, or on oil and gas pipelines or radiation emergencies. Such accidents, however, particularly if they involved a major chemical or radiation release, would clearly constitute a major emergency. Some of the sites may also be potential terrorist targets. **We therefore believe that bodies owning or operating such sites should be included in Category 2.**

47. In *Defence and Security in the UK* we expressed the view that the prospect of a statutory licensing regime for the private security industry created the opportunity to increase their involvement in counter-terrorist reinforcement. In April Assistant Commissioner David Veness told us that, as part of the training requirements being introduced with the new licensing regime—

the Police Service will be contributing counter-terrorist awareness as part of the basic competency framework that is going to be developed within the [Security Industry Authority]. We will also be asking that those who are engaged in that training are effectively our eyes and ears.³⁹

We welcome the progress being made in this area and urge the Joint Committee to consider whether a private security industry which is governed by a statutory licensing regime should be included among those bodies given a statutory responsibility to co-operate in civil protection activities.

48. An issue which the draft bill does not address but which has been represented to us as a serious cause for concern is the lack of any legislative framework in respect of the security of private sector buildings. Comparisons are drawn with the fire regulations which place clear duties and responsibilities on the owners of commercial buildings. Commercial and private property has historically been the target of the majority of international terrorist attacks. It may not be appropriate to include these matters in this draft bill, but we urge the Government to recognise that the lack of legislative certainty has the capacity to undermine the ability of the owners of such buildings to take appropriate steps in the face of a prospective threat and thus that legislation in this area should be a priority.

London

49. The consultation document states that the bill will apply to London more or less as it applies elsewhere. The existing London Resilience Forum will act as a RRF and a new forum bringing together the London boroughs and supported by the London Fire and

³⁸ Consultation document, p16

³⁹ Q 276

Emergency Planning Authority will take on the role of a LRF. The Government does not explain why two separate but coterminous bodies are necessary in London.

50. One of the events described in the definition of emergency in the draft bill is disruption to “the activities of banks or other financial institutions.”⁴⁰ In the City of London it would seem essential that the private financial institutions are closely integrated into all relevant processes and we believe that their inclusion in Category 2 would assist in securing the clarity and consistency which is at the heart of the draft bill’s objectives.

51. When the London Resilience Forum was set up, the Armed Forces were not included in its membership. Mr Zyg Kowalczyk, Director of the London Resilience Team told us, however, that the meeting of the Forum in February 2003 “agreed that the Armed Forces London district should be invited and they have agreed.”⁴¹ It would seem in principle that, as for the LRFs generally, there would be strong arguments for including the Armed Forces in the analogous body in London. **The Joint Committee might consider whether the Armed Forces should be represented on the LRF analogous body in London.**

Scotland, Wales and Northern Ireland

52. Part I of the bill does not apply to Scotland or Northern Ireland. It does apply to Wales where, according to the consultation document, the local responder arrangements will be based on the four police areas. Additionally there is to be an all-Wales High Level Group, chaired by an Assembly Minister, which will be “broadly consistent (in terms of purpose, membership, operation) with the groups proposed for the English regions.”⁴²

53. The Scottish Executive has responsibility for resilience at a local level in Scotland. It has decided that the local responders arrangements should not apply in Scotland. Instead it will conduct a separate consultation on these issues. The position is similar in Northern Ireland.⁴³

Resources

54. The requirements placed on Category 1 Responders to assess, plan, advise and inform will need to be resourced. Without sight of the regulations it is impossible to assess whether the emergency services will be required, in practice, to do more than they already do. This is another reason why the regulations should be published in draft for consideration by the Joint Committee.

55. The Government believes that the current level of funding to local authorities is sufficient to support their responsibilities under the draft bill. The existing resources provided through the Civil Defence Grant will be “brought into the mainstream” and incorporated in the Revenue Support Grant. The Civil Defence Grant may only be used for the payment of salaries. The responses to the Emergency Planning Review demonstrated broad support from local authorities for this proposal.

40 Clause 1 (4) (c)

41 Q 299

42 Consultation document, p32

43 *Ibid*, p32–3

56. The evidence we received from local authorities, however, both for our Defence and Security in the UK inquiry and more recently, shows continuing dissatisfaction with the total level of resources available to local authorities for their responsibilities in respect of emergencies. In particular local authorities have argued that the fact that the Civil Defence Grant is the only central government funding for emergencies and that it can only be used for the payment of salaries, together with the lack of any explicit duty on local authorities to plan or prepare for emergencies, means that emergency planning activities always lose out to other priorities. Furthermore the costs of responding to actual emergencies have to be met from the authorities' own funds, unless the cost is of sufficient scale to become eligible under the Bellwin scheme.

