



House of Lords
House of Commons

Joint Committee on the Draft
Civil Contingencies Bill

Draft Civil Contingencies Bill

Session 2002–03

Report and evidence



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

*Ordered by the House of Commons
to be printed 11 November 2003
Ordered by the House of Lords
to be printed 11 November 2003*

**HL Paper 184
HC 1074**

Published on 28 November 2003
by authority of the House of Lords and the House of Commons
London: The Stationery Office Limited
£0.00

The Joint Committee on the draft Civil Contingencies Bill

The Joint Committee on the draft Civil Contingencies Bill was appointed on 11 July “to consider and report on any draft civil contingencies Bill presented to both Houses by a Minister of the Crown” by the end of November 2003.

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Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House of Lords and House of Commons. All publications of the Committee (including press notices) are on the Internet at http://www.parliament.uk/parliamentary_committees/jcdccb.cfm.

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1 Introduction and Summary

1. We were appointed on 11 July “to consider and report on any draft civil contingencies Bill presented to both Houses by a Minister of the Crown” and to do so by the end of November 2003. The nature of the Parliamentary calendar, however, is such that only 11 of those 21 weeks were available for deliberation and the taking of evidence. This report therefore only covers the main issues that appear to us to be of major concern, making generalised recommendations on the substance of the Bill and how it might be improved. It contains only a few detailed proposed drafting changes. We should also record that the draft of the regulations to be issued under Part 1 of the Bill, which will identify the nature and extent of the duties to be imposed, were not available to us. We were therefore unable to consider their potential consequences on those that they may affect.

2. The Government has been engaged in wide-ranging consultation, since before the events of 11 September 2001, on the desirability of improving the UK’s resilience to disruptive challenge and the need to update the Emergency Powers Act 1920 and Civil Defence Act 1948. Those recent events however, led to a reappraisal of the range of concerns to be considered, and it was not until June 2003 that the draft Bill was published¹ with explanatory notes, regulatory impact assessments, and a consultation document.

3. Given the limited time available to us, we decided not to issue a call for evidence but to rely instead on the responses to the Government’s own Consultation Document, which went to a wide range of representative organisations. We did however seek written comments on some specific issues from academic lawyers and representative organisations that are closely involved in contingency planning, and took oral evidence from a limited number of witnesses. We appointed as specialist advisers Dr James Broderick, Professor Clive Walker and Mr Garth Whitty and are most grateful to them for their advice and expertise, which have greatly assisted this inquiry. We were also guided in our deliberations by some valuable comments from the House of Commons Defence Committee², the Joint Committee on Human Rights³, the House of Lords Select Committee on the Constitution⁴, the House of Commons Transport Committee⁵ and the House of Lords Delegated Powers and Regulatory Reform Committee.⁶ We were not however, able to take account of the House of Commons Science and Technology Committee’s Report on “The Scientific Response to Terrorism”⁷, which was published on 6 November, after we had completed our deliberations.

The Purpose of the Bill

4. The draft Bill is “enabling” legislation, seeking (a) to create a statutory duty on the part of local bodies to develop contingency plans for dealing with a range of emergencies, and

1 Cm 5843.

2 Seventh Report of Session 2002-03 HC 557.

3 Fifteenth Report 2002-03 HC 1005 HL Paper 149 14 July 2003.

4 Memorandum from the House of Lords Select Committee on the Constitution, Appendix 1.

5 Memorandum from the House of Commons Transport Committee, Appendix 2.

6 Memorandum from the House of Lords Select Committee on Delegated Powers and Regulatory Reform, Appendix 3.

7 HC 415-I.

(b) to provide powers for the Government to make regulations to deal with proclaimed emergencies. It is in three parts and contains two schedules:

- Part 1 (clauses 1 to 16) would apply only in England and Wales and sets out local arrangements for civil protection. It imposes on certain local bodies, described as Category 1 Responders, a statutory obligation to prepare plans for dealing with the wide range of civil emergencies defined in clause 1. Their duties will be outlined in more detail by regulations still to be published. Organisations listed as Category 2 Responders would be statutorily obliged to cooperate with the emergency planning and response processes and to share information with Category 1 Responders.
- Part 2 (clauses 17 to 30) would apply to the whole of the United Kingdom and replace the Emergency Powers Act 1920 and the Emergency Powers Act (Northern Ireland) 1926. Under the draft Bill, a declaration of emergency can be made either by proclamation by Her Majesty or by a Secretary of State if he or she believes that a proclamation may occasion “serious delay”.⁸ Clause 20 confers the power on Her Majesty or the Secretary of State to make regulations to control, prevent or mitigate the effects of an emergency, while clause 21 outlines their scope. A declaration of emergency can be made at a regional rather than national level.
- Part 3 deals with repeals, commencement and the short title.
- Schedule 1 lists what are described in Part 1 as Category 1 and 2 Responders.
- Schedule 2 is a comprehensive list of repeals, including the Emergency Powers Act 1920 and the Civil Defence Act 1948.

5. We agree with the large majority of stakeholders who have shown general acceptance of the principle set out in Part 1, namely that local bodies should have a statutory duty to make contingency plans for dealing with a wide range of emergencies and Government should have a role in ensuring national consistency. We have concerns, however, that the draft Bill lacks sufficient detail or provides adequate safeguards against potential misuse. In the absence of publication of the regulations and guidance, we agree that the draft Bill is something of “a ‘leap of faith’ ... because we cannot judge the legislation until we see the content of the regulations and also the funding”.⁹

6. Our consideration of the draft Bill has been undertaken in the knowledge that it is an enabling measure which may not be invoked for a generation or more. Our concern, particularly in respect of Part 2, is to ensure that the Bill does not provide any exploitable opportunity to misuse emergency powers and potentially, in a worst case scenario, allow for the dismantling of democracy. In the course of his evidence, the Minister in charge of the draft Bill referred several times to the need to achieve “balance” in the provisions. In our view, given the nature of the legislation, the emphasis should be on precision and clarity, to ensure that the principles of democracy cannot easily be undermined.

8 Draft Civil Contingencies Bill, Part 2, clause 19(1)(c).

9 Q 128, Mr Richard Davies (Leeds City Council).

Definitions of Emergency

7. Both Parts 1 and 2 of the draft Bill provide very similar definitions of an emergency, the main difference being that Part 2 refers to a threat to “welfare”, rather than “human welfare” as in Part 1, and a threat to human welfare under Part 2 is not inclusively defined, as it is under Part 1. The draft Bill defines an emergency as an event which presents a “serious” threat to: human welfare; the environment; political, administrative, or economic stability; and the security of the UK or part of it. These are then defined in further generalised terms.

8. An exceptionally wide range of events or situations may give rise to a threat within the meaning of the draft Bill, including political protests, computer hacking, a campaign against banking practices, interference with the statutory functions of any person or body, an outbreak of communicable disease, or protests against genetically modified crops, among many others.¹⁰ We believe that the definition is drawn too widely in both Parts, especially in Part 2, where it could trigger substantial emergency powers. We suggest that key terms, such as “serious”, “essential” and “stability” must be defined within the Bill and that there needs to be a clear and objective trigger for action under Part 1 and 2. (Chapter 2)

Category 1 and 2 Responders

9. The Bill’s Schedule 1 lists the organisations to be included as Category 1 and 2 Responders. Category 1 Responders will have a statutory duty to assess and plan for an emergency, with further details to be laid out in regulations made under the Bill. At present, they include local authorities, emergency services, ambulance trusts, the Environment Agency and the Secretary of State in relation to maritime and coastal matters. Category 2 Responders include utility companies, railways, airports and harbour authorities and the Health and Safety Executive. They will be required, through regulations to be published under the Bill, to join with Category 1 Responders to establish arrangements for better communication, cooperation and information sharing.

10. The Government’s Consultation Document asked stakeholders whether they thought the list was appropriate and we sent a separate letter to key NHS bodies and organisations in the energy, food and media sectors, asking whether they believed they should be included as a Category 1 or 2 Responder. We agree with a significant number of consultation responses, who questioned the role and statutory responsibilities of central, regional and devolved government. We believe that their status should be clarified and be subject to the same statutory duty as that imposed on Category 1 Responders. We recommend that key bodies within the NHS should be included in Category 1 and 2 and that Category 1 Responders should be given a statutory power to include voluntary sector organisations in planning for an emergency. We also suggest that Category 1 Responders should have the flexibility to select the most appropriate local voluntary organisations in planning and training exercises. (Chapter 3)

¹⁰ As identified by the Joint Committee on Human Rights, Fifteenth Report 2002-03 HC 1005 HL Paper 149 14 July 2003, 3.11.

Human Rights

11. The draft Bill itself does not appear to contain any specific encroachment on human rights, but it is an enabling Bill under which regulations could be made which do breach such rights. Clause 25 for instance, would allow for regulations to “be treated as if it were an Act of Parliament” for the purposes of the Human Rights Act. We do not believe that the Government has demonstrated a clear and compelling need for clause 25 and agree with the Joint Committee on Human Rights that it “would, if enacted, give rise to a significant risk that regulations could be made which would violate, or authorise a violation of, Convention rights, without any judicial remedy being available for a victim of the violation”.¹¹

12. We are concerned that regulations should not be able to contravene any of the inalienable rights protected under the European Convention on Human Rights. We recommend that the Bill prohibit regulations which would breach any of the Convention rights from which it is not possible to derogate or any provision in the Geneva Conventions. (Chapter 4)

Constitutional Issues

13. The list of possible constitutional issues raised by the draft Bill is extensive. Clause 21(3)(j) allows regulations to disapply or modify any Act of Parliament. In the wrong hands, this could be used to remove all past legislation which makes up the statutory patchwork of the British constitution. We believe that the Bill should list a number of fundamental parts of constitutional law that should be exempt from modification or disapplication. We suggest that regulations under Part 2 should be published from time to time and be subject to the same safeguards as primary legislation. One feature of some past emergency legislation is that it lapses after a set time unless renewed. We recommend that the powers in Part 2 should expire every five years from Royal Assent unless renewed beforehand by an order subject to the affirmative procedure. (Chapter 5)

Funding

14. At present, the top tier local authorities (Counties, Unitaries, Metropolitan Boroughs and London Boroughs) receive annual ring-fenced funding for emergency planning of just over £19 million through the Civil Defence Grant. It has been estimated that this is only 50 percent in real terms of 10 years ago and that local authorities currently contribute an additional £17 million from their own local resources over and above the £19 million they receive from Government.

15. The Government claims that the new statutory duties will impose negligible additional costs (after allowing for the “voluntary” expenditure local authorities already make),¹² but we have heard from many local authorities that the new statutory duties cannot be undertaken without further drains on their budgets. Without knowing the detail of the regulations governing those duties, we are not in a position to develop an informed view,

¹¹ Fifteenth Report 2002-03 HC 1005 HL Paper 149 14 July 2003, para 3.35.

¹² In the Regulatory Impact Assessment (para 76) and the Consultation Document (chapter 3, para 35, p 20).

but the balance of probabilities is that there will indeed be a requirement for new money. We have heard unanimity that Government should meet the costs of emergency planning.

16. While we believe that there is a good case for central government to meet all emergency planning costs, the debate and the final decision need to be informed by facts, not assumptions. We believe that the Government should initiate, as a matter of urgency, a comprehensive review of the funding provision once the detail of the regulations is known. (Chapter 6)

Audit and Management

17. The Government considers that existing mechanisms are sufficient to ensure robust performance management, and has concluded that there is no need to establish an inspectorate to ensure operational effectiveness and financial efficiency. We share the view of the Association of Chief Police Officers (ACPO)¹³ that a dedicated civil contingencies inspectorate would better manage an inter-disciplinary environment, and enhance the profile of the process as a whole.

18. There is also some concern about crisis management in general. We recognise the merits of the “lead department” concept in terms of providing advice, but believe that the critical role of the Regional Nominated Coordinator in England (Emergency Coordinator in Scotland, Wales and Northern Ireland) should be allocated to an individual with proven management skills, preferably in crisis management. We also believe that the planning process would be enhanced through the creation of a Civil Contingencies Agency, which would incorporate the dedicated inspectorate. This would act as a source of advice on a range of contingency planning issues and should report annually to Parliament through the Home Secretary. (Chapter 7)

The Regional Tier

19. The proposed regional tier will be based, in England, on the Government Offices of the Regions, but at national level in Scotland, Wales and Northern Ireland. The Government suggests that the regional tier will have a coordinating role between central government and the region, and between regions and their local Responders.¹⁴

20. There is no mention of the regional tier on the face of the draft Bill, apart from clauses outlining the appointment and duties of Regional Nominated Coordinators. We are concerned by the absence, in England, of a statutory basis for regional governance by appointees. We believe that the role of the regional tier should be detailed in statute on the face of the Bill; that it should be subject to the same range of performance criteria as local Responders; and that the role of democratically elected members on the regional bodies should be consistent across all regions.

21. The Bill allows for proclamation of an emergency to be made at a regional level. We question the wisdom of the intention, in England, to use the Government Office regions as its basis. These regions have been created for administrative convenience, are often very

¹³ Memorandum from the Association of Chief Police Officers, Ev 21, Q9.

¹⁴ Consultation Document, chapter 4.

large and do not have a separate legal personality.¹⁵ We suggest that Part 2 should include the flexibility to proclaim emergencies in geographical rather than administrative areas in circumstances which so dictate. (Chapter 8)

15 Q 283, Mr Alexander (Minister of State, Cabinet Office).

2 Definitions of Emergency

Background

22. The term emergency is defined twice in the Bill, in clause 1 at the beginning of Part 1 (which applies only to England and Wales) and in clause 17 at the beginning of Part 2 (which applies to the whole of the UK).

23. In the Bill, an emergency is defined as a “serious threat” to:

- human welfare
- the environment
- political, administrative or economic stability
- the security of the UK or a part in it.

24. Each of these “threats” is then defined in further detail:

- A threat to human welfare (“welfare” under Part 2) includes a loss of human life, human illness or injury, homelessness, damage to property, disruption of the supply of food, water, energy, fuel or another essential commodity, disruption of communications, facilities for transport, medical, education or other essential services. This list is inclusive under Part 1 but not under Part 2.
- A threat to the environment encompasses contamination with biological, chemical or radioactive matter or fuel oils, flooding, or disruption or destruction of plant or animal life.
- A threat to political, administrative or economic stability includes disruption to the activities of the Government, the banks or other financial institutions, or to the performance of public functions.
- A threat to security includes war, armed conflict or terrorism.

25. The major difference between the definitions is that Part 2 refers to a serious threat to “welfare” rather than “human welfare” as in Part 1, and that a threat to human welfare under Part 2 is not inclusively defined, as it is under Part 1. As the draft Bill uses basically the same definition in Parts 1 and 2, we have considered them as a single definition, except where we consider the points that distinguish them. We also consider, in paragraphs 27-28, the case for creating separate thresholds in each Part.

26. We have identified several issues of potential concern:

- Use of same definition in both Parts
- The breadth of the definition
- The “triple lock” safeguards
- Emergency as “threat to human welfare”

- Issues of ambiguity.

Use of same definition in both Parts

27. As already noted, the definition of emergency is virtually identical in both Part 1 and 2, even though each Part serves entirely different purposes. Part 1 is concerned with the preparation of contingency plans, while Part 2 is concerned with events which could justify the invocation of emergency powers. However, the kind of major incident for which civil contingency plans should be prepared, under Part 1, will only rarely call for the use of emergency powers under Part 2. It is our view that the use of extensive emergency powers under Part 2 requires a higher threshold for action than that required under Part 1. We would therefore question the merit of using virtually identical definitions of emergency in both Parts.

28. The two Parts of the draft Bill serve different purposes and provide for qualitatively different action. We recommend that the Government include, in a sufficiently robust and objective clause, an additional set of criteria which must be satisfied before a declaration of emergency under Part 2 can be made. This would be in addition to the ‘triple lock’ test (see paragraphs 33-42 below).

Breadth of definition

29. The Government states that the definition is “designed to be highly inclusive, encompassing circumstances as diverse as severe flooding, a major chemical attack, disruption of fuel supplies and epidemics”.¹⁶ This approach would seek to enable flexibility and adaptability to be built into the legislative framework, which could then be used as authority to act decisively should novel or unforeseen events occur.

30. In our view, however, this “highly inclusive” approach has led to ambiguous terminology and unclear thresholds and triggers, raising concerns about the Bill’s potential for misuse. In Part 1, which only enables government to issue regulations for the preparation of contingency plans, a lack of clarity about what constitutes an emergency may raise issues about resources and respective responsibilities of local Responders but is otherwise the less serious of the two outcomes. It does not separately prescribe action to be taken in crisis situations. Under Part 2, however, which would allow Ministers to declare a state of emergency and assume extensive and potentially draconian powers, the possible consequences of an insufficiently clear definition are of far greater concern.

31. As currently drafted, the definition of an emergency could include a wide range of events or situations. The Joint Committee on Human Rights’ report has already identified a number of situations where emergency powers under this Bill could be deployed, including strikes, political protests, computer hacking, a campaign against banking practices or protests against genetically modified crops.¹⁷ Witnesses and responses to the Cabinet Office consultation have commented that the definition is so wide as to encompass events which are already routinely dealt with by emergency services.

¹⁶ The Draft Civil Contingencies Bill Explanatory Notes, para 41, p27.

¹⁷ Fifteenth Report 2002-03 HC 1005 HL Paper 149 14 July 2003, 3.11.

“The definition as given in the Bill would include a number of events to which the emergency services respond every day”.¹⁸

“The definition as it stands does not include an element of scale and could therefore apply to a relatively minor road traffic accident or small fire”.¹⁹

“Under the current definition an emergency could be declared following the destruction of one property”.²⁰

32. We concur with the conclusion of the House of Lords Select Committee on the Constitution that the current definition is unduly broad.²¹

“Triple lock”

33. The Government has sought to outline certain conditions that must be met before a state of regional or national emergency can be declared. These are described as the “triple lock” of seriousness, necessity, and geographical proportionality.²² We believe that in order for this to be an effective safeguard against potential misuse, the triple lock must be significantly strengthened.

34. A number of consultation responses and the Defence Committee’s report²³ echo our own concern that the triple lock is not readily identifiable within the draft Bill and that Ministers are not statutorily obliged to assess a situation against the triple lock criteria before declaring an emergency.²⁴

35. The Government has told us that the triple lock is reflected in various clauses in Part 2, including clauses 17, 18, 19 and 21.²⁵ Given the confused and hurried circumstances in which an emergency is likely to be declared, when the only guidance to the Government of the day may be the legislation itself, it is vital that safeguards against misuse are made as clear on the face of the Bill as possible. We do not believe that scattering the three issues across the Bill gives it the clarity, visibility or importance necessary for a major safeguard against misuse.

36. In the light of the above, we welcome the Minister’s statement when he gave evidence on 16 October. Although he declared himself satisfied that the triple lock was as robust in its present form as it would be in a single clause, he nevertheless agreed:

“there is no reason why the triple lock cannot be gathered together from the various clauses of the draft Bill and presented in a single clause and if the Committee were so minded to recommend it, that would be something that would weigh heavily in

18 Q 36 Mr Goldsmith (ACPO).

19 Memorandum from the Royal Borough of Kensington & Chelsea, Ev 264, question 1.

20 Memorandum from the East Riding of Yorkshire Council, Ev 209, question 1.

21 Memorandum from the House of Lords Select Committee on the Constitution, Appendix 1, para 6.

22 Consultation Document, chapter 5, para 19, p28.

23 Seventh Report 2002-03 HC 557 2 July 2003, para 64, p23.

24 Memorandum from Torbay Council, Ev 275, question 16; Memorandum from Dudley Metropolitan Council, Ev 205, question 16.

25 Clauses 17 and 21 refer to the seriousness of a threat or effect, clauses 18 and 19 require that a proclamation be necessary, and clause 21 (4)(f) contains the principle of proportionality in geographic terms. See Questions for the Bill Team, Appendix 9, question 8.

the Government’s deliberations about translating this from a draft Bill into a Bill that would be introduced in due course”.²⁶

37. We recommend that the triple lock should be explicitly stated in a single or adjoining clauses on the face of the Bill, rather than mentioned in discrete sections. It should be a statutory condition that the triple lock test is applied before a declaration of emergency can be made.

38. We believe that the triple lock tests, as drafted, are insufficiently objective or clear to create a robust safeguard. Clauses 17 and 21 refer to the seriousness of a threat or effect, clauses 18 and 19 require that a proclamation/declaration is necessary, and clause 21(4)(f) contains the principle of proportionality in geographic terms. We consider these tests to be defective in the following respects:

- There is no express requirement of objectivity in any of the tests. The absence of the word “reasonableness” does not rule out review, for example, by the courts. However, it would signal a more rigorous standard of the exercise of powers and *ex post facto* review if it were to be included. We do not consider it to be acceptable that the existence of these conditions is exclusively for the Government to discern at will.²⁷
- The term “necessity” is left unexplained, except in clause 21(4)(e) where it is specified that the use of legal powers and resources normally available without the invocation of the Civil Contingencies Bill will not be sufficient to deal effectively with the emergency. These notions should apply to other appropriate clauses in the Bill.
- Proportionality is explained in purely geographical terms. However, we consider that proportionality should also apply to the exercise of powers at three key points: when an emergency is declared, when the regulations are issued and when the regulations are applied. We are concerned about a ‘one size fits all’ approach, which might see powers triggered that are not proportionate to the emergency occurring. The notion of proportionality has been inserted into other recent legislation dealing with the rights of the individual, including the Anti-terrorism, Crime and Security Act 2001²⁸ and the Regulation of Investigatory Powers Act 2000.²⁹

39. We recommend that the triple lock include a test which measures whether the use of powers is proportionate to the nature of the emergency, as well as providing for geographical proportionality. The test of “reasonableness” should be inserted into the triple lock. The “seriousness” test (see paragraph 58) should be made more robust, given that “serious” is not defined anywhere in the Bill. The opening phrase in clause 21(4), “without prejudice to the generality of subsection (1)(a)” should be removed.³⁰ It is confusing and can only undermine what is otherwise the clear intent of clause 21(4). Unless these recommendations are followed, there is a substantial risk that the

26 Q 250, Mr Alexander (Minister of State, Cabinet Office).

27 This seems to be suggested in the Consultation Document, chapter 5, para 20, p 28.

28 See the Anti-terrorism, Crime and Security Act 2001, sections 17 and 19.

29 The use of powers under the Regulation of Investigatory Powers Act 2000 is qualified by the inclusion of the sub clause “that the taking of the action is proportionate to what the action seeks to achieve”, see sections 5,22,23,28,29,32,49, 51,55 and 73-5.

30 Memorandum from David Bonner, Ev 178, para 15.

idea of the triple lock in the Consultation Document³¹ will remain little more than rhetoric.³²

40. Additionally, as drafted, the triple lock seems to act as a mechanism to ‘weed out’ non-emergency situations which the overly broad definition of an emergency has inadvertently caught. We recognise its potential value as an additional threshold that must be surmounted before a declaration of emergency can be made, but the triple lock is not a substitute for an undesirably loose definition of emergency.

41. The Minister in charge of the Bill told us that the Government was considering putting a more explicit trigger on the face of the Bill. He suggested three possibilities: including a proportionate scale of emergency, “where a threat to a portion of the community or the community itself is deemed to be one of the criteria having to be met”; better defining the notion of serious; or an additional test that could be added to the Bill, perhaps “linked to the exercise of Responders in circumstances of emergency”.³³

42. We welcome this response. While we acknowledge the concept of a triple lock as an additional threshold, it cannot replace the need for a clear, objective and proportionate definition of an emergency.

Emergency as the ‘threat to human welfare’

43. In Part 2, the definition of emergency refers to a serious threat to “welfare”, rather than “human welfare”. The Government has told us that there is no qualitative difference between the two definitions, but that “parliamentary counsel said that he would have used the same terminology if he could but he felt the difference in structure meant a different wording was needed”.³⁴ While there may be different structures between the two Parts of the Bill, we are not convinced that the search for drafting elegance is sufficient reason for minimising the importance of the threat to human welfare.

44. We therefore recommend that the term “human welfare” be explicitly incorporated into the definition of emergency in both Parts of the Bill.

45. Under the Emergency Powers Act 1920, an emergency is defined as an event which has or may interfere with the supply and distribution of food, water, fuel, light or transportation, thereby depriving all or part of the community of the essentials of life.³⁵ The Bill significantly widens this definition; a threat to human welfare constitutes but one of many components, and is not a prerequisite for all eventualities. Threats to the environment, to political, administrative or economic stability, or to the security of the UK can be regarded as an event justifying the deployment of emergency powers, whether or not they represent a threat to the people.

31 Chapter 5, para 19, p 28.

32 See also Defence Committee, Seventh Report of Session 2002-03 (HC 557), para 64.

33 Q 243, Mr Alexander (Minister of State, Cabinet Office).

34 Q 241, Ms Lane (Legal Advisor, Cabinet Office).

35 The Emergency Powers Act 1920 defines an emergency as “[an event] of such a nature as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life”.

46. Civil rights experts have told us that this definition strays too far from the core basis of what an emergency is:

“There may be room for slight improvement on the 1920 definition, but not the extended broad definition of public emergency that is offered in this Bill, which does not cut to the heart of the kind of emergency, the basic threat to existence for significant numbers of people should be the only scenario that is sufficient for ousting parliamentary jurisdiction”.³⁶

“We are not defending the language of the 1920 Act as perfect, but the core concept is one of ensuring public safety and physical well being”.³⁷

47. We consider that the core of an emergency, particularly one meriting substantial emergency powers, is the threat to human welfare. We cannot envisage justifying the use of potentially draconian emergency powers if there was no demonstrable threat to human welfare. Including this as a key component of the definition of emergency would further ensure that the use of emergency powers would be limited to protecting the welfare of the population, rather than the welfare of the state. This issue is explored further in paragraph 49.

48. We recommend that the definition of an emergency is re-drafted to reflect that an emergency is a situation which presents a threat to human welfare.

Political, administrative or economic stability

49. Clauses 1(1)(c) and 17(1)(c) extend the definition of an emergency to include an event or situation which presents a threat to political, administrative or economic stability. This could include disruption to the activities of the Government, banks or other financial institutions, or to the performance of public functions. Emergency powers could therefore be triggered by events which threaten the essentials of life for the government, as well as events which threaten the essentials of life for the community. These two points of focus are not necessarily compatible. In protecting the government, emergency powers could potentially be used *against* the civil population.

50. No distinction is drawn in this clause between essential and non-essential functions. As drafted, a serious threat of disruption to a non-essential government activity or public function could activate the use of emergency powers. In a worst-case scenario, “the Government could, in principle, declare a state of emergency and suspend all primary legislation if faced with potential political instability”.³⁸ It has also been pointed out that:

“political, economic or security issues...are an unnecessary duplication and are simply one of the many events or situations which would require an emergency to be declared under the first two criteria of the definition due to the disruption to human welfare or the environment”.³⁹

36 Q 197, Ms Chakrabarti (Liberty).

37 Q 197, Dr Metcalfe (JUSTICE).

38 Memorandum from Liberty, Ev 87, para 20.

39 Memorandum from the East Riding of Yorkshire Council, Ev 209, question 1.

51. While we do not envisage that the present Government, or any political party represented in Parliament, plans to trigger emergency powers in the event of a threat to its own existence, it is imperative in this Bill, as in other proposed enabling legislation, that such hostages to fortune should not be left available for deployment against future generations.

52. We have grave reservations about allowing enabling legislation to contain exploitable opportunities that could give the government of the day the power to protect its own existence when there may be no other threat to human welfare. We recommend that this clause should only remain in the Bill if it can be demonstrated that situations occurring under it will also present a threat to human welfare or safety. It should only cover those threats to human welfare caused by disruption to essential services.

Educational Services

53. One of the threats to human welfare is identified as one that causes or may cause disruption of educational services. While events that may cause disruption to educational services are serious matters, they do not necessarily constitute an automatic threat to human welfare. Education is not included as a basic essential of life in the European Convention on Human Rights, nor are educational services considered ‘essential’ in international labour law.⁴⁰ In evidence, the Minister said that he could not think of an example where disruption of educational services would warrant the use of emergency powers and signalled his willingness to re-consider its inclusion.⁴¹

54. While education is an important service, we can see no reason why a threat to educational services should, of itself, warrant the use of extensive emergency powers. We therefore recommend that educational services should be removed from clauses 1(2)(h) and 17(2)(h).

Issues of ambiguity

Seriousness of “a threat”

55. As the Bill currently reads, the existence of an emergency is judged according to the seriousness of a “threat”, rather than the seriousness of a potential outcome: “it attempts to define the causes rather than the effects of the emergency”.⁴²

56. This seems to be at odds with the approach in other legislation. The definition of ‘terrorism’ in the Terrorism Act 2000 requires a threat of action involving serious harm, rather than a serious threat of action involving harm.⁴³ Slightly to our surprise, the Cabinet Office told us that parliamentary counsel has advised “quite clearly that the natural

40 Memorandum from David Bonner , Ev 178, para 1.

41 Q 294, Mr Alexander (Minister of State, Cabinet Office).

42 Memorandum from the East Riding of Yorkshire Council, Ev 209, question 1.

43 Terrorism Act 2000, Part 1.

meaning of the term serious threat to human welfare is a credible threat with serious consequences”.⁴⁴

57. In the interests of clarity, we recommend that the Bill makes explicit that the test of the existence of an emergency is judged according to the seriousness of its potential or actual consequences to human welfare.

Meaning of “serious”

58. An emergency is deemed to exist according to whether a threat is “serious”. Yet the Bill does not provide any explanation of what “serious” is held to mean. This term has been described as “open to differing interpretations and... difficult to quantify”.⁴⁵

“I would definitely like to see some sort of elucidation of what is implied by “a serious threat”. That can mean many different things to different people”.⁴⁶

“The term “serious threat” is woolly and therefore guidance is necessary to determine what would trigger an event that was considered to be a “serious threat”. Without guidance or a stronger definition within the Bill, there may be inconsistency of approach across the country”.⁴⁷

59. *Dealing with Disaster*, the Cabinet Office’s guidance to emergency planners and local Responders, defines a major emergency as an event or circumstance “...on such a scale that effects cannot be dealt with by the emergency services, local authorities and other organisations as part of their normal day to day activities”.⁴⁸ There has been wide support in consultation responses for including this definition in the Bill or using it, in Part 1, to replace the existing definition:

“The simple, single paragraph definition from *Dealing with Disaster* is perfectly adequate. We can think of no situation, listed in the bill’s definition, which it could not be deemed to cover”.⁴⁹

“The definition contained in *Dealing with Disaster* gives a far clearer trigger for a major emergency”.⁵⁰

60. The Minister told us that the drawback of this definition was that it was a “relative notion of disaster”, which could be deemed to be conditional, according to the capacity of the emergency services in the area. He did however, signal his willingness to consider defining the term “serious”.⁵¹

61. We would suggest that emergencies are, by their very nature, relative. One reason an incident may develop into a crisis is the inability of existing capabilities to contain it. We do not propose that the definition in *Dealing with Disaster* should form the sole basis of a

44 Q 240, Ms Lane (Legal Adviser, Cabinet Office).

45 Memorandum from CACFOA, Ev 32, question 1.

46 Q 83, Mr Davies (Leeds City Council).

47 Memorandum from Tees Valley Chief Executives Group, Ev 272, question 1.

48 *Dealing with Disaster*, Cabinet Office, revised 3rd edition, 2003, para 1.5, p1.

49 Memorandum from NCCP, Ev 243, question 1.

50 Memorandum from Kent and Medway Towns Fire Authority, Ev 227, question 1.

51 Q 243, Mr Alexander (Minister of State, Cabinet Office).

definition of an emergency, but it is an example of the sort of threshold that should be crossed before the need for special legislation is considered.

62. We recommend that the *Dealing with Disaster* definition of a ‘major emergency’ be inserted into the Bill as one definition of the term ‘serious’.

Meaning of “stability”

63. Under the draft Bill, an emergency can be declared if there is a threat to political, administrative or economic stability. We have heard that the term ‘stability’ is inadequate for creating a clear and objective threshold:

“Stability is a very broad and unhelpfully vague term. A great deal of instability occurs in everyday life without causing an emergency of any particular kind”.⁵²

“From an emergency planning perspective I would like to see [the issue of stability] more closely tied to issues of human welfare so that we do not get drawn too far into the political sphere”.⁵³

64. In response to our request for a definition of “stability”, the Minister told us:

“The inclusion of Political, Economic and Administrative Stability is indicative of our desire to draw up a definition that reflects the full range of emergencies we might face in the future – an inherently unpredictable element. This comprehensive approach was endorsed by consultation.

This and other elements of the definition will be limited once we have a threshold in place”.⁵⁴

65. We recommend that the term “stability” is explicitly defined within the Bill, with reference to our recommendation that the core of an emergency is the threat to human welfare.

Open-ended definition

66. An event or situation which presents a threat to the welfare of a population is defined in both Part 1 and Part 2 by a list of consequences, including loss of human life, homelessness and human injury. In Part 1, a threat to human welfare is restricted to the list outlined on the face of the Bill: “an event or situation presents a threat to human welfare only if it involves, causes or may cause...”.⁵⁵ In Part 2 however, the list is a guide only: “an event or situation presents a threat to the welfare of a population if, *in particular*, it involves...” (emphasis added).⁵⁶

67. It is our concern that the term “in particular” leaves the definition of emergency entirely open-ended, at the mercy of a range of interpretations, and therefore potentially

52 Q 197, Dr Metcalfe (JUSTICE).

53 Q 83, Mr Davies (Leeds City Council).

54 Further Letter from Douglas Alexander MP, Minister of State, Cabinet Office, Ev 124.

55 Clause 1(2).

56 Clause 17(2).

open to abuse. According to this wording, a Minister can determine the criteria by which an emergency is judged to exist, and accrue significant emergency powers accordingly. Given that the definition of human welfare is limited in Part 1, it is surprising that it is left open-ended in Part 2, where the more serious powers can be triggered.

68. The Minister has told us that “this is not deemed to be an exhaustive list, but rather is an illustrative example of what we were endeavouring to do which was, where possible, to be explicit with people as to the range of possible reach of the legislation as drafted”.⁵⁷ In reply to further questioning he said “a balance has to be struck ... but there are very clear limits on the powers of the Secretary of State or government acting under the draft legislation as presently drafted, the foundation of that of course being the triple lock.”⁵⁸

69. We are not convinced that the definition of emergency should incorporate such a degree of latitude, or that the safeguards are robust enough to protect against possible misuse. We therefore recommend that the words “in particular” be removed from clause 17(2).

70. Under the draft Bill, emergency powers can be triggered by a threat to “another essential commodity” and “other essential services”. These terms are not defined in the draft Bill and seem dependent on Ministerial interpretation, to be determined at an unspecified date, potentially far in the future.

71. In his written response, the Minister said:

“The use of ‘essential’ in the draft Bill should be taken to have its usual meaning – necessary.

It is difficult to predict what will be essential in the future, just as there are essential commodities today which would not have been judged to be so in the past. The 1920 Act was reflective of its time – for example there is no reference to computers or electronic communications. Ultimately, the inclusion of this language is intended to ‘future-proof’ the legislation.”⁵⁹

72. While we recognise that the Government wishes to leave the definition wide enough to “cover the full spectrum of current and future events and situations”,⁶⁰ we suggest that this degree of latitude leaves the Bill wide open to possible misuse. The phrases “another essential commodity” and “other essential services” should be removed from the Bill. Any amendments to the Bill which may become necessary in the event of future, unforeseen events, should be enacted through proper parliamentary procedure, not left to the discretion of the Government of the day.

Overlapping Responsibilities

73. The definition of a threat to human welfare includes a disruption to an electronic or other system of communication⁶¹ and disruption to the supply of water, energy or fuel.⁶²

57 Q 248, Mr Alexander (Minister of State, Cabinet Office).

58 Q 249, Mr Alexander (Minister of State, Cabinet Office).

59 Further Letter from Douglas Alexander MP, Minister of State, Cabinet Office, Ev 124.

60 Consultation Document, chapter 2, para 7, p 13.

61 Clause 1(2)(f).

Utility companies have raised concerns about the risk of overlap between Category 1 Responders' duties and their own statutory responsibilities, outlined in other legislation.

“Firstly, we believe disruption of BT’s network on its own rather than as a by-product of a wider serious incident which involves several Category 1 and 2 Responders is something that we have the expertise and the process to deal with as BT, regardless of the causes of disruption... Government Responders are unlikely to have the required knowledge, skills or expertise to direct the details of a telecommunications recovery”.⁶³

[The definition] “introduces a parallel and potentially conflicting set of requirements to those already governing electricity distribution network operators, hindering consistency via the possibility of fragmented debates. It significantly exacerbates the potential problems on ambiguity of roles and duties of local authorities”.⁶⁴

74. We have heard that the utility companies have an existing statutory duty to undertake emergency planning for their areas:

“Electricity distribution network operators are already subject to extensive statutory and license requirements which deal with contingency planning, network resilience and response to failures of electricity supplies. These are common nationally set requirements, on which the DNOs⁶⁵ are regulated, and are required to adhere to”.⁶⁶

“United Utilities sees little advantage in being a Category 1 Responder. In both the water and electricity sectors, the regulatory environments require us to have the contingency plans and do the risk assessments already that the requirements under the draft Bill and the emphasis on Category 1 Responders’ duties would bring. So a lot of that proposed Category 1 accountability exists already within those two sectors”.⁶⁷

“BT have got detailed continuity plans which go from sustaining its cashflow down to a major mobile exchange capability to restore a smoking hole scenario”.⁶⁸

75. We recommend that the existing statutory responsibilities of the utility organisations are cross-referenced in accompanying regulations, to ensure that there is no ambiguity or overlap in emergency responses.

Public functions

76. As the Defence Committee’s report has already stated, the definition of public functions in Part 2 does not include the UK Parliament, although it includes Ministers and the devolved administrations.⁶⁹ The National Assembly for Wales, although included in Part 2, does not appear in Part 1, although this Part covers both England and Wales.

62 Clause 1(2)(e).

63 Q 321, Mr Turner (British Telecom).

64 Q 321, Mr West (Western Power Distribution).

65 Abbreviation for Distribution Network Operators.

66 Q 321, Mr West (Western Power Distribution).

67 Q 323, Mr Miller (United Utilities).

68 Q 353, Mr Turner (British Telecom).

69 Seventh Report 2002-03 HC 557, para 18.

77. We recommend that the UK Parliament should be included in Part 2 and the National Assembly for Wales and the UK Parliament be included in Part 1.

Threat to environment

78. Under the draft Bill an event may present a threat to the environment if it causes, or may cause, contamination of land, water or air with fuel oils. Concern has been raised that these terms are overly restrictive or inadequately defined:

“This is a potential loophole which raises the question of the status of other oils, such as lubricating oils and edible oils, all of which could pose a threat to the environment”.⁷⁰

“This definition of oil would appear to be unnecessarily restrictive as it would only apply to those refined products that are used as fuel in large power plants...A broader definition to cover all eventualities would be provided by replacing ‘fuel oils’ with ‘oil’ or ‘oil and its derivatives’”.⁷¹

79. A similar definition to this is used in other legislation, including the Merchant Shipping Act 1995.⁷²

80. There are also concerns about the definition of water, including threats from offshore events. For example, Gloucestershire County Council Fire and Rescue Service recommended that, “the definition of the word ‘water’ needs clarification because of the implications relating to local authority and shoreline clean up”.⁷³ Bristol City Council was concerned that “‘water’ should include... riverine, estuarial and seawater”.⁷⁴

81. We recommend that the Cabinet Office consider making clearer the definition of oil and water, in the light of the concerns that the Committee has heard.

70 Memorandum from NCCP, Ev 243, question 1.

71 Memorandum from the International Tanker Owners Pollution Federation Ltd, Ev 226, para 3.8.

72 The Merchant Shipping Act 1995 definition is: “‘oil’ means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;” and “oil residues” means any waste consisting of, or arising from, oil or a mixture containing oil” (clause 151(1)).

73 Memorandum from Gloucestershire County Council Fire and Rescue Service, Ev 221, question 1.

74 Memorandum from Bristol City Council, Ev 188, question 1.

3 Category 1 and 2 Responders

Background

82. The Bill's Schedule 1 lists the organisations to be included as Category 1 and 2 Responders. Category 1 Responders will have a statutory duty to assess and plan for an emergency, with further details to be laid out in regulations made under the Bill. Key duties will include risk assessment, maintaining plans to prevent or control an emergency, publishing assessments and plans, and maintaining arrangements to warn the public. At present, they include local authorities, emergency services, ambulance trusts, the Environment Agency and the Secretary of State in relation to maritime and coastal matters.

83. Category 2 Responders include utility companies, railways, airports and harbour authorities and the Health and Safety Executive. The Government told us that Category 2 currently includes "more than 400 private sector organisations".⁷⁵ They will be required, through regulations to be published under the Bill, to join with Category 1 Responders to establish arrangements for better communication, cooperation and information sharing.

84. The Government's Consultation Document asked stakeholders whether they thought the list was appropriate. We also sent out a separate letter to key NHS bodies and organisations in the energy, food and media sectors, asking whether they believed they should be included as a Category 1 or 2 Responder.

85. We heard, in evidence from the Government, that their intention was "to capture the people who are at the core of or are essential in cooperating with the local effort. What we are not seeking to do is capture everyone who has even the most peripheral interest in planning in certain local areas".⁷⁶ Organisations that are not included in Category 1 or 2 are not intended to be excluded from the planning process: "Bodies that are not covered by the list for Category 1 or Category 2 can of course still continue to be involved in local civil protection".⁷⁷

86. We have heard numerous suggestions about the inclusion of other organisations as Category 1 or 2 Responders. We note the Government's argument that Category 1 and 2 Responders should be focused on the core organisations at the heart of the emergency planning process and welcome the flexibility of the categories.⁷⁸ We consider below whether more local flexibility is required, given that different areas face very different threats. We also outline below the organisations that we believe ought to be added to the Category 1 and 2 lists.

Local flexibility

87. During the course of our scrutiny, a huge range of organisations have been suggested to us as suitable for inclusion in Category 1 and 2. It is evident that regional and local

75 Q 275, Mr Hargreaves (Head of Bill Team, Civil Contingencies Secretariat).

76 Q 280, Mr Hargreaves (Head of Bill Team, Civil Contingencies Secretariat).

77 Q 282, Mr Alexander (Minister of State, Cabinet Office).

78 The Consultation Document states that "Movement between the two categories will be possible under the Bill. New organisations may be added in future in either Category", chapter 3, para 14, p 18.

diversity means that many of the organisations that would be useful for emergency planning in say, Dartmoor, would be entirely inappropriate in London boroughs. This has led us to question whether the selection of organisations required to aid emergency planning should be allowed more local flexibility.

“There are also particular organisations whose cooperation may be vital to comprehensive planning, such as the operators of major shopping, leisure and sporting complexes. Equally the cooperation of the organisers of major public events is vital... It would probably be better to copy the existing Community Safety legislation, which enables a local authority to require the cooperation of any organisation which it considers has a role to play”.⁷⁹

“Agencies that are not listed in either Category 1 or 2 should, with consent of the Local Resilience Forum, be adopted (locally) on a temporary or permanent basis if appropriate”.⁸⁰

88. The Minister in charge of the Bill told us:

“A central part of the intention of the Bill is to ensure that there is a national framework. In that sense we are keen to ensure that there is a degree of coherence in terms of the planning and framework that are in place. Bodies that are not covered by the list for Category 1 or Category 2 can of course still continue to be involved in local civil protection”.⁸¹

89. We accept the Government’s intention to create a national framework, and acknowledge that it would be impractical to put every relevant regional or local organisation into Category 2. We do not consider that local flexibility need affect this national framework however, but will instead enhance Category 1 Responders’ abilities to ensure robust emergency planning in their area.

90. We recommend that Category 1 Responders should be able to require any person or organisation to cooperate in planning or training for a response to an emergency. This requirement should be reasonable, necessary, and only be imposed on those most conveniently placed to deal with an emergency, while not creating substantial burdens relative to the resources of any person. Any resources or services required by a person under this section should be paid for by the Category 1 Responder on the most favourable (to the Category 1 Responder) commercial terms.

Central and regional tiers

91. Part 2 of the Bill provides for the appointment of Emergency Coordinators (or, in England, Regional Nominated Coordinators) to coordinate an emergency response following the declaration of an emergency. No other reference to central government or regional government is made on the face of the Bill. Apart from functions related to maritime and coastal matters, central government departments and the regional tier are not given any statutory duties, and have no formal status in the process of contingency

79 Memorandum from NCCP, Ev 243, question 2.

80 Memorandum from Mid Bedfordshire Council, Ev 236, question 3.

81 Q 282, Mr Alexander (Minister of State, Cabinet Office).

planning set out in Part 1. Devolved administrations are required to be consulted before regulations are published (although this can be disapplied), but their own responsibilities are not explained and they do not have any statutory duty placed upon them.

92. Central and regional government are referred to in the Consultation Document, which outlines the substantive responsibilities that central government undertakes regarding civil contingencies: “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”.⁸² These mirror the responsibilities of those included as Category 1 Responders. Rather than having a statutory responsibility to undertake these duties however, the Government is working to “establish standards against which departmental contingency planning activities can be monitored and audited”.⁸³

93. The Government has acknowledged that the regional tier proved inadequate during the flooding and the fuel crises in 2000: “arrangements at a regional level were unpractised and led to a disparity in response across the affected areas”.⁸⁴ As a result, it has suggested that, “robust regional arrangements needed to be put in place”.⁸⁵

94. We have heard a range of views about the value and practicality of including central and regional government as Category 1 Responders. Several witnesses and consultation responses have suggested that placing statutory duties on central and regional tiers of government and devolved administrations would enhance the creation of a clear national civil contingencies framework:

“The Society is convinced that both central and regional arms of government should be subject to the statutory duties in order that we have this single framework throughout the land”.⁸⁶

“It is surprising that Government departments have “responsibilities to plan, prepare, train and exercise”, yet are not to be included in the draft Bill”.⁸⁷

“The absence of Government departments contradicts the ethos of response through the lead Government department principle”.⁸⁸

“Civil protection is too important an area of public life for statutory responsibilities not to be imposed on any of the agencies which have key roles”.⁸⁹

“We would certainly support regional government being involved as potentially a Category 1 Responder to provide that focus and coordination for regional response. It was our experience in both the fuel crisis and the foot and mouth outbreak... that we would have benefited from that in the early stages of the outbreak”.⁹⁰

82 Consultation Document, Chapter 5, para 5, p26.

83 *Ibid*, Chapter 5, para 6, p26.