57. Bodies with a responsibility for responding to emergencies must clearly include in their plans arrangements to ensure that they themselves are able to function if an emergency occurs. This is known as business continuity management. *Dealing with Disaster* states—

Organisations must explore all options for maintaining critical services not only during the response but also throughout the recovery and aftermath procedures, which may be lengthy.⁴⁴

In Portsmouth we were told that the City Council, as well as having an emergency planning room in the council offices, also had arrangements to operate from other sites if a particular emergency meant that that facility could not be used.⁴⁵ The draft bill places a duty on all Category 1 Responders to maintain business continuity plans. The consultation document also states that local authorities will be required to promote business continuity management within their area—

As a result, resilience will be further underscored by extending the civil protection duty beyond emergency planning to address risks to business in the local community generally.⁴⁶

We welcome this emphasis on business continuity management. It is clearly needed. Mr Zygmunt Kowalczyk, Director of the London Resilience Team, told us that forty per cent of FTSE-250 companies do not have a business continuity plan.⁴⁷ However, it will need resources, if it is to be done properly. Local authorities already believe that they are under-resourced for their existing responsibilities. **We are concerned that, if those bodies which are charged with promoting business continuity management do not have the resources to do it properly themselves, still less to promote it effectively, the exercise will be undermined from the outset. This is not an area in which ‘do as I say, not as I do’ is likely to be a persuasive argument.**

58. It seems likely to us that the draft bill will impose extra activities and therefore extra costs on all Category 1 bodies and certainly on local authorities. Although the proposal to move central government funding from the Civil Defence Grant to the Revenue Support Grant is both logical and broadly welcomed by local authorities themselves, it is not

44 *Dealing with Disaster*, paragraph 2.7

45 Q 188

46 Consultation document, p19

47 Q 279

without potential risks. Local authorities may for example be tempted to find the money for the activities required under the draft bill by reducing salary costs, perhaps by employing fewer specialist emergency planning officers. **We are concerned that the level of funding proposed in the consultation document is inadequate for the responsibilities envisaged under the bill and we recommend that the Joint Committee examine this issue further.**

59. We are also concerned that many of the initiatives taken to improve the response capacity of the emergency services and other agencies have been inadequately resourced. Ms Susan Scholefield, Head of the Civil Contingencies Secretariat, for example, ran through with us the steps that had been taken to increase the capacity nationally to respond to the threat from a chemical, biological or radiological incident and the money that central government had devoted to ensuring that the emergency services were getting the equipment they needed. Yet, when we took evidence in Portsmouth, each of the emergency services told us that they would still have to draw on other resources to support these capabilities. The Fire Service, in fact, had received no additional resources. The Ambulance Trust had received 150 personal protection suits and three pre-hospital decontamination units—“tents, for want of a better word”—but no funding for training in their use or for their replacement.⁴⁸ The Police had received a “specific grant” which had enabled the Chief Constable to “deploy two police support units equipped with protective equipment”⁴⁹ but he was still having to rely on “efficiency savings” for other capabilities.⁵⁰ These resourcing issues are not directly within the scope of this draft bill, but they must be addressed if the proposals in the bill (and in the consultation document) are to be translated into real improvements in resilience and response capacity.

48 Q 137

49 Q 127

50 Q 132

5 Provisions relating to emergency powers

60. Part II of the bill as drafted contains sweeping powers for Ministers to declare a state of emergency (although that phrase is not used) and then introduce emergency legislation (termed ‘special legislative measures’ in the draft bill). The potential scope of that legislation is very much the same as in the Emergency Powers Act 1920—the existing legislation. The 1920 Act was introduced “in the face of what was seen as the growing threat of nationally disruptive industrial action and the risk of civil unrest.”⁵¹ It has been used only twelve times, the most recent in 1974, and only ever in response to industrial unrest.⁵²

61. The first question therefore must be whether the Government needs such powers at all. The consultation document states—

Some disruptive challenges are of such a nature or scale they may require extraordinary measures to be taken to deal with their effects and aftermath which would not be appropriate in normal circumstances. States therefore have legislation in place that enables such measures to be taken to deal with emergencies that exceed the capacity or authority of the usual systems or cannot be dealt with most effectively under any existing legislation.⁵³