84 *Ibid*, Chapter 1, para 4, p9.

85 *Ibid*, Chapter 1, para 4, p9.

86 Q 13, Mr Ward (Emergency Planning Society).

87 Memorandum from Kirklees Metropolitan Council, Ev 230, question 3.

88 Memorandum from Ceredigion County Council, Ev 198, question 2.

89 Memorandum from Brent Council, Ev 184, question 2.

90 Q 332, Mr Miller (United Utilities).

“Should the Welsh Assembly Government be listed as a Category 1 Responder, as it has responsibility for key funding on health, ambulances and other services?”⁹¹

95. We have heard from other witnesses that including central government in the Bill may not add much value to the process, as there are already non-statutory relationships and procedures in place:

“Certainly from a health perspective in England we would be looking for the Department of Health to be providing direction and control and operational co-ordination in a very major incident at a regional or national level anyway, and whether or not that was covered by the statute I suspect would not make an awful lot of different at all to the way we engage with them”.⁹²

96. Rhodri Morgan, First Minister of the National Assembly for Wales, told us that he did not think that the National Assembly for Wales should be a Category 1 or 2 Responder because it had qualitatively different functions from those already included in the list:

“no more than a Whitehall department - because we are not providers of the services. We are funders of the services, whether it is ambulance, health or, in the future after transfer, fire; but we are not the providers”.⁹³

97. However, in relation to foot and mouth, Mr Morgan told us that the Welsh Assembly was at the forefront of the response: “We did administer foot and mouth disease, even though we had no powers at all... We had to take *de facto* powers which we did not have and operate in a way which did not have legal backing, because that was the necessity of the situation”.⁹⁴

98. The Minister in charge of the Bill told us:

“It is difficult to see how a sensible, meaningful duty could be imposed on central Government by way of statute”.⁹⁵

99. We note however, that Category 1 already includes “The Secretary of State, in so far as his functions relate to maritime and coastal matters”.⁹⁶ Moreover, there are numerous examples of legislation imposing duties on Secretaries of State. Section 1 of the Police Reform Act 2002 requires the Secretary of State to prepare a national policing plan.⁹⁷ The Enterprise Act 2002 s118 imposes a duty on the Secretary of State to publish an agency's report subject to excisions.⁹⁸ The National Health Service Reform & Health Care Professions Act 2002 imposes a duty on the Secretary of State to establish Strategic Health Authorities and Health Authorities in Wales.⁹⁹

91 Memorandum from North Wales Police, Ev 248, question 3.

92 Q 309 Mr Kealy (West Yorkshire Strategic Health Authority).

93 Q 152, Mr Morgan (National Assembly for Wales).

94 Q 131 and Q 133, Mr Morgan (National Assembly for Wales).

95 Q 265, Mr Alexander (Minister of State, Cabinet Office).

96 Draft Civil Contingencies Bill, Schedule 1.

97 Police Reform Act 2002, Ch. 30, 1.

98 Enterprise Act 2002 s118.

99 National Health Service Reform & Health Care Professions Act 2002, Ch. 17.

100. The Minister also raised concerns that “there is a particular legal difficulty with [imposing a legal duty], in that Government Offices of the Regions do not have a separate legal personality and therefore to place a distinct legal burden upon them would be, to say the least, difficult”.¹⁰⁰ We wonder how the Government’s desire to make arrangements for the regional tier more robust¹⁰¹ can be achieved with a regional administrative centre that does “not have a separate legal personality”. In any case, we suggest that placing a statutory duty upon Secretaries of State will overcome this issue.

101. Given that central and regional government and the Welsh Assembly Government do in reality plan for and respond to emergency situations, we can see no reason for not according them a statutory duty to do so. At the moment, the Bill appears to be very ‘bottom heavy’, with all statutory duties being accorded to local providers and a cloak of invisibility being drawn over the regional and central tiers. It is entirely conceivable that a local emergency could turn into a regional one and then a national one. Given this potential, it is vital that the role of the regional and central tiers is clarified and codified, so that the chain of responsibilities is obvious to all. Without a statutory duty on central or regional tiers, it is difficult to see how the comprehensive national framework that the Government hopes to attain through this Bill can be achieved.

102. We recommend that the role and responsibilities of Government Departments, the National Assembly for Wales and regional government are outlined on the face of the Bill and that they are given a statutory duty to undertake their responsibilities.

Local government arrangements

103. County councils and Shire district councils are both included as Category 1 Responders, which in effect accords them the same duties and responsibilities. However, the Consultation Document states that, “county councils will take full responsibility for local authority civil protection planning in their area”.¹⁰² This has led to confusion about what the responsibilities of district councils will be and concern that their current role in emergency planning is being overlooked:

“The district council seeks better definition for the responsibilities within each Category. It cannot support the view that no additional resources are required to meet the wider scope and potentially higher standards envisaged by the Bill”.¹⁰³

“It is irrational to suggest that Shire counties take full responsibility for local authority civil protection planning in their area. Counties lack the resources, staffing and local expertise to effectively meet their proposed new responsibilities without the support of a District Emergency Planning Officer or equivalent in post”.¹⁰⁴

104. When we asked him to clarify matters, the Minister told us:

100 Q 283, Mr Alexander (Minister of State, Cabinet Office).

101 Consultation Document, Chapter 1, para 4, p9.

102 *Ibid*, chapter 3, para 10, p 17.

103 Memorandum from Rochford District Council, Ev 260, Part 1, para 2 and Part 2, para 2.

104 Memorandum from Exeter City Council, Ev 216, question 2.

“We believe the main civil protection burden will continue to fall on the counties as it does at present but the Bill will allow for clear roles and responsibilities and minimise duplication of effort. We have included districts in Category 1 because of their role in delivering key functions such as housing and environmental health”.¹⁰⁵

105. We recommend that the responsibilities, in England, of County councils and Shire District councils should be explicitly set out on the face of the Bill.

Fire and Civil Defence Authorities (FCDAs)

106. Under the draft Bill, FCDAs seem likely to be prevented from undertaking emergency planning arrangements on behalf of local authorities, as they have been doing in Tyne and Wear and Merseyside for several years. Several other FCDAs exist around England, although each has its own arrangements and duties. The Consultation Document states that “FCDAs will not exercise any aspects of the civil protection duties under the Bill on behalf of local authorities”.¹⁰⁶ No explanation is given as to why this should be the case, except that “Joint working... is not always appropriate”.¹⁰⁷ Some witnesses have strongly recommended that existing arrangements be allowed to continue:

“There is no reason in principle why the imposition of an obligation on all local authorities should necessarily result in joint and collaborative arrangements ceasing. On the contrary, if all local authorities have similar obligations, there is very good reason why they should work together”.¹⁰⁸

“I would advocate that good practice/excellent practice where it exists, such as Tyne and Wear, should continue”.¹⁰⁹

107. We recommend that the Government re-examine its stance and consider whether successful existing arrangements, such as Fire and Civil Defence Authorities, should be left in place.

NHS

108. We invited NHS organisations in England and Wales to comment on the fact that the only representatives of the Health Sector mentioned in the Bill were Ambulance trusts. All 22 replies contended that some or all of the NHS should be included as Category 1 or 2 Responders:

“there are very few (if any) areas of potential resilience response which do not have NHS implications”.¹¹⁰

“it is difficult to see how issues of availability, capacity etc of the NHS facilities could be addressed by anyone else”.¹¹¹

105 Q 277, Mr Alexander (Minister of State, Cabinet Office).

106 Consultation Document, chapter 3, para 31, p20.

107 *Ibid.*

108 Q 10, Mr Griffin (Local Government Association).

109 Q 10, Mr Ward (Emergency Planning Society).

110 Memorandum from Northumberland and Tyne & Wear Strategic Health Authority, Ev 248.

109. We heard from witnesses that certain parts of the NHS should be included in Category 1:

“I think it is appropriate to have in Category 1 strategic health authorities, PCTs¹¹² and acute trusts. I think this is a recognised admission... they may not be a blue light in terms of the London ambulance or the ambulance service at large, but certainly the response and the planning is well within the remit and it is a key responsibility of the strategic health authority and the PCTs”.¹¹³

“From a Wales perspective where the structure is slightly different we agree that it should be both trusts, the ambulance service and local health boards as Category 1 organisations”.¹¹⁴

“The National Public Health Service absolutely should be a Category 1 Responder, to my mind. Their role is vital in response to incidents that involve chemicals, biological agents and that type of incident”.¹¹⁵

110. We have heard that these parts of the NHS already undertake the emergency risk assessment and contingency planning required of Category 1 Responders:

“The work around risk assessment and planning, information sharing and actual incident response is all part of general major accident planning and emergency preparedness in SHAs¹¹⁶, NHS trusts and PCTs”.¹¹⁷

“All acute hospitals, PCTs, strategic health authorities and ambulance services in general have a responsibility to have an emergency plan with escalation triggered within those plans”.¹¹⁸

111. There were varying degrees of support for including the Health Protection Agency (HPA) as a Category 1 or 2 Responder:

“In terms of the Health Protection Agency within Wales and the National Public Health Service ... their role is vital in response to incidents that involve chemicals, biological agents and that type of incident”.¹¹⁹

“We would see the HPA very much as an advisory body providing advice and expertise to the NHS organisations ... and in that advisory capacity I am not sure it would be necessary for the HPA to be categorised as a formal Category 1 or 2 respondent”.¹²⁰

111 Memorandum from Ceredigion Local Health Board, Ev 201.

112 Abbreviation for Primary Care Trusts.

113 Q 299, Mr Pullin (South West London Strategic Health Authority).

114 Q 299, Mr Williams (North Wales Health Emergency Planning Group).

115 Q 307, Mr Williams (North Wales Health Emergency Planning Group).

116 Abbreviation for Strategic Health Authorities.

117 Q 302, Mr Kealy (West Yorkshire Strategic Health Authority).

118 Q 303, Mr Pullin (South West London Strategic Health Authority).

119 Q 307, Mr Williams (North Wales Health Emergency Planning Group).

120 Q 307, Mr Kealy (West Yorkshire Strategic Health Authority).

“It is important to note that by this time next year the HPA will not be part of the NHS and their role and responsibilities need to be clearly defined as a consequence of that transfer”.¹²¹

112. It has been proposed that the National Blood Service, medical gas supply companies or NHS supply companies are included as Category 2 Responders, because “we have to be confident in our response, in our planning arrangements, that those services behind us can support us in the event of a long-term destructive challenge”.¹²² It was also noted, however, that by including pharmaceutical organisations “the Category 2 list would become never ending as a consequence.”¹²³ We were also told that their inclusion may not be necessary as “there are emergency stores of mainline drugs around the country, both with the Ministry of Defence and the Ministry of Health, and it is something that the Department has access to on an as-required basis”.¹²⁴

113. In conclusion, we recommend that Category 1 also include (in England) Strategic Health Authorities, Primary Care Trusts, Acute Hospital Trusts, (in Wales) Local Health Boards, Public Health Services and the National Public Health Service for Wales.

114. We recommend that the Health Protection Agency, National Blood Service and Welsh Blood Service be included as Category 2 Responders.

Utilities

115. Electricity, gas, water and telecommunications companies are included as Category 2 Responders under the Bill. Paragraphs 73-75 have already outlined the utility companies’ concerns about an overlap in their own emergency planning duties under other legislation and the role of Category 1 Responders in this Bill.

116. We have also heard that the requirement for Category 2 Responders to provide information to all Category 1 Responders would cause utility companies practical and financial difficulty, not reflected in the Partial Regulatory Impact Assessment:

“Speaking on behalf of a business that covers Crewe to Carlisle in terms of area and about seven million population, we interface with six county level forums. The 4.5 staff who are dedicated to that interaction would struggle to interact at a local authority level, and it is not necessarily an advantage to interact at that level because many of the problems we might present to them for their resolution, or contribution to the resolution, can be addressed at a generic level”.¹²⁵

“At the moment it is me that supports the London resilience forum, and if I were to support another nine regional committees all wanting to start at the same time there

121 Q 307, Mr Pullin (South West London Strategic Health Authority).

122 Q 300, Mr Williams (North Wales Health Emergency Planning Group).

123 Q 308, Mr Pullin (South West London Strategic Health Authority).

124 *Ibid.*

125 Q 327, Mr Miller (United Utilities).

would be an issue not just of who would do it but what is the skillset if you were to put that under BT alone”¹²⁶.

“As drafted, the Bill provides for each and every Category 1 Responder to require every Category 2 Responder to cooperate, attend meetings etc. ... In WPDs case, it interfaces with over 45 county, county borough and district councils alone, let alone the other Category 1 Responders”¹²⁷.

117. Many of the utilities advocated interfacing at county or regional level, rather than at local level:

“We would certainly welcome a regional forum because having that regional footprint... particularly with our aqueduct network which stretches across that region, we have the scope to affect fairly quickly from a problem in Cumbria the citizens in Manchester for instance”¹²⁸.

“if we were called in at a regional level and that replaced the need to liaise at a local level, that would help, but the question would then be whether you would be able to go into the detail required for local authorities working at that level”¹²⁹.

“In respect of electricity we already interface with the county councils quite happily and successfully, and we would hope that they could take on the role of coordinating the interface with the local authorities below them”¹³⁰.

“Virtually all local authorities are represented at county level and we do have regular exchanges with them, but the implication of having more detailed and more extensive exchanges, as is perhaps implied in the proposals, would require additional resources on our part to manage, but that testing and challenge of the preparedness does go on at county council level”¹³¹.

118. The Government has acknowledged the utility companies’ concern and has proposed that utilities be involved at local resilience forum level, based on police force areas:

“Of course, utility companies do not always cover the whole country; they tend to cover a region, so realistically perhaps four or five interfaces with the local level for each utility company, which to our mind seems to strike the right balance in terms of the degree of involvement”¹³².

119. We conclude that the Government’s proposal to involve utilities at local resilience forum level represents a practical compromise.

126 Q 326, Mr Turner (British Telecom).

127 Memorandum from Western Power Distribution, Ev 141, paras 15-16.

128 Q 327, Mr Miller (United Utilities).

129 Q 326, Mr Tuner (British Telecom).

130 Q 328, Mr West (Western Power Distribution).

131 Q 329, Mr Miller (United Utilities).

132 Q 279, Mr Hargreaves (Head of Bill Team, Civil Contingencies Secretariat).

Voluntary sector

120. The Government has chosen not to include the voluntary sector as Category 1 or 2 Responders, because “the skills and expertise available to the voluntary sector may vary from place to place”.¹³³ In his evidence, the Minister in charge of the Bill said that:

“Our concern in terms of framing the legislation was to ensure that we did not impose legal duties on organisations which, by their character, were unable to necessarily secure a uniform level of provision or service across the entirety of the country”.¹³⁴

121. Their involvement in local multi-agency planning and response will however be encouraged in the forthcoming guidance to the Bill.¹³⁵

122. We have heard that the resources of the voluntary sector would be of great use in an emergency:

“I think that the role of the voluntary organisations is vitally important and, from my own area, I have one particular allegiance with the WRVS and they are absolutely superb in providing an excellent service in the back up to the emergency services”.¹³⁶

“we feel it is absolutely imperative that voluntary sectors are included as part of the planning organisations, but as part of the regional resilience committees and forums rather than as Category 1 or 2 Responders because we do feel it would be difficult to apply statutory responsibilities to voluntary organisations because of the obvious funding issues”.¹³⁷

“we believe voluntary agencies could quite probably be treated as Category 2”.¹³⁸

123. There is varying opinion within the voluntary sector about whether they wish to be included as a Category 1 or 2 Responder or could deliver the demands this would place upon them.

124. The Red Cross told us that they should be made a Category 1 Responder: “With this unique status as auxiliary to the statutory authorities in the humanitarian field we feel strongly that we would be failing in our duty if we did not come in and support statutory partners and give humanitarian relief and that is why we have asked to be designated a Category 1 Responder.”¹³⁹ The Red Cross later outlined a more flexible approach: “The Red Cross believes that the final legislation should place a statutory responsibility on Category 1 Responders to involve the relevant voluntary organisations in all aspects of civil protection. We are flexible as to how this might be achieved”.¹⁴⁰

133 Consultation Document, chapter 3, para 13, p 18.

134 Q 275, Mr Alexander (Minister of State, Cabinet Office).

135 Consultation Document, chapter 3, para 13, p18.

136 Q 19, Mr Ward (Emergency Planning Society).

137 Q 39, Mr Dobson (London Fire Brigade).

138 Q 41, Mr Goldsmith (Association of Chief Police Officers).

139 Q 359, Ms Beardshaw (Red Cross).

140 Q 370, Ms Beardshaw (Red Cross).

125. Whilst all of the voluntary organisations that we spoke to believed that they had a valuable role to play in planning for or responding to an emergency, most did not believe that they should have a statutory duty imposed upon them:

“I would like to stress that we see ourselves as giving assistance to and not assuming the principal role in providing support. We have some 30,000 volunteers, but we have to recognise that many of those volunteers also have other commitments and amongst our many volunteers are doctors, nurses and paramedics whose prime responsibility would be to respond principally to the National Health Service rather than St John Ambulance in times of emergency”.¹⁴¹

“It is the element of support in providing that which is in addition to that which is provided by the statutory services, which we feel is a very significant role and it is another dimension to the role that is provided in the case of an emergency and we would not want to commit ourselves to a task that we would not be able to fulfil perhaps in some locations”.¹⁴²

“We recognise the problems of having statutory status not just from the point of view of guaranteeing a level of service but actually influencing the relationship we have with our funders at a local authority level and we have been working hard to try and secure funding streams there to support the work that we do and if we were to become a Category 1 status body that may have an impact at that level”.¹⁴³

126. There was support for voluntary organisations to have a consultative role in emergency planning:

“we feel we should be consulted. We see ourselves as partners, albeit supportive partners and we believe we should be consulted by the Category 1 providers”.¹⁴⁴

“I think the obligation on Category 1 Responders to consult with the voluntary organisations would perhaps lead to a more consistent approach to emergency planning and the way the involvement of voluntary organisations is managed”.¹⁴⁵

“there needs to be some inclusive approach to the voluntary sector, something explicit within the Act, so passing the responsibility on the Category 1 or perhaps 2 Responders... what we should ultimately end up with is the voluntary sector appropriately involved in every aspect of civil protection”.¹⁴⁶

127. We have also heard concerns that local flexibility is vital if the most appropriate voluntary organisations are to be involved in emergency planning:

“Providing a list of who would be Category 2 in particular is difficult because there is so much local variation. As an example, in Lincolnshire we might actually want the marsh wardens who work in The Wash actually to be involved at that level. I am

141 Q 361, Mr Brown (St John Ambulance).

142 Q 362, Major Cochrane (Salvation Army).

143 Q 363, Mr Lever (Women's Royal Voluntary Service).

144 Q 370, Mr Brown (St John Ambulance).

145 Q 370, Mr Lever (Women's Royal Voluntary Service).

146 Q 363, Ms Wood-Heath (National Voluntary Aid Society Emergency Committee).

sure that to put them in the list would not mean that in London you would have marsh wardens... There needs to be that flexibility".¹⁴⁷

"Clearly the national voluntary organisations are able to get involved at a national level but there are different parts of the country, like Dartmoor, where there are lots of local organisations who support emergency planning for those areas and I think it is vital they have the ability to have that flexibility".¹⁴⁸

"That represents a positive flexibility, in the sense of drawing into consultation those specialist organisations in particular parts of the country which have something particular to offer. St John Ambulance does not believe it will be correct to provide flexibility so that some organisations could be excluded from consultation".¹⁴⁹

128. We recommend that a statutory duty be placed upon Category 1 Responders to consult with and involve relevant voluntary organisations in civil contingency planning.

129. Given the plethora of voluntary organisations and the individual requirements of local areas, we recommend that Category 1 Responders be given flexibility to identify and consult with the most relevant voluntary organisations in their area.

Nuclear and chemical sites

130. No mention is made in the draft Bill about sites that have the potential to create emergencies, for example operators of establishments subject to the Control of Major Accident Hazards (COMAH) Regulations. This could include major chemical factories or nuclear plants.

"COMAH site operators should be included, especially in London where COMAH sites are dealt with through LFEPA¹⁵⁰, potentially leading to a lack of liaison at the local level".¹⁵¹

131. Given their potential to cause, as well as their ability to respond to a major disaster, we recommend that the Government consider whether to include in Category 2 all operators of establishments subject to the Control of Major Accident Hazards (COMAH) Regulations and organisations that have an emergency response through national schemes, including the National Arrangements for Incidents involving Radioactivity (NAIR), RADSAFE and CHEMSAFE.

Private sector industries

132. At present, railways, airports and harbour authorities are included as Category 2 Responders. The House of Commons Transport Committee has suggested that consideration be given to including road based transport enterprises:

147 Q 41, Mr Goldsmith (Association of Chief Police Officers).

148 Q 371, Mr Lever (Women's Royal Voluntary Service).

149 Q 371, Mr Brown (St John Ambulance).

150 Abbreviation for London Fire and Emergency Planning Authority.

151 Memorandum from London Borough of Richmond upon Thames, Ev 233, question 3.

“[Category 2 Responders] do not include those providing road based transport. There is no explanation for this distinction, beyond a reference in the Regulatory Impact Assessment... one can imagine circumstances in which those planning for an emergency evacuation, say, would wish to know how many buses were available in a particular district”.¹⁵²

133. This view is endorsed by others:

“Major transport providers should be aligned to this Category [2]... because local authorities rely on transport to take people from the incident site to rest centres and therefore there must be that cooperative requirement for us to be able to plan adequately”.¹⁵³

“Bus operating companies and/ or transport authorities with bus operating responsibilities should be included as Category 2 Responders”.¹⁵⁴

134. We have also heard evidence that the food and drink industry should be included as Category 2 Responders:

“The industry plays a key, strategic and vital role in the UK Economy and Category 1 Responders need to be aware of the ‘emergency’ impacts on the industry”.¹⁵⁵

“Food and animal feed producers, processors, distributors and retailers should be considered for inclusion in Category 2”.¹⁵⁶

“There are a number of central government agencies – a couple that come immediately to mind are the Food Standards Agency and the Health Protection Agency – that have a major role to play in many emergencies.”¹⁵⁷

135. Others have suggested including private security firms as Category 2 Responders.

136. We have not had an opportunity to take oral evidence from these sectors and therefore have not had time to explore these areas in great depth. We recommend that the Government consider whether to include the Highways Agency, transport enterprises, fuel suppliers, the food sector and private security firms as Category 1 or 2 Responders.

152 Memorandum from the House of Commons Transport Committee, Appendix 2.

153 Q 23, Mr Ward (Emergency Planning Society).

154 Memorandum from Kirklees Metropolitan Council, Ev 230, para B.

155 Memorandum from the Food and Drink Federation, Ev 219.

156 Memorandum from the Food Standards Agency Wales, Ev 219, para 4.

157 Q 14, Mr Griffin (Local Government Association).

4 Human Rights Issues

137. In this chapter we deal with the human rights aspects of the draft Bill. Both the Defence Committee and the Joint Committee on Human Rights have commented on these issues and we have drawn on their work as well as taking oral and written evidence ourselves.¹⁵⁸

Background constitutional principles

138. The human rights concerns arise most acutely in relation to Part 2 of the draft Bill (Emergency Powers). In this respect, the draft Bill replaces the Emergency Powers Act 1920, which was passed three decades before the United Kingdom ratified the European Convention on Human Rights and nearly eight decades before the Human Rights Act 1998 incorporated the Convention rights into UK law and provided for remedies in the UK courts. As a result of these developments, there is heightened attention and perhaps precision to the issue of infringement of rights than was previously the case. In addition, since 1920, wartime legislation and laws against terrorism have provided experience of the relevance of rights, the powers and limitations of judicial and parliamentary protection, as well as the relevance of mechanisms such as notices of derogation.

139. Of the constitutional principles which must be observed in civil contingency planning and in times of extreme crisis, disaster and emergency, the first we consider is the values of individual rights.¹⁵⁹ We deal below with other constitutional aspects of the draft Bill. These concepts closely correlate with the requirements of the European Convention on Human Rights, as embodied in the Human Rights Act 1998. The Convention is evidently infused with the values of rights and, within that context, seeks to proffer principles such as:¹⁶⁰

- Legality – is there a clear and accessible legal basis for processes and powers on the part of public authorities, the basis of which can be tested?
- Necessity – was the invocation of the public authority’s emergency power which infringed rights strictly required in response to the threat or crisis, or could “normal” powers have been utilised?
- Proportionality – even if new provisions are in principle necessary, were actions taken by public authorities proportionate to the threat or crisis which they are seeking to act against?

Relevant provisions of the Bill to be examined

140. The draft Bill itself does not appear to contain any specific encroachment on human rights – indeed, it contains specific protections for some Convention rights. But it is an

158 Seventh Report 2002-03 HC 557 2 July 2003 and Fifteenth Report 2002-03 HC 1005 HL Paper 149 14 July 2003.

159 See especially the summary provided by the Council of Europe, Guidelines on Human Rights and the Fight Against Terrorism (Strasbourg, 2002).

160 These are rightly emphasized by the Memorandum from the West Yorkshire Police (as lead for Regional Resilience Yorkshire and Humber Region), Ev 279, p.4.

enabling Bill under which regulations could be made which do breach such rights. The human rights organisation JUSTICE told us:

“The fact that the Government does not intend to breach someone’s rights does not prevent it from doing so. If you want to look at a very recent incidence, the application of section 55 of the 2002 Nationality, Immigration and Asylum Act was in technical breach of Article 3. I do not want to impute to anybody who was involved in the drafting of that legislation that they intended to breach Article 3”.¹⁶¹

141. In an emergency, a derogation under Article 15 of the European Convention may at times be necessary. The country concerned has to establish that the necessary criteria are met. Article 15 states as follows:

“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law”.

142. The main features of the draft Bill relating to human rights are as follows:

- Regulations would be treated as primary legislation (i.e. Acts of Parliament) for the purposes of the Human Rights Act 1998.
- Regulations could not be made which (a) required a person to provide military or industrial service (ECHR Article 4), (b) prohibited industrial action (Article 11) or (c) allowed a special tribunal to try offences (Article 6.1).
- On the other hand, there is no specific protection for the human rights which should not be abrogated even in emergencies – the right to life (Article 2), freedom from torture (Article 3) and the ban on penalties for retrospective offences (Article 7).
- It would be possible under the draft Bill for regulations to be made which breached the derogable rights to (a) freedom from detention without trial (Article 5), (b) respect for private and family life and the home (Article 8), (c) freedom of expression (Article 10), (d) freedom of assembly (Article 11) or (e) peaceful enjoyment of possessions (Article 1, Protocol No 1).
- Confiscation or destruction of property could be permitted with or without compensation.
- The creation of criminal offences with penalties of up to three months imprisonment.

143. These give rise to various questions:

- What is the relationship between derogation under Article 15 and the exercise of powers under the Bill?

161 Q 223, Dr Metcalfe (JUSTICE).

- Is it reasonable to limit the possibility of human rights-based challenges to the regulations?
- Would the restriction on compulsory industrial service hamper relief work?
- Should there be protection for the essential non-derogable rights or more protection for the rights from which there may be derogations in emergency?

Treating secondary legislation as an Act of Parliament

144. Of all the human rights issues, most witnesses¹⁶² regarded as the most serious the power in clause 25 to treat secondary legislation as if it is an Act of Parliament for the purposes of the Human Rights Act 1998. The problem it seeks to address is as follows. In theory, a court might rule that regulations made under Part 2 of the Civil Contingencies Bill were invalid, or might grant an injunction against action being taken pursuant to them before the legal issues had been fully argued in court. This might occur within the seven days between the regulations being made and their being approved by Parliament. The scenario envisaged is therefore of a Government unable to respond effectively to an emergency because the courts have ruled their measures actually or potentially illegal.

145. Both the Defence Committee and the Joint Committee on Human Rights have said:

“...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”.¹⁶³

146. The Constitution Committee has told us:

“We are not satisfied that the Government has demonstrated a compelling need for this departure from the structure for the protection of Convention rights created by the 1998 Act, and we consider that this approach would run the risk of creating an undesirable precedent”.¹⁶⁴

147. The ability of Ministers to make draconian regulations which breach human rights would not be entirely unfettered even with clause 25 remaining part of the Bill. The regulations would be subject to approval by Parliament within seven days and might not receive that approval. It would still be open to a court to declare that a regulation was incompatible with the Convention under section 4 of the Human Rights Act, though, as with primary legislation, this would not invalidate the regulation. The prospect of subsequent litigation might also act a deterrent. And regulations would still be subject to normal judicial review under the Civil Procedure Rule 54. Nevertheless, the Government recognises that the restraint imposed on striking down on human rights grounds under clause 25 would be an important departure from normal practice and so “believes that the case for its inclusion in the draft Bill is by no means certain”.¹⁶⁵

148. The effect of clause 25 is viewed with concern for three main reasons:

¹⁶² See for example Memorandum from Liberty, Ev 87, para 32.

¹⁶³ Seventh Report 2002-03 HC 557 para 68 and Fifteenth Report 2002-03 HC 1005 HL Paper 149 para 3.25.

¹⁶⁴ Memorandum from the House of Lords Select Committee on the Constitution, Appendix 1, para 11.

¹⁶⁵ Consultation Document chapter 5 para 36 p 30.

- One is on grounds of precedent – that the Human Rights Act is a finely balanced statute¹⁶⁶ which governs the relationship between state and individuals - and should not be changed even in an emergency or, perhaps, especially in an emergency. Allied to the ground of principle is the fear of the slippery slope – that a precedent will be set which other legislation will follow, perhaps dealing with such serious issues as terrorism, serious frauds and drug trafficking.
- The second is that in practical terms the value of rights is being diminished. It removes the possibility of the courts striking down the secondary legislation on grounds of incompatibility with Convention rights.
- The third reason for criticism of clause 25 is simply that the curtailment under clause 25 is not necessary.

149. Three reasons may be adduced for questioning the need for clause 25:

- i) There is little evidence that judges are overly “activist” in dealing with challenges to emergency powers.
- ii) Judges are unlikely to prevent the Government taking action when the balance of convenience is against interfering with measures to protect public safety.
- iii) It is always possible for the Government to derogate from parts of the European Convention.

150. Though it is true that there has been some shift from the very deferential attitudes which tended to prevail in wartime,¹⁶⁷ the vast majority of challenges to emergency powers (for example against terrorism) have been rejected by the courts.¹⁶⁸ On this point we have been told by human rights experts:

“The courts have been traditionally deferential towards the Executive in times of public emergency, that is in general the approach that courts have taken. That is true not just of the UK but other comparable jurisdictions, the United States as well. You will find a general attitude in common law jurisdictions that courts in times of emergency will give proper deference to the role of the Executive in making [the] regulations...”¹⁶⁹

“...there is nothing in our constitutional or legal history to suggest that our courts are anything other than deferential to the Executive and indeed to Parliament in times of national emergency or fear of national emergency”.¹⁷⁰

“If the Government is coming to court for, say, emergency flood relief, the court will have regard to the balance of convenience and I question whether any UK court or

166 QQ 213 and 217, Ms Chakrabarti (Liberty).

167 Note by Christopher Barclay, House of Commons Library - Legal Challenges to Emergency Powers, Appendix 12.

168 See especially Brind and obiter of Hoffman in Rehman. It may be noted that, albeit from an earlier era, there has only ever been one reported successful challenge in the history of the Emergency Powers Acts 1920-64. That challenge occurred in *Smith v Wood*, (1927) 43 TLR 178. concerning the prosecution of union officials for threatening to withdraw safety cover at a coal mine, a prosecution depending on a regulation which was unlawful as it effectively made it an offence to take part in a strike.

169 Q 190, Dr Metcalfe (JUSTICE).

170 Q 213, Ms Chakrabarti (Liberty).

High Court judge would ever strike down regulations that gave the Government power if needed to address a clear state of emergency”.¹⁷¹

“There can be no suggestion in reality that it would be realistic that the courts would wish to or be able to strike down in any serious and enduring way these regulations before Parliament had a chance to give them primary legislative effect”.¹⁷²

151. Nor are the judges very ready to grant injunctions even when they decide that a challenge is sustainable, recognising that the balance of convenience is against interfering with executive action intended to protect public safety.¹⁷³

152. Finally, the possibility of derogation under article 15 of the European Convention must be considered quite feasible. This process takes little time – the Secretary General of the Council of Europe has to be notified after the derogation is made.¹⁷⁴ To give effect to the derogation in UK law, the Secretary of State has to make an order under section 14 of the Human Rights Act 1998. The Government followed this path when bringing forward the Anti-Terrorism, Crime and Security Bill in 2001. Derogations have persisted as a common feature of emergency and anti-terrorism legislation to prevent terrorism in Northern Ireland since 1968. If the circumstances demand some temporary encroachment on human rights, it could be argued that a derogation from the European Convention would be the most Convention-compliant way of proceeding.¹⁷⁵

153. There is a further question mark concerning the necessity of clause 25. The issuance of a proclamation/declaration under clauses 18/19 is not subject to this provision and so is reviewable under the Human Rights Act. If it remains possible to challenge the legal basis of the emergency powers and thereby challenge every regulation issued, why should there be restraint on challenging an individual regulation? It is suggested that challenge to the exercises of clauses 18/19 should be possible, but should be subject to the same procedural safeguards as are mooted below as amendments to clause 25.

154. It should be noted, however, that clause 25 does not remove all possibility of legal challenge or even striking down. Under the normal principles of judicial review, it remains possible to challenge either the secondary legislation itself or, and probably more likely, any executive actions taken under it as *ultra vires* under the Civil Procedure Rule 54, and the individual action (but not the validity of the regulations) can still be challenged as in breach of the Human Rights Act 1998.

171 Q 217, Dr Metcalfe (JUSTICE).

172 Q 215, Ms Chakrabarti (Liberty).

173 E.g. *A and others v Secretary of State for the Home Department* [2002] EWCA Civ 1502.

174 Q 209, Ms Chakrabarti (Liberty) & Dr Metcalfe (JUSTICE).

175 The deferential judicial stance is also shared by the European Court of Human Rights, wherein most challenges to the special laws in Northern Ireland, perhaps the closest analogy which can be found, have failed. A notable exception was *Brogan v United Kingdom* (App.nos. 11209/84; 11234/84; 11266/84; 11386/85, Series A, No 145-B, (1989) 11 EHRR 117, but that judgment is hardly a convincing example of the courts causing havoc to the security forces. In that case, the European Court of Human Rights determined that there had been a breach under Article 5 arising from a failure to provide within a reasonable time judicial review of the necessity for detention in police custody under the Prevention of Terrorism (Temporary Provisions) Act 1984. The outcome was the lodging of a notice of derogation and no legislative change (or more than minor changes in operations) until the Terrorism Act 2000, over a decade later. It may be conceded that the derogation did not apply to international terrorism and so would become problematic post September 11th if the law had not been altered by the 2000 Act, though there is again always the device of derogation and indeed a further derogation allowing the alternative to police detention pending charge of detention without trial (under the Anti-terrorism, Crime and Security Act 2001, Part IV) is now in operation.

155. Assuming that there persists a remote risk of the courts frustrating the ability of the Government to cope with an emergency, we have considered what other legal devices might be available to avoid the consequent disruption which might arise.

- One possibility is that a court should not be able to implement any finding of invalidity until there had been an opportunity for the exhaustion of all appeal processes. Normally, this power to stay its decision pending an appeal would be at the discretion of the court,¹⁷⁶ but legislation could delimit that discretion, and this interference with normal judicial discretion would still be preferable to the total abolition of Human Rights challenge.
- Another possibility would be to provide for a stay pending the opportunity for parliamentary scrutiny. On this scenario, rather than awaiting the exhaustion of appeal processes, the courts might fix a set time (say 40 days) for suspension of a judgment sufficient for Parliament to take action by way of amending regulations.
- An additional option to both of the foregoing would be to provide for some changes to judicial process. For example, it might be suggested that challenges to the legality of such regulations could only be made directly to a higher judicial body – the High Court at least, or perhaps even to the proposed Supreme Court. In addition, challenges could be fast-tracked.

156. We conclude that the Government has not demonstrated a clear and compelling need to treat regulations under the Civil Contingencies Bill as having the status of Acts of Parliament for the purposes of the Human Rights Act. At most, there may be a need for some procedural changes, such as a fast track process within a higher court, plus a compulsory stay on the enforcement of any court order until the appeal is exhausted. We welcome the Government’s willingness to reconsider this matter.

Protections for human rights currently mentioned within the Bill

157. Three specific human rights are protected under the draft Bill. Regulations could not be made which:

- required a person to provide military or industrial service (ECHR Article 4) – clause 21(4)(a)
- prohibited industrial action (Article 11) – clause 21(4)(b) or
- allowed a special tribunal to try offences (Article 6.1) – clause 21(4)(d).

158. The restriction in clause 21(4)(a) on requiring people to undertake “military or industrial service” in an emergency has been the subject of some adverse evidence on behalf of ACPO to the Committee:

“...one could requisition property in that way but not necessarily require individuals to drive them on your behalf.... in terms of heavy lifting gear, for example, if one wanted to requisition that for a rescue I would guess that the skill needed actually to

¹⁷⁶ Q 220, Dr Metcalfe (JUSTICE). The courts do exercise this discretion, most notably in *A v Secretary of State for the Home Department* [2002] EWCA Civ 1502.

operate that would be very specialised and would be very difficult to find outside of that industry, and yet there is no power in the regulations to require the individual to operate that machinery on your behalf”.¹⁷⁷

159. But work in the nature of a “function” may be required under clause 21(3)(k), and one may interpret “function” to mean limited specific work rather than continual employment as in a “service”. It is probably unwise to go further and remove clause 21(4)(a) since it reflects Article 4 of the European Convention, a non-derogable right under the European Convention, and forced civilian labour may also contravene the Geneva Convention.¹⁷⁸ On the other hand, the wording of Article 4 is elaborated in Article 4(3) as expressly not including, “(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community”. “Emergency” is interpreted widely, and certainly covers situations other than what normally would be viewed as a “disaster”.¹⁷⁹

160. It has next been drawn to our attention that the restriction on regulations prohibiting strike or other industrial action in clause 21(4)(b) is more narrowly drawn than the equivalent provision in the 1920 Act. Section 2(1) of the latter prevented regulations being issued to make it an offence “to take part in a strike, or peacefully to persuade any other person or persons to take part in a strike.” This raises the possibility that it could be made unlawful under the Bill for *specific groups* to take part in industrial action.¹⁸⁰

161. Next, the interplay of clause 21(3)(k) and clause 21(4)(b) could be clarified.¹⁸¹ Clause 21(3)(k) could be invoked to impose new forms of statutory duty which could then be breached by industrial action, liability for which would fall outside the normal scope of immunities for industrial action. The regulation of peaceful picketing¹⁸² could also be clarified by adding a specific regulation-making power under clause 21(3) and removing picketing from the ambit of clause 21(3)(f), so that the matter can be specifically signalled and debated.

162. The Minister told us:

“It will not be possible for emergency regulations to prohibit individual groups from taking part in industrial action... The effect of this provision is the same as under the

177 Q 65, Mr Goldsmith (ACPO). See also Memorandum from ACPO, Ev 21, under “Further matters for consideration”.

178 But compare the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949 art.51: The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted. The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour. The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article. In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character.

179 For example, in *Iversen v Norway*, service in northern Norway could be imposed upon dentists because of a shortage of volunteers. Likewise, a requirement that those holding shooting rights should participate in the gassing of foxholes to control rabies was upheld in *S v Germany*.

180 Memorandum from K Ewing, Ev 213, para 8.

181 Memorandum from G Morris, Ev 241, p.3.

182 Memorandum from G Morris, Ev 241, p.3.

1920 Act. We were keen as much as possible to seek to reflect what is a settled position from the 1920 Act”.¹⁸³

163. Section 2(2) of the Emergency Powers Act 1920 provides that regulations shall not alter any existing procedure in criminal cases.¹⁸⁴ This is not replicated in the Bill. We can imagine that issues of venue and time-limits may have to be altered in an emergency. The Minister made plain that any emergency regulations affecting criminal jurisdiction would have to be consistent with the right to a fair trial in Article 6 of the ECHR.¹⁸⁵

164. We recommend that the Bill should provide that regulations shall not alter any existing procedure in criminal cases in any way which is inconsistent with Article 6 in the Human Rights Act.

165. Clause 21(3)(1) allows regulations to confer jurisdiction on a court or tribunal, including a tribunal established under the regulations. The Minister was asked¹⁸⁶ whether there had been consultation with the Council on Tribunals and subsequently replied that the Government had not yet done so but, in the light of our concerns, would be consulting the Council.¹⁸⁷ It was also put to him that the Council on Tribunals “as a general policy, has advised very strongly against the creation of any court or tribunal otherwise than by primary legislation”. The Minister undertook to bear the point in mind.¹⁸⁸

166. We recommend that the Cabinet Office put in place arrangements to ensure that the Council on Tribunals is properly consulted about clause 21(3)(1) and that the arrangements to create possible new courts or tribunals are set out in detail in regulations published in draft (see paragraphs 193-196).

Protections for non-derogable human rights not currently mentioned in the Bill

167. The draft Bill contains some protection for human rights which can legally be suspended in an emergency but, aside from the partial protection for article 4 above (on forced labour), not for those from which member States cannot derogate under the European Convention, article 15. It could be argued that it is unnecessary to repeat in the draft Bill that regulations may not be made which interfere with the right to life (article 2), freedom from torture or punishment (article 3), and protection from retrospective criminal offences (article 7) because those principles are already enshrined in the Convention and enforceable under the Human Rights Act 1998.¹⁸⁹ But uncertainty could arise concerning the relationship between the Civil Contingencies Bill and the Human Rights Act because of the existence of clause 25. In most cases, the rules of interpretation in section 3 of the Human Rights Act should ensure its predominance over the later regulatory legislation arising under this Bill, but there is left an area of uncertainty as to how judges will react in

183 Q 256, Mr Alexander (Minister of State, Cabinet Office).

184 Memorandum from D Bonner, Ev 178, para 13.

185 Q 292, Mr Alexander (Minister of State, Cabinet Office)

186 Q 291, Mr Alexander (Minister of State, Cabinet Office)

187 Further Letter from Douglas Alexander MP, Minister of State, Cabinet Office, Ev 124.

188 Q 293, Mr Alexander (Minister of State, Cabinet Office).

189 Compare the more extensive list of the Joint Committee on Human Rights, Scrutiny of Bills and Draft Bills (2002-03 HC 1005) para 3.31.

an emergency. Furthermore, without such mention, it is difficult to see how the claim that the Bill is compatible with the European Convention on Human Rights¹⁹⁰ is sustainable, since powers to breach the Convention are granted. It might also be useful to mention the requirements of international humanitarian law.

168. We conclude that the intention of the draft legislation would be clearer if clause 21(4) included among the prohibitions on the making of regulations a prohibition on regulations which would breach any of the Convention rights from which it is not possible to derogate or any provision in the Geneva Conventions of 1949 and Protocols thereto of 1977.

Protections for other derogable human rights not currently mentioned in the Bill

169. In a genuine emergency it is accepted that some human rights which are normally respected may have to be curtailed or suspended. Since they are not among the rights listed in clause 21(4) or the rights protected from derogation under the ECHR, the following rights are most at risk from being adversely affected by regulations made under the draft Bill:

- i) freedom from detention without trial (Article 5),
- ii) respect for private and family life and the home (Article 8),
- iii) freedom of expression (Article 10),
- iv) freedom of assembly (Article 11) or
- v) peaceful enjoyment of possessions (Article 1, Protocol No 1).

170. We have not received strong evidence that these liberties should enjoy any additional form of protection under the Bill. Dr Eric Metcalfe of JUSTICE did confirm that historically the rights which have been most vulnerable in emergencies were due process, liberty, freedom of assembly and freedom of speech.¹⁹¹ Much would depend on what regulations were made under Part 2 of the Bill. In response to questions about offences against these regulations, Ms Chakrabarti of Liberty said:

“All of these ...tie back to an holistic scheme where we would like the definition of ‘emergency’ to be more limited, there to be greater scrutiny and the courts to have full jurisdiction...”.¹⁹²

171. Probably the strongest case could be made for rights to free expression. It is arguable that special protection should be given to the protection of means of communication of public information. So, the powers of the authorities to interfere with media such as newspapers should be subject to special restraint. This idea would follow other legislation, such as the Contempt of Court Act 1981, section 10 and the Police and Criminal Evidence Act 1984 section 13. However, no arguments were put to this effect.

¹⁹⁰ Consultation Document, chapter 5, para 30, p 30. Joint Committee on Human Rights (HL Paper 149/HC 1005) para 3.35.

¹⁹¹ Q 223, Dr Metcalfe (JUSTICE).

¹⁹² Q 232, Ms Chakrabarti (Liberty).

Derogation and the Bill

172. Questions arise concerning the relationship between the ability to declare an emergency on a regional basis and the wording of Article 15 of the European Convention on Human Rights, which envisages an emergency threatening the life of “the nation”. The onus is on the state concerned to establish that there is a public emergency threatening the life of the nation and that the derogation is strictly required by the exigencies of the situation. Of course, not every invocation of the Civil Contingencies Bill will require resort to a derogation under Article 15. Nor is it a requirement of Article 15 that the emergency and emergency powers must be national – most derogations since 1951 within the United Kingdom have been confined to the region of Northern Ireland. Nevertheless, the effect must be that a different range of regulations is possible when a localised crisis affects the national position and a localised crisis which does not. This could be reflected in the Bill to avoid error and to ensure due consideration.