The document, however, gives no examples. **We recommend that the Government list in respect of each of the major emergencies of the last ten years or so (eg floods, fuel crisis, foot and mouth, 11 September 2001) whether they would have used the powers in Part II had they been available.**

62. The definition of an emergency is, as we have noted, very widely drawn in the draft bill. It is considerably wider than the definition under the existing emergency powers legislation.⁵⁴ The consequences of different types of emergencies may be very different and the powers which are required to deal with them should reflect those differences. Under the draft bill Ministers undoubtedly have the scope to make different regulations for different circumstances, but it may also be appropriate that for different types of emergency different powers should be available. Not all types of emergencies which may in extreme cases require special legislative measures will require the full range of powers provided by the draft bill. Parliament should not give Ministers powers in excess of what they need. **We believe that the Joint Committee should consider whether for certain types of emergency Ministers might require access to only some of the powers set out in Clause 21 and, if so, whether the bill should limit access to certain powers for certain types of emergency.** It may be that, if the Government provides the list of major emergencies which we have recommended, discussion of possible responses to them may offer instances where this would have been appropriate.

51 Consultation document, p27

52 *Ibid*

53 *Ibid*

54 *Ibid*, p13

The triple lock

63. Although the draft bill does not limit by scale or extent the emergencies in respect of which Ministers could use the emergency powers, the consultation document describes what it calls a ‘triple lock’ to prevent possible misuse. The three elements of this are—

- Seriousness—the situation must be serious enough in nature to warrant the use of Emergency Powers.
- The need for special legislative measures—Emergency Powers allow the making of Emergency Regulations and should only ever be used if there is a genuine need to take such special legislative measures.
- Relevant geographical extent—A need for special legislative measures should be declared on the minimum geographical extent required. A UK emergency should not be declared where the declaration of a regional emergency will be sufficient.⁵⁵

Whether the three tests are met will be a matter for the Government to determine.

64. In principle, these tests seem sensible. We are concerned, however, that they do not appear on the face of the draft bill. The consultation document claims that before using the emergency powers, Ministers “must be satisfied” that the triple lock criteria are met.⁵⁶ But no such requirement appears in the bill and the consultation document does not ask for views on this point. **We believe that it should. Powers of this type should only be used when absolutely necessary. There is clearly scope for these powers to be misused. It seems to us that the bill which provides the powers should also provide the necessary safeguards on their use.**

Territorial extent

65. Under the draft bill an emergency can be declared either in respect of the entire UK or in respect of one or more of the English regions and/or the devolved countries. The consultation document explains—

The declaration of a sub-UK need for special legislative measures would allow for these to be used within a specified part of the UK. This would demonstrate proportionality of response.⁵⁷

Under existing legislation the territorial extent of a declaration can only be Great Britain or Northern Ireland wide.

66. It seems sensible and welcome to target measures, which may be intrusive and disruptive, only on those areas where they are really needed. We have one concern, however, which is to do with the boundaries of the English regions. These are not always well known to members of the public and there must be a risk that people will not know whether or not they are subject to the special legislative measures or will not be aware that

55 *Ibid*, p28

56 *Ibid*, p30

57 *Ibid*, p29

they have crossed a boundary into a region where they apply. An example might be a special legislative measure restricting the movement of animals. This is not an argument against the provision, but it does place a responsibility on Government to ensure that the public are clearly and properly informed about the geographical extent of any emergency.

Human rights

67. Clause 25 of the draft bill provides that emergency regulations under Clause 21 shall be treated as primary legislation for the purposes of the Human Rights Act. This means that the regulations could not be suspended or struck down by a court if they were challenged on human rights grounds. Under the Human Rights Act secondary legislation is subject to injunction and can be quashed. Primary legislation can be challenged, but if a court upholds that challenge it may only make a declaration that the legislation is incompatible with the claimant's rights under the European Convention on Human Rights.

68. The Government recognises that this is a controversial provision and admits that “the case for its inclusion in the final Bill is by no means certain.”⁵⁸ We discuss below the parliamentary procedures to which the emergency regulations are subject. In effect this provision gives Ministers the power to deprive people of protection for their human rights. The Government argues that “it is not desirable for any emergency regulations to be held up by injunctions, especially where delay may prevent effective resolution of an emergency which threatens the safety of the community.”⁵⁹ The proposition that the alternative is “not desirable” seems to us to be a insufficient argument for undermining the protection of people's human rights. A procedure already exists under which many of the rights protected by the Human Rights Act may be suspended in the event of a public emergency which threatens the life of the nation.⁶⁰ **We therefore conclude that this new provision should not be included in the bill unless the Government can demonstrate a clear and compelling need for the additional powers which it provides.**

58 *Ibid*, p 30

59 *Ibid*

60 By derogation from Article 5 of the European Convention on Human Rights

6 Parliamentary oversight

69. We have discussed the wide-ranging scope of the powers to make regulations given to Ministers by the bill. We have expressed a number of concerns in principle over their scope, but additional to the question of whether they are too far-reaching in themselves is the question of whether they are subject to the proper parliamentary procedures. The wider the scope of such powers, the greater the need to ensure that their exercise is subject to adequate parliamentary oversight.

70. We would expect the Delegated Powers and Regulatory Reform Committee of the House of Lords to take a close interest in this bill and it may be that the Joint Committee will wish to seek that committee's advice to assist its own deliberations. We do not pretend to be able to match its expertise in this area. But, in addition to the comments we have previously made,⁶¹ we do have a number of specific concerns.

71. In Part 1 regulations placing duties on bodies to assess, plan and advise in respect of emergencies (Clause 2) are to be made by statutory instruments which will be subject to the negative procedure. These regulations include such matters as—

- The definition of what kinds of emergency the bodies are to assess the risk of and plan against, and which they are not;
- How detailed those plans should be and what they should contain;
- The extent to which different bodies are permitted or required to collaborate; and
- The requirements to be placed on Category 2 Responders.

In other word these regulations will define the structure and content of that civil contingency planning which is statutorily required. **We believe therefore that these regulations should be subject to affirmative resolution by both Houses of Parliament.** The Government may argue that because of the unpredictable and fluid nature of emergency planning, the regulations may be expected to be subject to frequent updating and amending and to require such amendments to be approved by affirmative resolution would be both cumbersome and excessive. That may be true, but the answer, in our view, would be to set out the framework—ie the core regulations—on the face of the bill rather than reduce all parliamentary oversight to the level appropriate for those amendments.

72. The procedures for declaring a state of emergency, or as the consultation document calls it, declaring that special legislative measures are necessary, are very much the same as under existing legislation. Parliament is to be informed “as soon as is reasonably practicable.” Emergency regulations, which have immediate effect, must similarly be laid before Parliament as soon as possible, and will lapse seven days after their laying unless they are approved by both Houses. The Joint Committee will, no doubt, want to explore

61 See, for example, paragraph 37

whether these parliamentary procedures which were first set out in a 1920 Act remain appropriate for today.

73. The proclamation of an emergency itself lapses after thirty days, although a new proclamation may be made, if the emergency requires its continuance. Parliament, as we noted above, must be informed of the proclamation, but has no role in confirming or approving it. **We believe that consideration should be given to whether the proclamation of an emergency, or its renewal, should require to be approved by Parliament, perhaps in the same way as the regulations made under it.**

7 Conclusion

74. Whether measured from the start of the Emergency Planning Review or the events of 11 September 2001, we have waited a long time for a draft civil contingencies bill. Given that the draft bill which has now emerged is largely an enabling measure, it is not easy to understand why it has taken so long.

75. One explanation might be that the bill is just part of a wider set of arrangements designed to entrench resilience at all levels. The consultation document as well as describing the bill's civil protection provisions at the local level also sets out what is being and will be done at regional and national levels. The total package is elaborate and complicated. The Government must demonstrate that it is also necessary, robust and effective. We do not believe that it has yet done so.

76. The draft bill is as notable for what it omits as for what it contains. The regional and national arrangements are almost completely excluded. The vital safeguards which are intended to prevent misuse of the very extensive emergency powers are not in the bill. They seem to have no status beyond good intention.

77. Finally the extensive organisational initiatives are not matched by any increase in resources. The Government will face continuing scepticism over the priority it gives to improving national resilience as long as it is unwilling to devote the necessary resources to it. So, although we welcome the draft bill because there is a real need for new legislation, we will continue to urge on the Government that genuine resilience cannot be provided by bodies which are permanently overstretched.