Interference with property rights without compensation

173. The draft Bill provides for the requisition, confiscation or destruction of property, animal life or plant life with or without compensation (clause 21(3)(b)). Witnesses told us there was no reason why compensation should not be paid,¹⁹³ that to leave it in doubt would be problematic,¹⁹⁴ or that they could not think of a situation where the Government would not want to pay compensation.¹⁹⁵ The police view was:

“...if I were a police constable who had to requisition property or state that property would be destroyed, it would make my life a lot easier if I could say to the person who owned it, ‘You will be compensated for it.’”¹⁹⁶

174. The need for compensation arises, unless excused in very exceptional circumstances, under article 1 of Protocol 1 of the European Convention.¹⁹⁷ The Government has pointed out that compensation is not always appropriate in cases where property is covered by insurance or the owner’s negligence or malicious action is a factor in its destruction.¹⁹⁸ But clause 21(3)(b) is not confined to these instances. In any event, this invocation of private insurance should trigger a duty on government to ensure that suitable cover is available, on the precedents of the Pool Re (commercial property cover against terrorism) and Troika (commercial airline cover against terrorism) insurance schemes. The Government also pleads that it has not in this respect changed the wording from the 1920 Act.¹⁹⁹ Yet, the 1920 Act was passed before the presumption in favour of compensation was accorded by the Human Rights Act.

175. The Minister told us:

193 Q 226, Ms Chakrabarti (Liberty).

194 Q 109, Ms Lowton (Camden Borough Council).

195 Q 121, Mr Davies (Leeds City Council).

196 Q 63, Mr Goldsmith (ACPO). See also Memorandum from Oxfordshire County Council, Ev 254, para18.

197 Following the cases of the Holy Monasteries v Greece Application no. 13092/87 ; 13984/88, Ser A 301A, and Loizidou v Turkey, App.no. 25781/94, 2001-IV it is difficult to envisage such a taking under standing law as opposed to the heat of an event being held to be legitimate.

198 Q 252, Mr Alexander (Minister of State, Cabinet Office).

199 Question for the Bill Team, Appendix 9, question 38.

“Government should not be in a position... to say that there should be effectively a blank cheque from the public purse in all circumstances”.²⁰⁰

“it is absolutely and categorically not the case that there are no circumstances in which the Government would offer compensation under the Bill”.²⁰¹

176. We conclude that if property is to be taken without compensation, then it should be specified that (i) the taking is still in compliance with Article 1 of Protocol 1 of the European Convention and (ii) that steps are taken to ensure that insurance is available for any loss.

Creation of criminal offences

177. Clause 21(3)(i) of the Bill provides that regulations made under it may create criminal offences for non-compliance with those regulations or obstruction of enforcement officers. Clause 21(4)(c) prohibits the creation of other offences by regulation, while clause 21(4)(d) limits the punishments for offences to a scale 5 fine or up to three months imprisonment. As already mentioned, the created offences must be tried before normal first instance courts. No evidence has been presented against such a power, save that it be noted that the offence may be tried on indictment or summary process instead of summarily only, as under the 1920 Act.²⁰²

200 Q 252, Mr Alexander (Minister of State, Cabinet Office).

201 *Ibid.*

202 Memorandum from D Bonner, Ev 178, para13.

5 Constitutional Matters

178. In this chapter we consider some of the constitutional issues which arise from such emergency powers legislation and draw attention to matters which both Houses may wish to consider when a real Bill is brought forward. In this we have been greatly assisted by the evidence received from the Constitution Committee²⁰³ and the Delegated Powers and Regulatory Reform Committee.²⁰⁴

179. Despite the severe challenges which have been faced in the 20th and the 21st centuries, including emergent threats of international terrorism, rogue and failed states, environmental change and other concerns identified in the Consultation Document, it should remain a constant that laws dealing with crises, disasters and threats must be focused upon resilience and restoration. This objective applies to the principles of constitutionalism just as it applies to the lives of people affected or the physical environment.

180. The rule of law demands that the courts and Parliament are not impotent in response to the might of executive power in an emergency. One threat to judicial intervention, the impact of clause 25, has already been discussed in chapter 3 (from paragraph 144). It is important to ensure that in other respects an effective check is kept on how powers under Part 2 are constructed and executed. This scrutiny function is a matter not only for the courts but also for Parliament. The main controversies relating to democratic and legal accountability which ought to be taken into account when examining such legislation are as follows:

- Pre-enforcement review
- The mechanisms for Parliamentary review
- Duration and expiry (“Sunset clauses”)
- The mechanisms for democratic accountability of the tiers of authority under the Bill
- The mechanisms for legal review.

Possible constitutional issues

181. The list of possible constitutional issues raised by the draft Bill is extensive. They include:

- i) The extent to which it is necessary for Ministers to be given powers to amend any previous Acts of Parliament.
- ii) Whether it is desirable to give such extensive powers to Ministers in an enabling Bill without Parliament either approving or in some cases seeing the draft regulations containing all the actual detail which would be made under the Bill.

203 Memorandum from the House of Lords Select Committee on the Constitution, Appendix 1.

204 Memorandum from the House of Lords Select Committee on Delegated Powers and Regulatory Reform, Appendix 3.

- iii) Whether a Royal proclamation (clause 18) or emergency declaration (clause 19) should be made subject to a substantive vote in Parliament rather than simply notification.²⁰⁵ The Defence Committee noted that the draft Bill gives Parliament no role in approving that declaration.²⁰⁶
- iv) Whether provision should be made for expiry and renewal of the powers to ensure continuing parliamentary review of the powers.
- v) Whether Parliament should be able to amend secondary legislation which will be given the force of Acts of Parliament (primary legislation).
- vi) Whether Ministers should be required to give a human rights statement under section 19 of the Human Rights Act 1998 in respect of regulations which will have the force of Acts of Parliament.
- vii) Whether the various time limits for parliamentary consideration of regulations made under the draft Bill ensure sufficient parliamentary scrutiny.
- viii) Whether affirmative or negative parliamentary procedure should apply to regulations made under Parts 1 and 2 of the draft Bill.
- ix) Whether the new power for a Minister to make regulations without the normal and notional involvement of the Head of State requires additional safeguards.
- x) Whether it is necessary or desirable for the Government to be given sweeping powers in one Act to deal with emergencies or whether it would be better to have separate pieces of legislation covering different sectors of the economy and different types of emergency.
- xi) Whether a new statute on emergency powers should also draw in and update legislation on the use of the armed forces in such emergencies.
- xii) Whether officials in charge of emergency situations at a regional level will be subject to sufficient democratic accountability.

182. We have not received evidence on all of these points and so do not canvass them in detail, though we are aware that they will raise interest when the Bill is debated in both Houses. Our views on some of these issues are set out below. We have already dealt, in chapter 4, with the proposed constitutional novelty of treating regulations made under the Bill as Acts of Parliament for the purposes of the Human Rights Act 1998.

Power to amend all Acts of Parliament

183. The proposed power in clause 21(3)(j) to disapply or modify any Act of Parliament is very wide. In the wrong hands, it could be used to remove all past legislation which makes up the statutory patchwork of the British constitution. For these purposes, the fundamental parts of constitutional law could be taken to include the following statutes:

205 Memorandum from D Bonner, Ev 178, para10.

206 Seventh Report 2003-03 HC 557, para 73.

- Magna Carta 1297
- Bill of Rights 1688
- Crown and Parliament Recognition Act 1689
- Act of Settlement 1700
- Union with Scotland Act 1707
- Union with Ireland Act 1800
- Parliament Acts 1911-49
- Life Peerages Act 1958
- Emergency Powers Act 1964
- European Communities Act 1972
- House of Commons Disqualification Act 1975
- Ministerial and Other Salaries Act 1975
- British Nationality Act 1981
- Supreme Court Act 1981
- Representation of the People Act 1983
- Government of Wales Act 1998
- Human Rights Act 1998
- Northern Ireland Act 1998
- Scotland Act 1998
- House of Lords Act 1999
- Civil Contingencies Act [2004]

184. It has been suggested²⁰⁷ that the list might also include the Police and Criminal Evidence Act 1984 (plus equivalents elsewhere), but that provision is far more related to legitimate emergency purposes.

185. When asked about this, the Minister argued that it is not possible to define a category of constitutional legislation which ought to be protected by amendment.²⁰⁸ He did not specifically address the issue of whether certain named Acts of Parliament should be

207 Memorandum from Prof Ian Leigh, Ev 231.

208 Q 253, Mr Alexander (Minister of State, Cabinet Office).

excluded from the possibility of amendment or repeal under the draft Bill, but later wrote to tell us that he would be seeking legal advice.²⁰⁹

186. We accept that there may be circumstances in which it is necessary for amendments to be made to existing Acts of Parliament in an emergency and the normal process of a new Bill will not be sufficiently quick. We also accept that to list all the statutes to which this might apply would be excessive. We therefore prefer the approach of excluding certain statutes from this power to modify or disapply. When the Bill is debated in each House there may be amendments proposing that other key Acts of Parliament be added to the list. The onus will then be on the Government to show why such Acts should be subject to amendment by regulation under the Bill.

187. We recommend that the Acts of Parliament listed in paragraph 183 above should appear on the face of the Bill as not being liable to modification or disapplication under clause 21(3)(j).

Parliamentary approval of declaration of emergency

188. The Defence Committee has pointed out that the draft Bill gives Parliament no role in endorsing the declaration of emergency. It is easy to argue the case for not requiring any specific parliamentary approval: historically such actions have been taken by the Crown and Government without the need for formal parliamentary approval; the circumstances of the emergency may make it impossible for Parliament to meet; and, in reality, no Government would be able to sustain such a declaration of emergency if it did not command a majority in the House of Commons.

189. On the other hand, specific parliamentary endorsement for such a declaration would give democratic legitimacy to a whole range of measures which could not be examined in detail, would give confidence to those carrying them out that they were properly authorised and would assure the courts that Ministers were not acting beyond their political authority. It would also overcome the problem that, theoretically, it would be possible under the Bill for an emergency to be declared and successive sets of regulations to be made every seven days without any meeting of Parliament. We return to this subject in paragraph 203 below in the context of a declaration of emergency made without the consent of the Privy Council under clause 19.

Regulations under Part 1

190. Clause 2 of the Bill allows a Minister to make regulations about the extent of the duties imposed on Category 1 Responders and the manner in which they are to be performed. Those regulations will be published with the Bill and subject to the negative procedure. Clause 7 however authorises a Minister to amend or issue new regulations orally or in writing if the urgency of the situation so demands. There is no requirement to inform Parliament, and we believe there should be.

191. Similarly, clause 12 requires a Minister to consult the National Assembly for Wales before making regulations under clause 2, or taking other actions specified in clauses

209 Further Letter from Douglas Alexander MP, Minister of State, Cabinet Office, Ev 124.

2,3,4,5,7,9 or 11. But clause 12(3) allows a Minister to ignore this requirement if the matter is urgent.

192. We recommend that, where because of urgency the Minister issues directions, in substitution for regulations, under clause 7(2) or regulations under clause 12(2) without consulting the National Assembly for Wales, such directions or regulations should expire after 21 days. This would allow the Minister time to make, if necessary, regulations which meet the normal requirements of scrutiny by Parliament and for consultation with the National Assembly for Wales.

Publication of emergency regulations

193. Those regulations to be issued under Part 1 are likely to be made available to potentially affected agencies and authorities, especially as their cooperation is needed in the process of implementation. But those under Part 2 may be kept secret. The Cabinet Office states that the regulations that would be possible under Part 2 of the Bill have “a wider scope than existing legislation”.²¹⁰ As a result, Parliament is being asked to legislate without being told the possible consequences of that action. The lack of available information on the contingencies envisaged for forms of attack with weapons of mass destruction means that, if ever needed, there will be both an absence of considered debate by Parliament and a lack of preparedness on the part of agencies affected.²¹¹ One might compare the position in the USA, where responsibilities for 12 Emergency Support Functions under the Federal Response Plan have been prepared and published.²¹²

194. We understand that the reasons for not publishing the draft regulations under the Emergency Powers Act are as follows:²¹³

“...the draft regulations are subject to frequent change”

“‘standard’ ... regulations would not necessarily offer a clear indication of the content of future emergency regulations”

“Wide access to draft emergency regulations could highlight both potential weaknesses or targets and likely counter-measures”

195. If the frequency with which the regulations are changed is said to be only once every two years, there seems little problem in keeping the current set of regulations in the public domain. The regulations dealing with industrial emergencies under emergency powers legislation have been more or less the same for many years. Publication in advance could allow a dialogue which ensures that any weaknesses are reduced, and it could ensure training and better enforcement when invocation comes. It would be wrong on constitutional grounds to spring upon citizens new catalogues of complex regulations on for example chemical and biological attack without due prior consideration and discussion.

196. We recommend that draft regulations under Part 2 and guidance to them be published from time to time. The drafts should be published not just for the purposes

210 Questions for the Bill Team, Appendix 9, question 22.

211 See New Zealand Law Commission, Report No. 22, Final Report on Emergencies, (Wellington, 1991) para 6.79.

212 The relevant legislation is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC s.5121).

213 Questions for the Bill Team, Appendix 9, question 23.

of Parliamentary deliberation on the legislation but in the interests of open government.

Effects of making regulations which have the legal status of Acts of Parliament

197. If regulations made under Part 2 of the Bill are in effect to have the force of primary legislation, there is a case for applying to them some of the procedures which apply to the parliamentary passage of Acts of Parliament. The requirement in section 19 of the Human Rights Act 1998 for a Minister to make a statement of compatibility in regard to primary legislation does not apply to secondary legislation. But in the case of the Civil Contingencies Bill, many regulations may be far wider in terms of their impact on rights than ordinary primary legislation. There is therefore a case for the section 19 requirement to be applied equally to regulations issued under the Civil Contingencies Bill.

198. Under clause 24, regulations lapse unless approved by Parliament within seven days of their being laid by the Secretary of State. But Parliament can then only accept or reject. Under the original Emergency Powers Act 1920, section 2(4), a regulation can be added to, altered or revoked by resolution, which offers a much fuller level of parliamentary scrutiny.²¹⁴ In the limited time available for parliamentary scrutiny of such regulations, it is quite possible that defects will emerge – or indeed that the Government will identify a need for further change. The alternative of withdrawal of the original regulation and the making of another might take longer. There is therefore a case for regulations made under Part 2 of the Bill to be subject to amendment in Parliament in the same way as applied to those under the Emergency Powers Act 1920. This may also require some amendment to section 27 and the Statutory Instruments Act 1946.²¹⁵

199. We recommend that regulations made under Part 2 of the Bill should be subject to the same safeguards as primary legislation in that Ministers should be required to make a human rights statement under section 19 of the Human Rights Act 1998 and that the individual regulations should be subject to textual amendment in Parliament.

Expiry and renewal

200. One feature of some past emergency legislation is that it lapses after a set time unless renewed. Thus the Prevention of Terrorism Acts 1974-1989 were subject to an annual debate in Parliament prior to a decision on renewal. Parts of the Anti-terrorism, Crime and Security Act 2001 are subject to an expiry clause and renewal (section 29). Disciplinary powers for the armed forces have for a long time been enacted in an Armed Forces Act which lapses after five years and is replaced by a new Act, passed after scrutiny by a Select Committee. One witness put the case for these powers in Part 2 to be subject to renewal every five or ten years and to expire completely after 30 years.²¹⁶ We understand that this could be achieved by including in the Bill a provision that the powers will lapse after five

214 Memorandum from D Bonner, Ev 178, para 11; See also Memorandum from the House of Lords Select Committee on the Constitution, Appendix 1, para 13.

215 Memorandum from G Morris, Ev 241, p.2.

216 Memorandum from David Bonner, Ev 178, para 18.

years unless renewed for a further five years by an order made under the affirmative procedure – which would provide an opportunity for a Select Committee to review the operation of the Act and recommend any changes before the powers are renewed.

201. We recommend that the powers in Part 2 should expire every five years from Royal Assent unless renewed beforehand by an order subject to the affirmative procedure and laid by a Secretary of State following a report by a Select Committee on the operation of the Act.

202. On the specific issue of renewal of regulations made under the Bill, we endorse the evidence we have received from the Delegated Powers and Regulatory Reform Committee:

“Under clause 23(1) and (2) proclamations or orders declaring the emergency lapse after 30 days. Any regulations lapse with the proclamation or order, though a new proclamation or order can be made, and new regulations can be made under it. But clause 23(4) provides an exception. Where, before the lapse of a proclamation or order, a fresh one is made about the same emergency (so that there is no break in continuity), the regulations made under the first proclamation or order continue in force (and do not lapse). If this provision remains in the bill, we will consider whether there should be a time limit for regulations which continue under clause 23(4), whereby the regulations would lapse unless specifically renewed”.²¹⁷

The exclusion of the Crown under clause 19

203. An unusual feature of the draft Bill is that the normal procedure for making secondary legislation through the Privy Council and with the participation of the Monarch can be avoided if necessary. If the Secretary of State is satisfied that it would not be possible to arrange for a proclamation of emergency without delay, then a declaration may be made on his or her own authority. The question arises whether this provision is necessary and whether, if it is, it creates serious risks to the constitution which ought to be further guarded against.

204. As regards necessity, it should be noted that the Crown is itself a very resilient institution. The resilience of the office of the Crown is vital to the operation of Part 2 of the Civil Contingencies Bill. The Crown is relied upon to deal with:

- the proclamations of emergencies (cl.18)
- the making of Orders in Council (clause 20)
- the requiring of the meeting of Parliament (clause 24)
- and the appointment of Secretaries of State and Ministers of the Crown (*passim*).

205. It follows that it is important to ensure that in any proclaimed or declared emergency, the existence of the Crown in person is assured and that the exercise of Crown powers remains feasible. However, in the light of the rules of succession and regency,²¹⁸ the

²¹⁷ Memorandum from the House of Lords Select Committee on Delegated Powers and Regulatory Reform, Appendix 3.

²¹⁸ Note by Professor Clive Walker, Specialist Adviser to the Committee – The Resilience of the Crown, Appendix 6.

Crown would appear to enjoy a high degree of resilience. It should be understood to be a very rare possibility for clause 19 to be invoked.²¹⁹ In addition, it should be noted that the sanction of the Privy Council is purely formal and the reality is that accountability rests with the Government in either scenario.²²⁰

206. It is some time since judicial review was prevented by adopting subjective wording for the grant of powers.²²¹ But the subjective wording in clauses 18 and 19 is striking. A requirement of reasonableness would give a signal that there must be proof of objective and provable evidence of an emergency and of the necessity for regulations (and, in the case of the Secretary of State, of the dangers of delay).²²² The Constitution Committee has pointed out that:

“in law there would appear to be no difference between regulations made by Order in Council (a purely formal procedure) and regulations made by the Secretary of State. In each case, the regulations would be, or would be made by, statutory instruments and would be subject to the Statutory Instruments Act 1946”.²²³

207. We refer in paragraphs 188 and 189 to the desirability of the proclamation of an emergency being subject to endorsement by Parliament at the earliest opportunity. This measure of democratic legitimacy would help to overcome several of the difficulties with the Bill – including the apparent exclusion of both the courts and the Crown. We attach importance to this because we believe that in an emergency regulations made in the customary way by Order in Council will carry greater public credibility than those made in an unusual way.

208. In relation to the ability of a Secretary of State to declare an emergency on his or her own, we consider there should be two additional safeguards:

- **the wording of clause 19 should be altered by adding the condition of reasonableness to the finding of satisfaction of the Secretary of State.**
- **A declaration under clause 19 should be subject to confirmation by Parliament within seven days, as under clause 24.**

219 Some say that there is no conceivable need: Memorandum from Oxfordshire County Council, Ev 254, paras. 59-60.

220 Memorandum from House of Lords Select Committee on the Constitution, Appendix 1, para 9.

221 See *Nakkuda Ali v MF de S Jayaratne* [1951] AC 66; *Attorney-General of Saint Christopher, Nevis and Anguilla v Reynolds* [1980] AC 637.

222 Memorandum from D Bonner, Ev 178, para 9.

223 Memorandum from the House of Lords Select Committee on the Constitution, Appendix 1.

6 Resource Implications

Background

209. This chapter examines the financial and manpower consequences of the draft Bill. The Government's main consideration of the effects on resources is set out at chapters 2 and 3 of the Consultation Document, in the two Partial Regulatory Impact Assessments published with the draft Bill²²⁴ and in the explanatory note on the financial and public service manpower effects of the Bill.²²⁵

210. Since 1998 there has been a requirement that all Government policy proposals which affect business, charities or voluntary bodies must be subjected to a Regulatory Impact Assessment, which should identify the impact of policy options in terms of the costs, benefits and risks of the proposals²²⁶ to, in this case, improve emergency resilience. The analyses of costs are critical in informing external consultees about the consequences for them of proposals, and hence are central to the policy making process.²²⁷ As well as analysing the effects of the Government's proposals on the private sector, the guidance reminds officials "to consider the costs and benefits to ... local ... government", including the costs of complying with any requirements.²²⁸

211. The Cabinet Office published two Partial Regulatory Impact Assessments alongside the draft Bill. The first reviewed the effects of the local contingency planning provisions in Part 1; the second addressed issues arising from use of the emergency powers in Part 2.

Local contingency planning: costs to business, voluntary organisations and charities

212. In examining how to meet its policy objective – to create a modern framework for contingency planning and response – the Government identified three options when framing the provisions at Part 1 of the Bill:

- option 1 - continuation of the current arrangements;
- option 2 - the imposition of a duty to carry out the full spectrum of civil protection activities (assessment, prevention, planning for emergency response and business continuity, response and recovery) on Category 1 Responders and a more limited duty to share information and co-operate in maintaining preparedness on Category 2 Responders;²²⁹ and
- option 3 - two duties would be defined on broadly the same basis as in the option 2 but most of the organisations in Category 2 in the second option – for example, utility

224 Cm 5843.

225 *Ibid*, note 58.

226 Regulatory Impact Unit and Cabinet Office (2003) Better Policy Making: A Guide to Regulatory Impact Assessment, para 1.1-1.2 at <http://www.cabinet-office.gov.uk/regulation/scrutiny/ria-guidance.pdf>.

227 *Ibid*, para 3.6.

228 *Ibid*, para 3.11.

229 Partial Regulatory Impact Assessment (Local Responders) paras 28-30.

companies – would be moved into Category 1 and thus would have to meet the full duty and, in addition, groups such as voluntary organisations and charities would be brought into Category 2 and so would have to meet the co-operator duty.²³⁰

213. The Government concluded that the first option would not meet the policy objective of establishing resilience systematically.²³¹ The third option, while it would meet the objective, would be 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”.²³² The second option provides, in the Government’s view, the middle way of achieving the policy, while the additional costs to Category 1 bodies (local authorities and public bodies) “will not be great” because the organisations subject to the new requirements in the draft Bill “are already engaged in this activity”.²³³

214. The Partial Regulatory Impact Assessment provides an evaluation of the additional costs the second and third options would place on business, voluntary organisations and charities.

- The additional costs arising from the second option are estimated at between £850,000 and £1,450,000²³⁴ (rounded). The explanation for this modest estimate is that (under option 2) only a small number of organisations will have to meet the duty; those to which it applies will be placed in Category 2; the work required to meet the *co-operator* duty in Category 2 is not onerous (e.g. requests for information, attendance at meetings and infrequent, short exercises); and some businesses are already carrying out the work.²³⁵
- The figures offered for option 3 are very tentative: double the costs for those organisations placed in Category 1 rather than Category 2; and around £5,650 – £6,250 (rounded) for organisations in Category 2.²³⁶
- The Regulatory Impact Assessment did not attempt to quantify the difference in benefits between options 2 and 3.