8 Conclusions and recommendations

Introduction

1. We welcome the publication of the draft Civil Contingencies Bill. We believe that the public consultation on and pre-legislative scrutiny of the draft bill should be followed by prompt introduction of a bill in the new parliamentary session. (Paragraph 2)

The draft bill

2. We do not wish to add to the delay in making progress with this important legislation, but we are not persuaded that a draft bill could not have been produced soon enough to have provided for a consultation period which met the spirit of the Government's Code of Practice on Consultation and allowed a fair and adequate time for interested parties to express their views. As it stands, however, and given that the Joint Committee has until the end of October to report, we believe that the public consultation period should be extended by three weeks (ie to the beginning of October). (Paragraph 11)

An enabling bill

3. In the case of Part I we believe that the Government should aim to make drafts of the principal regulations available to the Joint Committee to assist its deliberations. In the case of Part II, we believe that the Joint Committee would find it helpful to have drafts of illustrative regulations available. (Paragraph 13)

Definition of emergency

4. We recommend that the Joint Committee clarify whether a serious threat to the UK Parliament would be included in the bill's definition of an emergency. (Paragraph 18)

Central Government

5. The Government should explain why the draft bill does not include provisions relating to central government's national responsibilities for civil protection. (Paragraph 24)

The Regional Tier

6. We are concerned that the proposals for Regional Nominated Co-ordinators risk repeating the problems with the concept of lead government departments which we raised in our report *Defence and Security in the UK*. They also place greater emphasis on specialist expertise than on the ability to provide leadership in times of crisis. (Paragraph 30)

7. We believe that the decision not to include the regional tier in the framework established by the draft bill requires a proper explanation. (Paragraph 33)

Local Tier

8. We believe that the Government must provide much more detailed information on the content of the regulations which Ministers propose to make under the draft bill. Without that information it is impossible to judge to what extent the Government intends to do more at local level than entrench existing best practice. (Paragraph 36)
9. The Government clearly believes that genuine resilience can only be secured by contributions from the local, regional and national levels. They have described the structures by which they expect it to be delivered. They must now demonstrate not only that each is needed but also that the elaborate machine which they have designed will work efficiently and will deliver a level of resilience significantly greater than could be achieved by the ad hoc, but often effective, arrangements which these proposals replace. (Paragraph 39)

Local responder bodies

10. We recommend that the Joint Committee explore the possibility of including some voluntary organisations as Category 2 Responders with the organisations. (Paragraph 42)
11. We believe that there are strong arguments for including the Armed Forces on Local Resilience Forums. (Paragraph 43)
12. In our view there are strong arguments for substantially increasing the membership of Category 2, although it might not be necessary that all the additional bodies be members of Local Resilience Forums. (Paragraph 46)
13. We believe that bodies owning or operating sites covered by the existing statutory arrangements for managing major accident hazards at industrial sites, or on oil and gas pipelines or radiation emergencies should be included in Category 2. (Paragraph 46)
14. We welcome the progress being made in regulating the private security industry and urge the Joint Committee to consider whether a private security industry which is governed by a statutory licensing regime should be included among those bodies given a statutory responsibility to co-operate in civil protection activities. (Paragraph 47)

London

15. The Joint Committee might consider whether the Armed Forces should be represented on the LRF analogous body in London. (Paragraph 51)

Resources

16. We are concerned that, if those bodies which are charged with promoting business continuity management do not have the resources to do it properly themselves, still less to promote it effectively, the exercise will be undermined from the outset. This is not an area in which ‘do as I say, not as I do’ is likely to be a persuasive argument. (Paragraph 57)
17. We are concerned that the level of funding proposed in the consultation document is inadequate for the responsibilities envisaged under the bill and we recommend that the Joint Committee examine this issue further. (Paragraph 58)

Provisions relating to emergency powers

18. We recommend that the Government list in respect of each of the major emergencies of the last ten years or so (eg floods, fuel crisis, foot and mouth, 11 September 2001) whether they would have used the powers in Part II had they been available. (Paragraph 60)
19. We believe that the Joint Committee should consider whether for certain types of emergency Ministers might require access to only some of the powers set out in Clause 21 and, if so, whether the bill should limit access to certain powers for certain types of emergency. (Paragraph 62)

The triple lock

20. We believe that the safeguards governing the use of emergency powers should be included in the bill. Powers of this type should only be used when absolutely necessary. There is clearly scope for these powers to be misused. It seems to us that the bill which provides the powers should also provide the necessary safeguards on their use. (Paragraph 63)

Human rights

21. We conclude that the provision to treat specialist legislative measures as primary legislation for the purposes of the Human Rights Act should not be included in the bill unless the Government can demonstrate a clear and compelling need for the additional powers which it provides. (Paragraph 68)

Parliamentary oversight

22. We believe that regulations made under Clause 2 of the bill should be subject to affirmative resolution by both Houses of Parliament. (Paragraph 71).
23. We believe that consideration should be given to whether the proclamation of an emergency, or its renewal, should require to be approved by Parliament, perhaps in the same way as the regulations made under it. (Paragraph 73)

Witnesses

Thursday 20 March 2003

Page

Sir David Omand KCB, Security and Intelligence Co-ordinator and Permanent Secretary, Cabinet Office and **Ms Susan Scholefield CMG**, Head, Civil Contingences Secretariat, Cabinet Office.