215. The second option is embodied in the draft Bill.

216. Since the publication of the draft Bill, the businesses responding to the consultation exercise have expressed reservations about the Government’s figures. United Utilities, who under the provisions at Part 1 of the Bill would be a Category 2 Responder, said that their expenditure on emergency planning responsibilities was already nearly double the amount quoted in the Regulatory Impact Assessment, even before allowing for any uplift in activity as a result of the Bill, and that the Assessment, although not an order of magnitude wrong, was two or three times too small.²³⁷ BT – another Category 2 Responder – said it

230 *Ibid*, para 33.

231 *Ibid*, para 75.

232 *Ibid*, para 78.

233 *Ibid*, para 76.

234 *Ibid*, para 65.

235 *Ibid*, paras 46, 49 and 59.

236 *Ibid*, para 74.

237 Q 346, Mr Miller (United Utilities). See also Memorandum from United Utilities, Ev 147, question 6.

was not in a position to confirm that the appraisal of costs was adequate or accurate, as a robust assessment would rest on an understanding of features which were, at present, either vaguely defined or not defined at all. But BT did point out that the estimate of costs failed to consider overhead and operating expenditures, capital costs, and opportunity costs.²³⁸ BT also said that the proposals could involve “moving down to a greater level of detail and it depends how that is managed and rolled out across the country”.²³⁹ British Energy – also a possible Category 2 Responder – was not clear how the costs of ongoing training, exercises and learning from real and exercise events or regulatory requirements would be accommodated within existing cost bases, or that they had been included in the assessment.²⁴⁰ CE Electric UK – another possible Category 2 Responder – considered that the costs identified in the assessment had been grossly underestimated and that the burden imposed by the new statutory duties would depend on the degree of preparation already carried out by the local authority or other agency, which varied markedly from one to another.²⁴¹

217. In our view, the debate about civil contingency planning can only be pursued effectively if the costs and benefits are addressed comprehensively. Although the Minister in charge of the Bill suggested that the Regulatory Impact Assessment showed that the burden on the private sector was small and that the benefits were potentially very large,²⁴² we found little to assist us in the Partial Regulatory Impact Assessment (Local Responders) as it had been prepared before the secondary legislation was ready, omitted costs and lacked evidence to support the figures quoted. We do not believe that the Partial Regulatory Impact Assessment provides a sound basis to inform policy decisions.

218. We therefore recommend that the Regulatory Impact Assessment (Local Responders) be redrafted in order to address the concerns voiced by business and to ensure that it meets the rigorous requirements of *Better Policy Making: A Guide to Regulatory Impact Assessment*. It needs to set out in much more detail, with supporting evidence, the costs and benefits of the options and to review the options comprehensively in the light of the regulations to Part 1, which are now due to published with the Bill.²⁴³

219. We deal below with the provision of additional resources for civil contingency planning for the private, voluntary and public sectors.

Local contingency planning: costs to local authorities

220. Neither the Partial Regulatory Impact Assessment (Local Responders) nor the Consultation Document and explanatory notes provide a detailed or systematic analysis of the costs to local authorities of implementing the proposals in the Bill. Instead, the

238 Memorandum from BT, Ev 134, question 6.

239 Q 350, Mr Turner (British Telecom).

240 Memorandum from British Energy, Ev 192, question 6.

241 Memorandum from CE Electric UK, Ev 196, question 6.

242 Q 278, Mr Alexander (Minister of State, Cabinet Office).

243 Q 237, Mr Alexander (Minister of State, Cabinet Office).

Consultation Document lists recent initiatives which the Government has taken to improve the UK's resilience.²⁴⁴

221. The Local Government Association's (LGA) comment on the assertion that "local authorities have seen specific Civil Defence grant rise by more than a third over the last two years to £19 million for 2002-03" was that this level of grant was 50 per cent, in real terms, of what it had been ten years ago.²⁴⁵ The LGA produced a research briefing setting out the costs of emergency planning to local authorities.²⁴⁶ They estimate that local authorities are currently spending at least £36 million annually on emergency planning, which means that they are investing £17 million of their own resources over and above the £19 million from the Government.²⁴⁷ The LGA's figures have not been challenged by the Government, and we consider that they provide a reasonable initial indication of the annual costs of the present service in England and Wales.

222. We recommend that the definitive version of the Bill should contain, in the explanatory notes, a detailed analysis of the current and projected costs of providing the emergency planning service.

223. One of the questions included in the Consultation Document was whether the level of funding to support the Bill was sufficient.²⁴⁸ An overwhelming majority of local authorities indicated that the current level of funding was inadequate. The LGA pointed out that the Bill will put extra duties on local government.²⁴⁹ Durham County Council reflected the views of many when they told us that there were completely new activities required by the Bill, including warning the public; promoting business continuity management in the community; taking action to prevent emergencies from occurring; participation in the new local resilience forums; participation in the initiatives arising from the new resilience forums; undertaking activities as directed by central government; and providing ongoing information to the public.²⁵⁰ Devon County Council, in their written response to Question 8 of the Consultation Document, pointed out that the new definition of an emergency will include, for the first time, the need to plan, and respond to, threats to the environment.²⁵¹ The LGA contend that the scale of new duties proposed in the draft Bill, especially when extended to Shire district councils for the first time, will require a wholesale review of the funding provision.²⁵²

224. The Minister in charge of the Bill pointed out that there had been significant resources contributed by central government to civil protection through a range of responders over recent years and very significant increases in the funding had been provided. While he accepted that there is an important discussion to be had on funding, he took the view that the focus of the Bill is the framework for civil protection rather than the funding of civil protection. The Minister said that the way forward on funding was the discussions

244 Consultation Document, pp 13-14.

245 Q 11, Councillor Chalke (Local Government Association).

246 Local Government Association (July 2003) Emergency Planning: A Survey of Top Tier Local Authorities.

247 Q 11, Councillor Chalke (Local Government Association).

248 Consultation Document, Q8.

249 Q 11, Councillor Chalke (Local Government Association).

250 Q 89, Mr Cunningham (Durham County Council).

251 Memorandum from Devon County Council, Ev 203, question 8.

252 Memorandum from the Local Government Association, Ev 1, para 4.1.3.

currently taking place between local authorities and central government which will find expression in the Spending Review decisions that are reached in SR2004.²⁵³

225. In our view, full consideration of the costs of legislative proposals is, as a general rule, an essential part of pre-legislative scrutiny. We are not satisfied with either the quality of the analysis of the effects of the draft Bill on financial and public service manpower, or with the Government's conclusions. The Government's approach seems to be that it is up to others to disprove its belief that current funding levels are sufficient to meet the proposals in the Bill. This approach is particularly problematic with an enabling measure that is largely dependent on draft regulations not available during the consultation process. In our view, it is essential that when enabling bills are subject to pre-legislative scrutiny, the draft primary and secondary legislation should be published simultaneously.

226. We therefore recommend that in future all enabling Bills published in draft should be accompanied by a comprehensive set of draft secondary legislation, to form the basis of an analysis of the financial and public service manpower effects of the proposed legislation. In the case of this Bill we recommend that both Houses only consider it if the explanatory notes published with the Civil Contingencies Bill contain a clear statement of the effects on financial and public service manpower and the explanatory notes address the shortcomings we have identified.

227. When it considered the draft Civil Contingencies Bill in July 2003, the House of Commons Defence Committee was concerned that the level of funding proposed in the Consultation Document was inadequate for the responsibilities envisaged under the Bill and recommended that we examine this issue further.²⁵⁴ The evidence we have received reinforces those concerns. We share the belief that the introduction of new duties on local authorities, in conjunction with national standards and a monitoring process, will almost certainly require a greater level of planning and training than is currently performed by many Responders. Inevitably the implementation of the proposals in a Bill such as the Civil Contingencies Bill will cost money. The key point, however, is that the Government's consultation process was seriously flawed by the absence of draft regulations, making it impossible for Responders to estimate the costs of the proposals in Part 1 the Bill.

228. In these circumstances we recommend that the Cabinet Office, once it has revised its analysis of costs as suggested above, should publish at the conclusion of the Spending Review 2004 the resources the Government has agreed to implement the Bill fully and effectively.

Local contingency planning: grant funding arrangements

229. The Government proposes that funding for local contingency planning should be moved from a specific grant – Civil Defence Grant – to general grant, currently Revenue Support Grant. Under the proposed framework, funding for local authority civil protection work will be brought into the mainstream. In the view of the Government, direct grant has reinforced the isolation of civil protection planning as a function. The Government points out that both it and the Local Government Association are committed to reducing the

²⁵³ Q 284, Mr Alexander (Minister of State, Cabinet Office).

²⁵⁴ Seventh Report of Session 2002-03 (HC 557), para 58.

amount of ring-fenced and specific grants made to local authorities by streaming all funding through Revenue Support Grant, other than in exceptional circumstances. The Government considers that there are no exceptional reasons why funding for local contingency planning to Category 1 local authorities should not be routed through Revenue Support Grant. It has also said that in addition to being in line with general policy, Revenue Support Grant funding will allow individual authorities to determine how best to allocate their resources to fulfil their responsibilities and to meet their priorities.²⁵⁵

230. The response has been mixed. A substantial number of local authorities support a move to mainstream funding, although with reservations. These reservations mainly relate to concern that funding intended for local contingency planning might be diverted to meet more pressing priorities and thus undermine resilience. The Local Government Association believes that, if Civil Defence Grant is to be phased out, there should be transitional arrangements for emergency planning funding to be ring-fenced or identified as a line in the Environmental, Protective and Cultural Services grant, for, say, 2-3 years, to allow this funding to be fully established in local authority expenditure plans, and to enable the service to measure up to public expectation. If Civil Defence Grant is transferred to the Formula Spending Share (the formula Government uses to work out what a council needs to spend to provide all of its services and thus their level of Revenue Support Grant), resource demand pressures from other services could overwhelm the emergency planning service.²⁵⁶

231. The Minister in charge of the Bill said that the move to Revenue Support Grant was about bringing a greater degree of autonomy to local government and moving away from discrete budgets for discrete areas of work. In relation to civil protection, the Government believes that the proposal would have the merit of ensuring that civil protection is mainstreamed within the thinking of local government as in central government. He said this approach was in line with the policy of the Local Government Association.²⁵⁷ The Minister said, however, that the Government will not remove the specific grant until the new framework is in place.²⁵⁸

232. We do not wish, in this Report, to join in the debate on the general merits or otherwise of ring-fencing, but we are concerned that contingency planning should be adequately and transparently resourced. Because emergency planning has had a low profile and a history as a discretionary and uneven service, there is a risk that funds may be diverted to other priorities.

233. We therefore recommend, at the very least, that serious consideration be given to the introduction of transitional arrangements, for example a temporary ring-fencing of existing grant levels until such time as the new legislation beds down, appropriate infrastructures are established, and new funding streams identified. Alternatively, the Government should consider delaying the abolition of Civil Defence Grant for at least two years after the new arrangements commence to ensure that planning for and implementation of the provisions at Part 1 of the Bill are adequately resourced.

²⁵⁵ Consultation Document, para 33, p 20.

²⁵⁶ Memorandum from the Local Government Association, Ev 1, para 4.2.1.

²⁵⁷ Q 285, Mr Alexander (Minister of State, Cabinet Office).

²⁵⁸ Q 286, Mr Alexander (Minister of State, Cabinet Office).

Business continuity management

234. As well as local arrangements for civil protection, the Government intends “to generate a resilience culture at the local level” and to require local authorities to promote business continuity management within their areas. The Government believes that resilience will be further strengthened by extending the civil protection duty beyond emergency planning to address risks to business in the local community generally. The Cabinet Office accepts that promotion of business continuity management elements will constitute an additional cost to local authorities, which they “may seek to defray by charging local businesses who respond to the initiative”.²⁵⁹

235. In commenting on the Bill the Local Government Association questioned the proposal for a mandatory requirement for local authorities to give advice and assistance “to the public”. It considered that the most likely recipients would be commercial business operators rather than members of the general public.²⁶⁰ The Association advised that the potential for charging needed to be explored carefully and guidance given to local authorities on how to set charges in order to recover their costs.

236. A clear definition of what “business continuity management” actually means would have assisted respondents to the consultation exercise on the draft Bill. We assume it includes advice on technology recovery, disaster recovery, risk management, crisis management, as well as advice to organisations on increasing resilience to disruption, interruption or loss. We endorse the principle that the promotion of business continuity management should be encouraged. But the consultation documents do not spell out what the Government proposes and whether other mechanisms have been examined. Neither the type and scope of the business continuity management service proposed nor the costs of setting up the service, operating it, or the level of charges have been made clear.

237. We recommend that the principal elements of the proposed business continuity management service be set out in detail in the explanatory notes published with the Civil Contingencies Bill. It should include a business plan for the operation of the service in a typical local authority.

Emergency powers

238. The consultation documents published by the Cabinet Office include a Partial Regulatory Impact Assessment of the emergency powers at Part 2 of the draft Bill.²⁶¹ The Government takes the view that, as emergency regulations can be used to do anything that might be done by enactment or Royal Prerogative, it is not possible to be specific “at this stage” about the potential regulatory impact if they were used. The regulations may affect businesses, charities and the voluntary sector; but their nature and coverage would depend entirely upon the nature and scale of the emergency and the response and recovery strategy adopted. The Government states that 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 in the Bill will allow the powers to be used on a much more targeted and proportional basis than the existing legislation, which

²⁵⁹ Consultation Document para 23 on page 19 and Partial Regulatory Impact Assessment (Local Responders) para 57.

²⁶⁰ Memorandum from the Local Government Association, Ev 1, paras 3.3.1-3.3.2.

²⁶¹ Partial Regulatory Impact Assessment (Emergency Powers).

will mean only those organisations which genuinely need to be affected by regulations will be.²⁶²

239. We note the qualification “at this stage”. This rather begs the question of whether there will ever be a stage at which the Government plans to be more specific about the potential regulatory impact. We accept that the Government cannot provide a fully fleshed out Regulatory Impact Assessment, but we do believe it could – and should – revise the present text to include, for example, case studies. Whilst these will not be comprehensive, they should show where resources flow, where costs fall and who controls the purse strings.

240. We recommend that the Government produces a revised and expanded Regulatory Impact Assessment of the emergency powers at Part 2 of the draft Bill.

Bellwin scheme

241. The Bellwin Scheme is based on a statutory provision at section 155 of the Local Government and Housing Act 1989, and gives Ministers discretion to reimburse local authorities for immediate action to safeguard life and property or to prevent suffering or severe inconvenience in their area following an emergency or disaster. A review of the Bellwin Scheme was conducted in 2001, following which the Government concluded that a change to the statutory basis of the Scheme would not be appropriate.²⁶³

242. In the view of the Government the Civil Contingencies Bill will represent a “thorough revision of general emergency related legislation [and] will result in a comprehensive legislative framework appropriate for the twenty-first century”.²⁶⁴ The Committee is therefore surprised that there is not a single reference in the consultation documents to the Bellwin scheme, which is a pillar of the emergency framework in England and Wales and which had been reviewed only two years ago.

243. While the Minister in charge of the Bill told us that the Bellwin scheme was retained by agreement with the Local Government Association,²⁶⁵ during our consideration of the draft Bill representatives of local authorities expressed concern to us about the operation of the scheme. The “Bellwin” process was described as “a very discretionary and very bureaucratic process”, and the expenditure threshold was said to be too high. It was suggested that an alternative mechanism – a reserve contingency fund – would give local Responders the confidence to make financial decisions during emergencies that were not going to enfeeble their ability to provide other services.²⁶⁶

244. We are not in a position to give a considered view on the strengths and weaknesses of the Bellwin scheme, or possible alternative arrangements. **But we would recommend that the Government, when it comes to finalise the Bill and its supporting documentation, explains the part which the Bellwin scheme plays in resilience and how it fits within the new framework.**

262 Partial Regulatory Impact Assessment (Emergency Powers) paras 6 and 7.

263 Questions for the Bill Team, Appendix 9, question 47.

264 Consultation Document, p 41.

265 Q 288, Mr Alexander (Minister of State, Cabinet Office).

266 Q 108, Mr Cunningham (Durham County Council).

7 Audit and Management

Audit

245. In this chapter we consider the mechanisms for assessment of performance, the role of the lead coordinator in declared states of emergency, and the provision of advice to contingency planners.

246. The Government believes that the certainty offered by the new local contingency framework will provide the basis for robust performance management of civil protection activity to ensure operational effectiveness and financial efficiency. It has considered establishing a new mechanism for performance management, possibly through an inspectorate, but believes that the use of existing mechanisms will achieve its aims of ensuring consistency of performance and bringing civil protection into the mainstream.²⁶⁷ The new framework will feed into established processes through bodies such as the Audit Commission, the emergency services inspectorates, and the utility regulators.

247. In common with other areas of policy, the Government believes 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.²⁶⁸ The Local Government Association is satisfied that joint preparedness can be tested and audited. It cited as an example the Crime and Disorder Reduction Partnerships, which are based on obligations placed jointly in two-tier areas, on the county council, the district council and the chief officer of police. The Association believe that the arrangements for audit and inspection generally work well.²⁶⁹

248. The Association of Chief Police Officers took a different view. They argued that there would be benefit in a separate inspectorate for emergency planning. Their experience of working with Crime and Disorder Reduction Partnerships suggested that multi-agency performance measures were both difficult to create and had limitations in holding organisations to account. They believe something as definable and containable as emergency planning could justify a very small inspectorate.²⁷⁰

249. We share the view of the Police, and are attracted by the concept of a separate, dedicated civil contingencies inspectorate. It would be able to ensure that civil contingency inspection had a high profile and that specialised expertise was developed to examine civil contingencies and the joint working arrangements which will be needed to underpin it.

250. Because of the importance of ensuring public confidence in the system, we recommend that the Cabinet Office examines the feasibility of a dedicated inspectorate to oversee performance management of civil protection activity, to ensure operational effectiveness and financial efficiency. Such a dedicated inspectorate might be based within a Civil Contingencies Agency (see paragraphs 256-260).

267 Cabinet Office (June 2003) Draft Civil Contingencies Bill: Consultation Document, para 37, p 21.

268 Cabinet Office (2003) Partial Regulatory Impact Assessment (Local Responders), para 69.

269 Q 27, Mr Griffin (Local Government Association).

270 Q 60, Mr Alan Goldsmith (ACPO), and Memorandum from ACPO, Ev 21, question 9.

Crisis Management

251. Emergencies frequently develop into disasters because of the inadequacies of command and control. Confidence in commanders needs to be established before an incident occurs, and is dependent on a number of qualities, the most important of which is leadership but which include a deep understanding, and ideally experience, of the generic principles of the response to emergencies. The principle of appointment/organisation primacy already has a proven track record in counter terrorist operations where the police may be supported by a variety of departments, organisations or agencies, but it is ultimately the senior police officer who determines the course of action to be taken on the basis of the advice provided by the subject matter experts. Although in these circumstances the term “command and control” is avoided to minimise the sensitivities of the subordinate contributors, they are in effect the functions that the senior police officer fulfils.

252. In its Consultation Document, the Government states that “the identity of the Regional Nominated Coordinator would depend on the nature of the incident, mirroring at regional level the existing Lead Government Department concept.”²⁷¹ In his evidence, the Minister in charge of the Bill said:

“I am convinced that the approach that the British Government has taken, with lead Government departments identified in core areas of responsibility, is the right way forward for the people of Britain”²⁷².

253. Others disagreed, for example, the Surrey Police, who argue that “recent experience through the fuel crisis and the outbreak of foot and mouth disease has shown it does not work.”²⁷³

Lead Government Department

254. We are concerned that the principle of lead government department for coordinating the response to a crisis following the declaration of an emergency will not ensure the best level of leadership under what are likely to be the most extreme and challenging conditions. It is also unlikely to ensure consistency of planning among the broad range of different disciplines. Nor would it allow for a consistent central Government participation in emergency planning exercises. We accept that expertise in the subject matter, whether from departmental Ministers or the heads of agencies/organisations, is an essential component of any response to a crisis, but we doubt if individuals selected for their specialist knowledge have the skills or experience necessary for crisis and consequence management. It is our belief, therefore, that a Regional Nominated Coordinator (or Emergency Coordinator) should be an individual with proven crisis management skills, not an official with expertise in one or other branch of government.

255. This view was shared by local authorities²⁷⁴ and representatives of the “blue light” services.²⁷⁵ We also believe that he or she should be identified in advance, not appointed as

271 Chapter 4, para 18.

272 Q 265, Mr Alexander (Minister of State, Cabinet Office).

273 Memorandum from Surrey Police, Ev 268, para 6(h).

274 Q 110, Mr Cunningham (Durham County Council) and Mr Davies (Leeds City Council).

275 Q 50, Mr Alan Goldsmith (ACPO).

a crisis is breaking. Ideally, there should be a crisis management capability at every regional office, whose members would be intimately involved with the continuing development of emergency responses, to ensure mutual confidence at all levels. On the declaration of an Emergency, Regional Nominated Coordinators (and Emergency Coordinators) would then be supported, on the one hand, by the subject matter experts from the lead department/agency/organisation and, on the other, by the embedded emergency management experts.

An Advisory Agency

256. In his evidence, the Minister in charge of the Bill firmly rejected the concept of an “Emergencies” super Ministry, along the lines of the Department for Homeland Security in the United States.²⁷⁶ We accept and support his arguments. That said, as in the case of leadership discussed above, we are not convinced that preparedness for events of such potentially catastrophic consequence can be effectively overseen by anything less than an organisation established for that specific purpose. That is in no way to diminish the expertise developed within individual departments in the confrontation of terrorism and other threats to the population, the economy and the environment, or the professionalism demonstrated by those who routinely manage emergencies.

257. What we propose is the formation of a relatively small permanent national Civil Contingencies Agency (CCA), not a department, staffed by people with expertise in the management of crises and their consequences, and perhaps answerable to a body of part time Civil Contingencies Commissioners, who in turn report to the Home Secretary. In addition to fulfilling a management and audit function, the Agency would also be responsible for setting national response standards for Category 1 and 2 Responders. We believe that by having subject matter experts, from the department or organisation within whose sphere of routine responsibility the emergency falls, providing specialist advice to the emergency manager a consistently high level of emergency management would be provided. We also consider that by providing the emergency management function at both National and Regional tier level there will be a high level of operational coherence.

258. In his evidence, the Minister in charge of the Bill described the coordination of the response to the foot and mouth epidemic as “the beginnings of an effective regional response in parts of the United Kingdom”,²⁷⁷ having earlier commented that central Government was able to “draw on the expertise of a range of outside bodies to assist it in that work of central coordination and resilience”.²⁷⁸ In our view, that function could more easily be achieved through a separate Agency, which could include individuals seconded from appropriate fields of emergency expertise (for example, military, logistics, police, CBN,²⁷⁹ etc) for 2/3 year periods – ultimately building up a reserve of men and women who can be pulled in to advise at every level of Government, and to advise on the management and coordination of responses to crises requiring the use of emergency legislation. An equivalent group but with the potential for extended tenure would have responsibility for the management/coordination of response to crises requiring the use of

276 QQ 266-268, Mr Alexander (Minister of State, Cabinet Office) and Mr Hargreaves (Head of Bill Team, Civil Contingencies Secretariat).

277 Q 272, Mr Alexander (Minister of State, Cabinet Office).

278 Q 265, Mr Alexander (Minister of State, Cabinet Office).

279 Abbreviation for Chemical Biological and Nuclear.

emergency legislation. It would serve several objectives without cutting across Whitehall boundaries. These could include:

- To measure capacity, set training objectives and operational standards and ensure compliance across all contributing departments, organisations and agencies, including those of central government, to ensure consistency in planning and response capability
- To provide a channel for expert advice to local authorities
- To collate technical, scientific and other information as it becomes available (including intelligence on terrorist techniques) and to consider strategies for dealing with wide area emergencies
- To develop the ability to “horizon scan” to improve levels of anticipation and the planning necessary to cope with the unexpected
- To develop an intimate knowledge of capabilities and skills at Local Government level and among the emergency services, so that any contingency could be dealt with by bringing together those individuals best able to manage the given emergency. This would require the Agency to develop a tactical as well as a strategic capacity
- The Agency would report to Parliament annually (through the Home Secretary), and its reports should be published, as is the case with the Security and Intelligence Committee.

259. The national Civil Contingencies Agency could have representatives based in the Government’s regional offices to advise and support potential Regional Nominated Coordinators. They would bring some focus for what is at present a vague concept of the Regional Tier in crisis planning and management (see chapter 8). They, and the Agency itself, would also provide a link to those organisations which are currently absent from the Bill but who would be involved in the process, namely the military, central government departments, and an array of national bodies and utilities. Such arrangements would be preferable to relying on the senior regional civil servant having responsibility for a role for which s/he was ill-equipped.

260. We therefore recommend that the Government gives careful consideration to the establishment of a Civil Contingencies Agency which, like other Agencies, would have both advisory and supervisory responsibilities.

8 The Regional Tier

Background

261. This chapter examines the Government's concept of a regional tier to coordinate the response to an emergency over a sufficiently wide area to require the invocation of emergency legislation.

262. There is broad consensus on the need to modernise existing legislation in order to "reflect the move from Cold War civil defence to modern civil protection."²⁸⁰ It is clear, too, that a key element in the Government's modernisation strategy is the creation of a regional dimension in the civil protection function. This objective is pursued in Part 2 of the draft Bill.

263. The two main purposes of creating a regional tier are:

- to improve coordination - between the local and regional bodies, at the regional level itself and between the regions and the centre,²⁸¹
- to enable the Government to proclaim an emergency over a restricted area of the country.

The Bill's Provisions

264. The draft Bill however fails to meet the objectives summarised above because the provisions relating to the regional tier are contained in Part 2, which deals with crisis response - not crisis planning. More specifically, the Bill creates the role of Regional Nominated Coordinator (RNC) in England, and Emergency Coordinators elsewhere in the UK, to be nominated at the time an emergency is proclaimed. The Government's Consultation Document says in terms that the regional tier will have a non-statutory role, including "to identify gaps and interdependencies, to assist with the brokering of mutual aid agreements ... and to establish a strong cadre of staff familiar with emergency procedures".²⁸²

265. The main thrust of Part 1 of the Bill is to harmonise and integrate the planning and response functions of the local tier. It is an enabling provision which allows the achievement of consistency by means of regulations and guidance issued from the centre. It is clear that the Regional Resilience Forums and the Regional Resilience Teams (RRT) are also intended to provide a planning function, but their omission from Part 1 results in a lack of clarity over their responsibilities in the planning field. A further source of confusion is that, in England, the RRTs are more accurately defined as the 'regional presence' of national government, not a part of 'regional government' in the sense either of reporting to elected regional assemblies or as a means of devolving power to the regions from the Centre. At the local level, the RRTs could well be regarded as a means of furthering

280 Draft Civil Contingencies Bill Consultation Document, chapter 1, para 2, p 9.

281 *Ibid*, chapter 4, pp.23-23.

282 *Ibid*, chapter 4, para 5.

centralised control over locally elected bodies, while supposedly only having a ‘coordination’ function after an emergency has been proclaimed.

266. Beyond the regional offices of which they are a part, the RRTs also report to the Civil Contingencies Secretariat of the Cabinet Office, the Regional Coordination Unit (RCU) of the Office of the Deputy Prime Minister, as well as ‘other’ lead Government Departments in Whitehall. The regional tier will thus involve interaction between four elements: “the Regional Resilience Unit, the Regional Resilience Forum, the Regional Civil Contingencies Committee and the Regional Nominated Coordinator”.²⁸³ Such a complicated chain of command and control is a cause for concern.

267. The Government’s Consultation Document argues that “the regional role in planning has to be clearly defined and well understood by other Responders, particularly at the local and national levels”.²⁸⁴ As noted earlier (in paragraphs 91-102), the Bill does not achieve such clarity. The relationships between the three tiers of response are obscure, potentially undermining the objective of ensuring consistency of approach across all levels of the resilience framework. This uncertainty and complexity was identified in the Defence Select Committee’s report²⁸⁵ and reinforced by other evidence. It will create conflicts of identity between local and national representation, while singularly failing to establish an alternative ‘regional’ culture. The mechanism for the nomination of the Regional Nominated Coordinator is not properly articulated and appears merely to mirror the ‘lead government department’ concept embedded in the national level framework, while many believe that in crisis conditions a proven crisis manager is preferable to a specialist in the discipline most closely connected to it (as outlined in paragraph 254).

Other Concerns

268. There are two other concerns:

- As noted above, the RRTs consist of appointed officials, while local authorities are led by elected representatives of the District or County. The Bill needs to set out the formal relationship between the two, not only in contingency planning (Part 1) but in responding to a local emergency as well as a proclaimed emergency under Part 2.
- The envisaged regional tier will not in all circumstances suit the demands of a particular emergency, or even the contingency planning to cope with it. The Deputy Chief Constable of Lincolnshire summed it up when he said “the regional structure is useful as a mechanism to get people together, to talk together, but it might not necessarily be the best in terms of response”.²⁸⁶ The logic of contingency planning dictates that adjoining areas should coordinate plans for mutual assistance if one or other is overwhelmed. But there are many examples of adjoining County authorities who do not share the same Regional Office. We recognise that the Government’s own administrative arrangements are based on these areas, which also mirror the Army’s Brigade boundaries. But the Bill needs to recognise that a “one size fits all” approach is

283 Memorandum from the South East Regional Resilience Forum, Ev 266, p.1.

284 Chapter 4, p 22.

285 7th Report of Session 2002-03 (HC 557), pp. 12-14.

286 Q 78, Mr Alan Goldsmith (ACPO).

undesirable and provide for greater flexibility in response arrangements for regional (proclaimed) emergencies.

269. The formalisation of a regional tier of government as part of the UK's resilience framework is an important initiative and is potentially of great value, not least in allowing for the proclamation of emergency over a smaller area than the nation as a whole, but also in achieving economies of scale between Responders at a time of crisis. It also has the potential to promote consistency in the overall level of civil protection planning. But the structure and responsibilities require further development to avoid the pitfall of creating an unnecessary and unwanted bureaucratic layer that contributes little to the resilience framework. Most importantly, the extent (or otherwise) of the regional tier's involvement in local contingency planning must be spelled out.

270. We therefore recommend that:

- **Part 1 of the Bill should clarify the respective planning responsibilities of the local authorities and the regional tier, and include a statutory duty for civil protection at the regional level.**
- **The regional tier should be simplified in terms of structure.**
- **The chain of command and communication between national and regional tiers needs to be clarified, and linked to the proposed Civil Contingencies Agency.**
- **Part 2 of the Bill should include the flexibility to proclaim emergencies in geographical rather than administrative areas in circumstances which so dictate.**

9 Summary of Recommendations

Definition of Emergency

271. The two Parts of the draft Bill serve different purposes and provide for qualitatively different action. We recommend that the Government include, in a sufficiently robust and objective clause, an additional set of criteria which must be satisfied before a declaration of emergency under Part 2 can be made. This would be in addition to the ‘triple lock’ test. (paragraph 28)

272. The current definition of emergency is so wide as to encompass events which are already routinely dealt with by emergency services. We concur with the conclusion of the House of Lords Select Committee on the Constitution that the current definition is unduly broad.²⁸⁷ (paragraph 32)

273. We have heard from the Government that the triple lock is reflected in various clauses throughout Part 2, including clauses 17, 18, 19 and 21. We recommend that the triple lock should be explicitly stated in a single or adjoining clauses on the face of the Bill, rather than mentioned in discrete sections. It should be a statutory condition that the triple lock test is applied before a declaration of emergency can be made. (paragraph 37)

274. We conclude that the triple lock mechanism requires significant strengthening if it is to provide an adequate safeguard against misuse. We recommend that the triple lock include a test which measures whether the use of powers is proportionate to the nature of the emergency, as well as providing for geographical proportionality. The term “reasonableness” should be inserted into the triple lock. The “seriousness” test should be made more robust, given that “serious” is not defined anywhere in the Bill. The opening phrase in clause 21(4), “without prejudice to the generality of subsection (1)(a)” should be removed.²⁸⁸ It is confusing and can only undermine what is otherwise the clear intent of clause 21(4). (paragraph 39)

275. We welcome the comment by the Minister in charge of the Bill that the Government is considering putting a more explicit trigger on the face of the Bill. While we acknowledge the concept of a triple lock as an additional threshold, it cannot replace the need for a clear, objective and proportionate definition of an emergency. (paragraph 42)

276. In Part 2, the definition of emergency refers to a serious threat to “welfare”, rather than “human welfare”. We recommend that the term “human welfare” be explicitly incorporated into the definition of emergency in both Parts of the Bill. (paragraph 44)

277. The draft Bill significantly widens the definition of emergency in the Emergency Powers Act 1920; a threat to human welfare constitutes but one of many components, and is not a prerequisite for all eventualities. We recommend that the definition of an emergency is re-drafted to reflect that an emergency is a situation which presents a threat to human welfare. (paragraph 48)

²⁸⁷ Memorandum from the House of Lords Select Committee on the Constitution, Appendix 1.

²⁸⁸ Memorandum from David Bonner, Ev 178, para 15.

278. Clauses 1(1)(c) and 17(1)(b) extend the definition of an emergency to include an event or situation which presents a threat to political, administrative or economic stability. We have grave reservations about allowing enabling legislation to contain exploitable opportunities that could give the government of the day the power to protect its own existence when there may be no other threat to human welfare. We recommend that this clause should only remain in the Bill if it can be demonstrated that situations occurring under it will also present a threat to human welfare or safety. It should only cover those threats to human welfare caused by disruption to essential services. (paragraph 52)

279. One of the threats to human welfare is identified as one that causes or may cause disruption of educational services. While education is an important service, we can see no reason why a threat to educational services should, of itself, warrant the use of extensive emergency powers. We therefore recommend that educational services should be removed from clauses 1(2)(h) and 17(2)(h). (paragraph 54)

280. As the draft Bill currently reads, the existence of an emergency is judged according to the seriousness of a “threat”, rather than the seriousness of a potential outcome. We recommend that the Bill makes explicit that the test of the existence of an emergency is judged according to the seriousness of its potential or actual consequences to human welfare. (paragraph 57)

281. An emergency is deemed to exist according to whether a threat is “serious”, yet the draft Bill does not provide any explanation of what “serious” is held to mean. We recommend that the *Dealing with Disaster* definition of a ‘major emergency’ be inserted into the Bill as one definition of the term ‘serious’. (paragraph 62)

282. Under the draft Bill, an emergency can be declared if there is a threat to political, administrative or economic stability. We have heard that the term “stability” is inadequate for creating a clear and objective threshold. We recommend that “stability” is defined within the Bill, with reference to our recommendation that the core of an emergency is the threat to human welfare. (paragraph 65)

283. Under Part 2, the phrase “in particular” is inserted into the list of possible scenarios that could trigger a declaration of emergency, leaving the definition open-ended and subject to interpretation. We are not convinced that the definition of emergency should incorporate such a degree of latitude, or that the safeguards are robust enough to protect against possible misuse. We therefore recommend that the words “in particular” be removed from clause 17(2). (paragraph 69)

284. Under the draft Bill, emergency powers can be triggered by a threat to “another essential commodity” and “other essential services”. These terms are not defined in the draft Bill and seem dependent on Ministerial interpretation. While we recognise that the Government wishes to leave the definition wide enough to “cover the full spectrum of current and future events and situations”,²⁸⁹ we suggest that this degree of latitude leaves the Bill wide open to possible misuse. The phrases “another essential commodity” and “other essential services” should be removed from the Bill. Any amendments to the Bill which may become necessary in the event of future, unforeseen events, should be enacted

289 Consultation Document, chapter 2, para 7, p 13.

through proper parliamentary procedure, not left to the discretion of the Government of the day. (paragraph 72)

285. Utility companies have raised concerns about the risk of overlap between Category 1 Responders' duties and their own statutory responsibilities, outlined in other legislation. We recommend that the existing statutory responsibilities of the utility organisations are cross referenced in accompanying regulations, to ensure that there is no ambiguity or overlap in emergency responses. (paragraph 75)

286. The definition of public functions in Part 2 does not include the UK Parliament, although it includes Ministers and the devolved administrations. We recommend that the UK Parliament should be included in Part 2 and the National Assembly for Wales and the UK Parliament be included in Part 1. (paragraph 77)

287. Under the Bill an event may present a threat to the environment if it causes, or may cause, contamination of land, water or air with fuel oils. Concern has been raised that these terms are overly restrictive or inadequately defined. We recommend that the Cabinet Office consider making clearer the definition of oil and water, in light of the concerns that the Committee has heard. (paragraph 81)

Category 1 and 2 Responders

288. We recommend that Category 1 Responders should be able to require any person or organisation to cooperate in planning or training for a response to an emergency. This requirement should be reasonable, necessary, and only be imposed on those most conveniently placed to deal with an emergency, while not creating substantial burdens relative to the resources of any person. Any resources or services required by a person under this section should be paid for by the Category 1 Responder on the most favourable (to the Category 1 responder) commercial terms. (paragraph 90)

289. Apart from functions related to maritime and coastal matters, central government departments and the regional tier are not given any statutory duties, and have no formal status in the process of contingency planning set out in Part 1. We recommend that the role and responsibilities of Government Departments, the National Assembly for Wales and regional government offices are outlined on the face of the Bill and that they are given a statutory duty to undertake their responsibilities. (paragraph 102)

290. County councils and Shire district councils are both included as Category 1 Responders, which in effect accords them the same duties and responsibilities. We recommend that the responsibilities, in England, of County councils and Shire District councils should be explicitly set out on the face of the Bill. (paragraph 105)

291. Under the draft Bill, Fire and Civil Defence Authorities seem likely to be prevented from undertaking emergency planning arrangements on behalf of local authorities. We recommend that the Government re-examine its stance and consider whether successful existing arrangements, such as Fire and Civil Defence Authorities, should be left in place. (paragraph 107)

292. We recommend that Category 1 also include (in England) Strategic Health Authorities, Primary Care Trusts, Acute Hospital Trusts, (in Wales) Local Health Boards, Public Health Services and the National Public Health Service for Wales. (paragraph 113)

293. We recommend that the Health Protection Agency, National Blood Service and Welsh Blood Service be included as Category 2 Responders. (paragraph 114)

294. The requirement for Category 2 Responders to provide information to all Category 1 Responders would cause utility companies practical and financial difficulty if it means that every local authority can request information. We recommend that the Government's proposal to involve utilities at local resilience forum level represents a practical compromise. (paragraph 119)

295. We recommend that a statutory duty be placed upon Category 1 Responders to consult with and involve relevant voluntary organisations in civil contingency planning. (paragraph 128)

296. Given the plethora of voluntary organisations and the individual requirements of local areas, we recommend that Category 1 Responders be given flexibility to identify and consult with the most relevant voluntary organisations in their area. (paragraph 129)

297. Given their potential to cause, as well as their ability to respond to a major disaster, we recommend that the Government consider whether to include in Category 2 all operators of establishments subject to the Control of Major Accident Hazards (COMAH) Regulations and organisations that have an emergency response through national schemes, including the National Arrangements for Incidents involving Radioactivity (NAIR), RADS SAFE and CHEMSAFE. (paragraph 131)

298. We have heard evidence proposing that road based transport enterprises, the food and drink industry and private security firms should be included as Category 1 or 2 Responders. We have not had an opportunity to take oral evidence from these sectors and therefore have not had time to explore these areas in great depth. We recommend that the Government consider whether to include the Highways Agency, transport enterprises, fuel suppliers, the food sector and private security firms as Category 1 or 2 Responders. (paragraph 136)

Human Rights Issues

299. We conclude that the Government has not demonstrated a clear and compelling need to treat regulations under the Civil Contingencies Bill as having the status of Acts of Parliament for the purposes of the Human Rights Act. At most, there may be a need for some procedural changes, such as a fast track process within a higher court, plus a compulsory stay on the enforcement of any court order until the appeal is exhausted. We welcome the Government's willingness to reconsider this matter. (paragraph 156)

300. We recommend that the Bill should provide that regulations shall not alter any existing procedure in criminal cases in any way which is inconsistent with Article 6 in the Human Rights Act. (paragraph 164)

301. We recommend that the Cabinet Office put in place arrangements to ensure that the Council on Tribunals is properly consulted about clause 21(3)(1) and that the arrangements to create possible new courts or tribunals are set out in detail in regulations published in draft. (paragraph 166)

302. The draft Bill contains some protection for human rights which can legally be suspended in an emergency but, aside from the partial protection for article 4 (on forced

labour), not for those from which member States cannot derogate under the European Convention, article 15. We conclude that the intention of the draft legislation would be clearer if clause 21(4) included among the prohibitions on the making of regulations a prohibition on regulations which would breach any of the Convention rights from which it is not possible to derogate or any provision in the Geneva Conventions of 1949 and Protocols thereto of 1977. (paragraph 168)

303. The draft Bill provides for the requisition, confiscation or destruction of property, animal life or plant life with or without compensation (clause 21(3)(b)). We conclude that if property is to be taken without compensation, then it should be specified that (i) the taking is still in compliance with Article 1 of Protocol 1 of the European Convention and (ii) that steps are taken to ensure that insurance is available for any loss. (paragraph 176)

Constitutional Matters

304. We recommend that the Acts of Parliament listed in paragraph 183 should appear on the face of the Bill as not being liable to modification or disapplication under clause 21(3)(j). (paragraph 187)

305. We recommend that, where because of urgency the Minister issues directions, in substitution for regulations, under clause 7(2) or regulations under clause 12(2) without consulting the National Assembly for Wales, such directions or regulations should expire after 21 days. This would allow the Minister time to make, if necessary, regulations which meet the normal requirements of scrutiny by Parliament and for consultation with the National Assembly for Wales. (paragraph 192)

306. We recommend that draft regulations under Part 2 and guidance to them be published from time to time. The drafts should be published not just for the purposes of Parliamentary deliberation on the legislation but in the interests of open government. (paragraph 196)

307. We recommend that regulations made under Part 2 of the Bill should be subject to the same safeguards as primary legislation in that Ministers should be required to make a human rights statement under section 19 of the Human Rights Act 1998 and that the individual regulations should be subject to textual amendment in Parliament. (paragraph 199)

308. We recommend that the powers in Part 2 should expire every five years from Royal Assent unless renewed beforehand by an order subject to the affirmative procedure and laid by a Secretary of State following a report by a Select Committee on the operation of the Act. (paragraph 201)

309. In relation to the ability of a Secretary of State to declare an emergency on his or her own, we consider there should be two additional safeguards:

- the wording of clause 19 should be altered by adding the condition of reasonableness to the finding of satisfaction of the Secretary of State.
- A declaration under clause 19 should lapse if not confirmed by Parliament within seven days as under clause 24. (paragraph 208)

Resource Implications

310. We have heard that the Partial Regulatory Impact Assessment does not present an accurate picture of the impact of the draft Bill. We recommend that the Regulatory Impact Assessment (Local Responders) be redrafted in order to address the concerns voiced by business and to ensure that it meets the rigorous requirements of *Better Policy Making: A Guide to Regulatory Impact Assessment*. It needs to set out in much more detail, with supporting evidence, the costs and benefits of the options and to review the options comprehensively in the light of the regulations to Part 1, which are now due to published with the Bill.²⁹⁰ (paragraph 218)

311. We recommend that the definitive version of the Bill should contain, in the explanatory notes, a detailed analysis of the current and projected costs of providing the emergency planning service. (paragraph 222)

312. We recommend that in future all enabling Bills published in draft should be accompanied by a comprehensive set of draft secondary legislation, to form the basis of an analysis of the financial and public service manpower effects of the proposed legislation. In the case of this Bill we recommend that both Houses only consider it if the explanatory notes published with the Civil Contingencies Bill contain a clear statement of the effects on financial and public service manpower and the explanatory notes address the shortcomings we have identified. (paragraph 226)

313. The Government's consultation process was seriously flawed by the absence of draft regulations, making it impossible for Responders to estimate the costs of the proposals in Part 1 the Bill. In these circumstances we recommend that the Cabinet Office, once it has revised its analysis of costs as suggested above, should publish at the conclusion of the Spending Review 2004 the resources the Government has agreed to implement the Bill fully and effectively. (paragraph 228)

314. The Government proposes that funding for local contingency planning should be moved from a specific grant – Civil Defence Grant – to general grant, currently Revenue Support Grant. We recommend, at the very least, that serious consideration be given to the introduction of transitional arrangements, for example a temporary ring fencing of existing grant levels until such time as the new legislation beds down, appropriate infrastructures are established, and new funding streams identified. Alternatively, the Government should consider delaying the abolition of Civil Defence Grant for at least two years after the new arrangements commence to ensure that planning for and implementation of the provisions at Part 1 of the Bill are adequately resourced. (paragraph 233)

315. As well as local arrangements for civil protection, the Government intends "to generate a resilience culture at the local level" and to require local authorities to promote business continuity management within their areas. We recommend that the principal elements of the proposed business continuity management service be set out in detail in the explanatory notes published with the Civil Contingencies Bill. It should include a business plan for the operation of the service in a typical local authority. (paragraph 237)

290 Q 237, Mr Alexander (Minister of State, Cabinet Office).

316. We recommend that the Government produces a revised and expanded Regulatory Impact Assessment of the emergency powers at Part 2 of the draft Bill. (paragraph 240)

317. A review of the Bellwin Scheme was conducted in 2001, following which the Government concluded that a change to the statutory basis of the Scheme would not be appropriate.²⁹¹ We would recommend that the Government, when it comes to finalise the Bill and its supporting documentation, explains the part which the Bellwin scheme plays in resilience and how it fits within the new framework. (paragraph 244)

Audit and Management

318. The Government has considered establishing a new mechanism for performance management, possibly through an inspectorate, but believes that the use of existing mechanisms will achieve its aims of ensuring consistency of performance and bringing civil protection into the mainstream. Because of the importance of ensuring public confidence in the system, we recommend that the Cabinet Office examines the feasibility of a dedicated inspectorate to oversee performance management of civil protection activity, to ensure operational effectiveness and financial efficiency. Such a dedicated inspectorate might be based within a Civil Contingencies Agency. (paragraph 250)

319. In his evidence, the Minister in charge of the Bill firmly rejected the concept of an “Emergencies” super Ministry, along the lines of the Department for Homeland Security in the United States. We recommend that the Government gives careful consideration to the establishment of a Civil Contingencies Agency which, like other Agencies, would have both advisory and supervisory responsibilities. (paragraph 260)

The Regional Tier

320. We recommend that:

- Part 1 of the Bill should clarify the respective planning responsibilities of the local authorities and the regional tier, and include a statutory duty for civil protection at the regional level.
- The regional tier should be simplified in terms of structure.
- The chain of command and communication between national and regional tiers needs to be clarified, and linked to the proposed Civil Contingency Agency.
- Part 2 of the Bill should include the flexibility to proclaim emergencies in geographical rather than administrative areas in circumstances which so dictate. (paragraph 270)

Appendix 1: Memorandum from the House of Lords Select Committee on the Constitution

Letter from the Lord Norton of Louth, Chairman of the Select Committee on the Constitution

Thank you for your letter of 16th July inviting the Constitution Committee to comment on the draft Civil Contingencies Bill.