Ev 1

Wednesday 26 March 2003

Mr Roger Ching, Acting Chief Executive, Portsmouth City Council, **Ms Shelia Clark**, Chief Executive, Portsmouth City Primary Care Trust, **Captain Martin Putman**, Port Manager, Portsmouth Continental Ferry Port, **Chief Constable Paul Kernaghan QPM**, Hampshire Constabulary, **Mr Richard Mawson**, Chief Ambulance Officer, Hampshire Ambulance Service Trust, **Commodore Amjad Hussain**, Naval Base Commander, Portsmouth, **Mr Malcolm Eastwood, QFSM** Chief Fire Officer, Hampshire Fire and Rescue Service and **Major Simon Andrews**, Chief of Staff, 145 Brigade Aldershot, Ministry of Defence.

Ev 20

Wednesday 2 April 2003

Raynsford MP, Minister of State for Local Government and the Regions, Office of the Deputy Prime Minister, **Assistant Commissioner David Veness CBE QPM**, Specialist Operations, Metropolitan Police and **Mr Zyg Kowalczyk**, London Resilience Team.

Ev 39

Written evidence

Joint Security Industry Council	Ev 58
Ambulance Service Association	Ev 59
The Emergency Planning Society	Ev 60
The Office of the Deputy Prime Minister	Ev 60
The Chief and Assistant Chief Fire Officers Association	Ev 68
The Cabinet Office	Ev 68

Unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1 (Tel 020 7219 3074). Hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

Society of Industrial Emergency Services Officers
Mr Ian Hoult

Formal minutes

Wednesday 2 July 2003

Members present:

Mr Bruce George, in the Chair

Mr James Cran

Mr David Crausby

Mr Gerald Howarth

Mr Syd Rapson

Mr Frank Roy

Rachel Squire

The Committee deliberated.

Draft Report (*Draft Civil Contingencies Bill*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 73 read and agreed to.

Annex [Summary] agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Wednesday 2 July 2003 at 2.30 pm.]

Reports from the Defence Committee since 2001

Session 2002–03

First Report	Missile Defence	HC 290 (<i>HC 411</i>)
Second Report	Annual Report for 2002	HC 378
Third Report	Arms Control and Disarmament (Inspections) Bill	HC 321 (<i>HC 754</i>)
Fourth Report	The Government's Proposals for Secondary Legislation under the Export Control Act (Joint with Foreign Affairs Committee, International Development Committee and Trade and Industry Committee)	HC 620
Fifth Report	Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny (Joint with Foreign Affairs Committee, International Development Committee and Trade and Industry Committee)	HC 474
Sixth Report	A New Chapter to the Strategic Defence Review	HC 93

Session 2001–02

First Report	Ministry of Defence Police: Changes in jurisdiction proposed under the Anti-terrorism Crime and Security Bill 2001	HC 382 (<i>HC 621</i>)
Second Report	The Threat from Terrorism	HC 348 (<i>HC 667</i>)
Third Report	The Ministry of Defence Reviews of Armed Forces' Pension and Compensation Arrangements	HC 666 (<i>HC 115</i>)
Fourth Report	Major Procurement Projects	HC 779 (<i>HC 1229</i>)
Fifth Report	The Government's Annual Report on Strategic Export Controls for 2000, Licensing Policy and Prior Parliamentary Scrutiny (Joint with Foreign Affairs Committee, International Development Committee and Trade and Industry Committee)	HC 718 (<i>Cm 5629</i>)
Sixth Report	Defence and Security in the UK	HC 518 (<i>HC 1230</i>)
Seventh Report	The Future of NATO	HC 914 (<i>HC 1231</i>)

Government Responses to Defence Committee reports are published as Special Reports from the Committee (or as Command papers). They are listed here in brackets by the HC (or Cm) No. after the report they relate to.