The draft bill clearly raises matters of constitutional significance which fall within our remit, since the effect of a declaration of emergency is to confer on the Government an exceptional power to deal with the emergency by making regulations covering matters on which power to legislate would in non-emergency situations be withheld from the Government. As requested by your letter we focus particularly on Part 2 of the Bill which proposes to repeal the Emergency Powers Act 1920 (as amended in 1964) and replace it with new primary legislation. We do not attempt to comment on every detail of the draft bill (which may be more appropriate for us to do when a substantive bill is introduced to Parliament) but draw attention to the following broad issues:

1. the definition of ‘emergency’;
2. the geographical extent of an emergency;
3. the need for a royal proclamation and Orders in Council;
4. the status of emergency regulations for the purposes of the Human Rights Act;
5. Parliamentary scrutiny and approval of emergency measures; and
6. the purposes for which emergency regulations may be made.

The definition of ‘emergency’

Our principal concern with the draft bill is with the definition of ‘emergency’. We note that the definition in clause 17 of the draft bill has a much more elaborate structure and a more extensive application than the definition in the Emergency Powers Act 1920, which is primarily concerned with maintaining the essentials of life for the community. In the draft bill, an ‘emergency’ in respect of all or part of the United Kingdom is “an event or situation which presents a serious threat” to:

- a) the welfare of all or part of the population;
- b) the environment;
- c) political, administrative or economic stability; or
- d) security.

Each of these threats is then spelled out in more detail. Thus a threat to the welfare of the population includes matters that may cause loss of life, homelessness, damage to property, disruption of supplies of food and other essential commodities, disruption of systems of communication, disruption of transport, and disruption of “medical, educational and other essential services”. Various forms of threat to the environment are specified (including contamination of land, water or air; and flooding). And “threats to political, administrative or economic stability” include an event or situation that “causes or may cause” disruption of (a) the activities of Her Majesty’s Government; (b) the performance of public functions (which are defined as including all functions of Ministers, the devolved authorities and local councils); or (c) the activities of banks or other financial institutions.

We consider that there are likely to be situations or events involving legitimate political activity and protest or legitimate industrial action which will be caught by this very broad definition. We also note that this definition of emergency has already been criticised in reports by the House of Commons Defence Committee (7th Report 2002–03, paras 62–64) and by the Joint Committee on Human Rights (15th Report 2002–03, para. 3.11).

We therefore consider that the definition of ‘emergency’ in the draft bill is unduly broad.

The geographical extent of an emergency

We note that it could be argued that a declaration of emergency in respect of part of the United Kingdom or a region of England would enable special powers to be invoked even though an event or situation is not so serious as one threatening the entire country. However, we also recognise the force of counter-arguments that support the additional flexibility that the draft Bill presents here compared with the 1920 Act. Restricting an emergency to (for instance) an English region struck by a natural disaster when other regions are not directly affected, seems to us to promote proportionality and avoid an over-broad response to a particular crisis.

The need for a royal proclamation and Orders in Council

The 1920 Act requires a state of emergency to be declared by means of a royal proclamation. The draft Bill (clause 19) envisages that there might be circumstances in which the effects of delay while a proclamation was sought from the Queen personally would be serious and significant avoidable harm would be caused. In this event, a Secretary of State would be empowered to make such a declaration. The constitutional responsibility for the decision in either case would be borne by the Government as a whole and there appear to be no grounds for supposing that the Queen would have a discretion to exercise before acting on the advice of her Ministers.

A similar question arises out of the provision for promulgating emergency regulations once an emergency has been declared. Clause 20 provides that such regulations shall be made by the Queen in Council, except where ‘serious delay’ in responding to the emergency would arise while a meeting of the Queen in Council is arranged. In this event, the regulations may under clause 20(1)(b) be made by the Secretary of State. Again, the constitutional responsibility for the regulations so made would be borne by the Government as a whole, and in law there would appear to be no difference between regulations made by Order in Council (a purely formal procedure) and regulations made by the Secretary of State. In each case, the regulations would be, or would be made by, statutory instruments and would be subject to the Statutory Instruments Act 1946.

The status of emergency regulations for the purposes of the Human Rights Act

The draft Bill provides in clause 25 that an instrument containing emergency regulations shall be treated as if it were an Act of Parliament for the purposes of the Human Rights Act 1998. The effect of this is that if it were established by a court that an emergency regulation could not be read to comply with Convention rights under the Human Rights Act, s 3, the only remedy under that Act that the court could give would (assuming it was a superior court) be to declare that the regulation was incompatible with the Convention (under the HRA, s 4). Thus the regulation could not be quashed or set aside for non-compliance with the Convention, as would otherwise be possible in the case of secondary legislation.

We are not satisfied that the Government has demonstrated a compelling need for this departure from the structure for the protection of Convention rights created by the 1998 Act, and we consider that this approach would run the risk of creating an undesirable precedent.

Parliamentary scrutiny and approval of emergency measures

In the 1920 Act, provision is made for the urgent recall of Parliament in the event of a declaration of a state of emergency while Parliament is not sitting. The emergency regulations made may remain in force only if approved by each House within seven days. In broad terms, clause 24 of the draft Bill provides for a comparable degree of parliamentary scrutiny. There are, however, two changes from the 1920 Act in the extent of Parliamentary scrutiny.

First, under the 1920 Act, emergency regulations “shall have effect as if enacted in this Act, but may be *added to, altered, or revoked* by resolution of both Houses of Parliament” (s 2(4)). The italicised words appear to give the two Houses a power to amend the regulations as laid. The draft Bill, however, provides that the regulations shall lapse seven days after the date of laying unless during this period each House approves the regulations (clause 24(7)). This formulation provides for no power to amend the regulations as made.

Second, the 1920 Act requires a new declaration and new regulations to be re-made where a declaration of emergency continued for more than the statutory month, and this would require a further resolution of each House to approve the new regulations. Clause 23(4) of the draft Bill appears to remove this latter requirement.

We draw attention to these two aspects of the draft bill as deviating from the existing provisions for Parliamentary scrutiny.

The purposes for which emergency regulations may be made.

Clause 21 of the draft bill sets out in considerable detail the provisions which may be made by emergency regulations. They may include “any provision which the person making them thinks necessary” for purposes that range from “(a) protecting human life, health or safety” to “(k) protecting or restoring activities of Her Majesty’s Government”. The regulations may also “disapply or modify any enactment or any provision made under or by any enactment” (clause 21(3)(j)) and “may make provision of any kind that could be made by Act of Parliament”. The drafting then continues with the words: “or by the exercise of the Royal Prerogative” (clause 21(3)). We find it difficult to see what could be done under the Royal Prerogative that could not be done by Act of Parliament.

This far-ranging statement of powers is, indeed, preceded by the provision that regulations 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” (clause 21(1)). Where that is the case, the regulations “may make any provision which the person making the regulations thinks necessary” for the purpose just set out. Nonetheless, we consider that the extent of the purposes for which regulations may be made reflects the breadth of the definition of ‘emergency’ contained in the draft bill; and that this will need to be re-examined if a narrower definition of ‘emergency’ is adopted.

The 1920 Act provides some express limitations on what may be done by regulations. Among these limitations is an exclusion of any form of compulsory military service or industrial conscription, and an exclusion of making it an offence for any person to take part in a strike or peacefully to persuade others to take part in a strike. Clause 21(4)(a) continues the exclusion for military or industrial conscription and clause 21(4)(b) provides that regulations may not “prohibit, or enable the prohibition of, a strike or other industrial action”. **We draw attention to this new formulation which seems narrower than the protection for industrial action given by the 1920 Act.**

Appendix 2: Memorandum from the House of Commons Transport Committee

Letter from Mrs Gwyneth Dunwoody, Chairman of the House of Commons Transport Committee

Thank you for inviting the Transport Committee to comment on the draft Civil Contingencies Bill. Given the specialist nature of our interest, we have limited ourselves to broad points of principle, and to one specific transport point.

Firstly, we agree with the Defence Committee that there needs to be far more detail about the way the Bill will be applied in practice, and the nature of the regulations that will be made under it. We are particularly concerned that the regulations in Part 1 of the Bill will not be subject to the affirmative procedure, even though they contain Henry VIII powers. It is not clear to us why regulations making provision for essentially planning work require those Henry VIII powers. Like the Defence Committee, we will be interested to see if the Bill is intended to apply to circumstances in which Parliament is under threat.

On a much narrower point, Category 2 Responders include:

- A person who holds a licence under section 8 of the Railways Act 1993;
- an airport operator within the meaning of section 82 (1) of the Airports Act 1986;
- a Harbour authority within the meaning of section 46 (1) of the Aviation and Maritime Security Act 1990.

They do not include those providing road based transport. There is no explanation for this distinction, beyond a reference in the Regulatory Impact Assessment to "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"; it may well be that existing police powers would be enough to deal with a road based emergency. However, the Bill allows for regulations to require Category 2 Responders to provide information to Category 1 Responders; one can imagine circumstances in which those planning for an emergency evacuation, say, would wish to know how many buses were available in a particular district. You may wish to ask about the reason for the exclusion of road based transport enterprises from the list of Category 2 Responders.

You particularly asked the Committee's view on Part 2 of the Bill. Clearly, we have not held a specific inquiry into this, but the parliamentary controls over emergency powers seem broadly adequate.

We note that the Defence Committee suggested that the "triple lock" over the use of emergency powers be included on the face of the Bill. It also suggested that the proclamation of a state of emergency might be required to be approved by Parliament. We understand the Defence Committee's concerns, but the counter argument is that the definition of state of emergency is already on the face of the bill; adding the other provisions would open the question of whether the use of the Act was appropriate further to judicial review. If a situation is serious enough to require immediate action, judicial review of the decision to proclaim an emergency could cause delay, and could be seen as giving the courts control of what is essentially a political judgement. A state of emergency would only be proclaimed if legislative action was needed (to do so otherwise would be pointless) and that is subject to stringent Parliamentary control. If our understanding that the Regulations made under the state of emergency themselves will be judicially reviewable is correct there are already both political and legal safeguards against government abuse of emergency powers.

Some form of Parliamentary approval of the Government's action in requesting the Queen to make a proclamation of a state of emergency might be a possible compromise, although the regulations themselves provide an opportunity for Parliament to strike down the Government's action.

I hope these comments are useful.

Appendix 3: Memorandum from the House of Lords Select Committee on Delegated Powers and Regulatory Reform

Letter from Lord Dahrendorf, Chairman of the House of Lords Select Committee on Delegated Powers and Regulatory Reform

Introduction

On 16 July, Dr Lewis Moonie MP, Chairman of the Joint Committee considering the draft Civil Contingencies Bill, wrote to Lord Dahrendorf, inviting this Committee to consider the delegated powers in the draft bill. We welcome the opportunity to contribute to the pre-legislative scrutiny of this important bill, and this Memorandum sets out the Committee's views.

We have not, unfortunately, had the benefit of a delegated powers memorandum by the Cabinet Office. As a result, some of the concerns we raise may be satisfied by further explanation (additional to that provided by the Explanatory Notes which accompany the bill and the consultation document of June 2003). Other concerns of the Committee are more fundamental. At this stage, we seek only to identify some of the issues to which we think the attention of the Joint Committee should be drawn, whilst reserving the right to comment again on the bill when it has been introduced and in the light of a delegated powers memorandum.

Part 1

There are a number of delegated powers to make orders and regulations in Part 1 of the bill. We shall refer in particular to those in clauses 1(7), 2(2), 4(2) and 6. We shall also comment on a power, in clause 7, to give directions in cases of urgency.

Clause 1(7)

Clause 1 provides a wide definition of "emergency" for the purposes of Part 1 of the bill. Clause 1(1) states that an emergency is an event or situation which presents a serious threat to any of the four categories set out in clause 1(1) (a) to (d). Clause 1(7) enables a Minister of the Crown to provide by regulations that particular situations or events, or types of situation or event, present a threat within one of those four categories. The regulations cannot override clause 1(2) (which gives an exhaustive list of events or situations presenting a threat to human welfare), though they may be more particular than clause 1(2). It is possible to deduce from clause 1(9) and from the draft Explanatory Notes that one likely use of this power is to relate certain types of event to certain types of "Category 1 Responders".

Although the delegation may not be inappropriate, we question the application of the negative procedure provided for under clause 13(3). In the absence of any explanation to the contrary, we would expect the affirmative procedure to apply here, since whether or not something is an emergency is highly significant for most of the other provisions in Part 1.

Clauses 2(2) and 4(2)

Clause 2(2) sets out the duties of those listed in Part 1 of Schedule 1 (local authorities, emergency services, etc. – "Category 1 Responders"). The extent of those duties is apparent in broad terms, but clause 2(2) enables regulations, subject to negative procedure, to prescribe the precise extent of the duty and how it is to be performed. Clause 2(3) lists some of the items which the regulations may contain (and in some cases duties can be imposed on those listed in Part 2 of Schedule 1 as well as on those listed in Part 1 of Schedule 1). The list of items in clause 2(3) is wide-ranging. We note, in particular, that under clause 2(3)(n) provision may be made which operates wholly by reference to the discretion of any specified person or body, and that clause 2(3)(o) enables the regulations to take precedence over statutory provisions in an Act. Were the last two provisions to be included in a bill as introduced, we would invite the Government to provide a full

explanation of the need for these provisions and suggest to the House that, given the width of the powers under clause 2(2), they should be subject to affirmative, rather than negative, procedure.

Clause 4(1) requires local authorities to advise and assist the public in connection with arrangements for the continuance of commercial activity in an emergency. Clause 4(2) is the equivalent for clause 4(1) of clause 2(2) for clause 2(1) and similar considerations apply.

Clause 6

Clause 6 enables a Minister of the Crown to make regulations, subject to negative procedure, requiring or permitting disclosure of information between persons and bodies listed in Part 1 or 2 of Schedule 1. This is in addition to the powers at clause 2(3)(h) (limited to the duty under clause 2(1)) and 5(3)(d) (limited to duties under the section 5 order). Clause 6(2) limits the subject-matter of the regulations to functions which relate to an emergency. But there is no limit on the provision of “sensitive information”. We note however that the June 2003 consultation paper, at Chapter 3, paragraph 26, refers to “appropriate safeguards” in this area. These safeguards do not appear in the draft bill itself. We assume therefore that the Government intends to include them in the regulations. The provision of such safeguards would be a relevant factor to our consideration of the appropriateness of the delegation under clause 6; and if clause 6 were to be included in the bill as introduced, we would invite the Government to provide a full explanation of those safeguards along with further explanation of the meaning of “sensitive information”.

Clause 7

Clause 7 enables a Minister to do, by oral or written directions, anything which he could do by regulations under clause 2(2), 4(2) or 6(1) or by order under clause 5, where there is urgent need and insufficient time to make the regulations or order.

This is a power of very considerable significance and we would expect a convincing justification for its inclusion. The bill (as it stands) provides for regulations under clauses 2(2), 4(2) and 6(1) to be subject to negative procedure, and instruments subject to that procedure can be, and often are, made in very short timescales. But even assuming that a power to give directions were appropriate, we question the need for that power to extend to oral directions. We expect the Government to provide convincing examples of situations where it would be possible to give directions only orally; and to consider requiring that all directions under clause 7 be put in writing at some stage even if it were not possible to communicate the directions in writing at the same time as orally.

Part 2

Clauses 20 and 21

Under clause 20, the power to make regulations is conferred on Her Majesty acting by Order in Council, and also on the Secretary of State where an Order in Council could not be made without serious delay. Clause 21 sets out the nature and width of the power to make regulations. It is a very wide power indeed. Clause 21(3) provides that the regulations may make provision of any kind that could be made by Act of Parliament or exercise of the Royal Prerogative, and gives a non-exhaustive list of provisions which might be included. If this were not a draft bill to make emergency provision, we would strongly question the appropriateness of a number of aspects of the power (such as, for example, sub-delegation by directions or orders (whether written or oral) ((3)(a)(ii)), confiscation of property without compensation ((3)(b)), destruction of property, etc. without compensation ((3)(c)), prohibition of movement ((3)(d) and (e)), and prohibition of assembly ((3)(f))).

The power in clause 21 might be exercised in a manner incompatible with the Convention Rights mentioned in section 1 of the Human Rights Act 1998. Clause 25 of the draft bill, by providing that regulations under clause 21 are to be treated as an Act of Parliament for the purposes of the 1998 Act, limits the effectiveness of remedies available in cases where those Convention Rights are infringed.²⁹² The extent to which there is an

²⁹² See the 15th Report, Session 2002-03, HL Paper 149, HC 1005, of the Joint Committee on Human Rights where, at paragraphs 3.20 to 3.35, the human rights implications of the draft Civil Contingencies Bill are described in detail.

effective remedy is a factor which the Committee would regard as relevant in considering the appropriateness of the powers in clause 21.

Parliamentary scrutiny and renewal of regulations

The arrangements for Parliamentary scrutiny are based on those for regulations under the Emergency Powers Act 1920. The Secretary of State must lay the regulations before Parliament as soon as practicable after making. The regulations lapse 7 days after laying unless approved by each House. This procedure for making the regulations seems satisfactory.

Under clause 23(1) and (2) proclamations or orders declaring the emergency lapse after 30 days. Any regulations lapse with the proclamation or order, though a new proclamation or order can be made, and new regulations can be made under it. But clause 23(4) provides an exception. Where, before the lapse of a proclamation or order, a fresh one is made about the same emergency (so that there is no break in continuity), the regulations made under the first proclamation or order continue in force (and do not lapse). If this provision remains in the bill, we will consider whether there should be a time limit for regulations which continue under clause 23(4), whereby the regulations would lapse unless specifically renewed.

8 October 2003

Appendix 4: Note by Dr James Broderick, Specialist Adviser to the Committee

EXECUTIVE SUMMARY OF OPENING BRIEF

What follows is a summary of the main points and questions contained in the Opening Brief submitted to the Clerks.

Definition of Emergency:

- Emergency is defined very broadly in the documentation
- There is ample scope for ambiguity and misinterpretation of events
- More structured categorisations of emergency are used in other countries
- The current structure of the Bill's terms of reference creates problems regarding the allocation of power and responsibility

Risk and Risk Management:

- Risk and risk management underpin the Bill team's approach to civil contingency
- The team adopts the view that disruptive challenges exist along a spectrum of severity but insufficient guidance is given about where key thresholds lie on this spectrum
- The Bill team over-emphasises quantification at the expense of qualitative issues
- Insufficient explanation is given regarding key governmental response mechanisms
- Horizontal and vertical integration in emergency response is not assured

Local Tier:

- Why is the statutory duty placed only on the local tier?
- The funding of the duty is not properly addressed
- Communications issues are not addressed
- Problems beset the proposal to create categories of Responder organisation

Regional Tier:

- The Draft Bill itself does not specifically mention the creation of a regional 'tier'
- The regional tier is poorly defined
- Why is a statutory duty not being placed on the regional level?
- The regional co-ordinator's role further embeds the problematic 'lead government department' concept
- The lack of specification in the Bill and supporting documentation means that the regional tier could become subject to problems already being experienced at local and national levels

The National Tier:

- The Draft Bill removes the Government duty to have civil contingency plans. This should be reviewed
- Central Government should report annually on defence and security in the UK
- The government should review how it transmits intelligence-based information
- Central rather than regional government should retain the crucial leadership function in emergency response
- Review and reform of the Civil Contingencies Secretariat, led by a dedicated Cabinet Minister other than the Home Secretary is required

ANALYSIS OF THE DRAFT CIVIL CONTINGENCIES BILL AND SUPPORTING DOCUMENTATION

Introduction

The following commentary on the Draft Civil Contingencies Bill is divided into five main sections: 1. Emergency, 2. Risk and risk management, 3. Local Tier, 4. Regional Tier, 5. National Tier. A brief conclusion then follows.

1. Emergency

‘Emergency’ is defined very broadly in the documentation.²⁹³ In one sense this is a seemingly rational approach which reflects a core belief that “...civil protection in the 21st Century bore [sic] little resemblance to the 20th Century legislation in which it had its roots.”²⁹⁴ The idea is that “the range of challenges that society faces has broadened as networks have become more complex” thus a greater degree of co-ordination and integration of activities is required.²⁹⁵ The definition of emergency is “designed to be highly inclusive, encompassing circumstances as diverse as severe flooding, a major chemical attack, disruption of fuel supplies and epidemics.”²⁹⁶ The advantage of such a conceptualisation is, of course, that flexibility and adaptability can be built into the legislative framework which can then be used as authority to act decisively should novel or unforeseen events occur.

However the very generality of this overarching definition does give rise to a number of questions which merit further exploration. In particular, the definition is so wide there is ample scope for ambiguity and misinterpretation of events. For example, the section entitled “When Emergency Powers May be used” of the Consultation Document uses terminology such as “Major accidents”, “Serious Economic Crises” “major acts of terrorism” and “War-like situations” without further explanation of the underlying quantitative or qualitative terms which will determine whether a given event or events should be labelled an emergency.²⁹⁷ For example, what exactly does the term ‘war-like situation’ mean here?

Why have the Bill team decided to opt for such a broadly defined and vaguely differentiated conceptualisation of the term ‘emergency’? Specifically, what are the reasons for avoiding a more structured definition of emergency since it is not that difficult to identify distinct ‘typologies’ of such situations. Events could be categorised using clearly understood (rather than simply implied) quantitative terms of reference relating to severity of impact (financial loss, fatalities etc) and/or qualitative assumptions that differentiate between terrorist attack, viral pandemic, failure of critical infrastructure/services and so on. Importantly, this could provide guidance as to where responsibility for managing/responding to emergencies should reside.

More structured categorisations of emergency are used in other countries. For example, in the Report by British Institute of International and Comparative Law it is noted that *the Robert. T. Stafford Disaster Relief and Emergency Assistance Act* differentiates between a “major disaster” and an “emergency” in terms of “duration, extent of damage and the amount of federal assistance needed and provided.”²⁹⁸ Moreover:

The Stafford Act governs the co-ordination and delivery of [federal] disaster relief for natural and man-made disasters. It establishes a process for requesting and obtaining a [Presidential] disaster declaration, defines the type and scope of assistance available from the [Federal] government and sets the conditions for obtaining the assistance.”²⁹⁹

293 See for example the “Common Definition of Emergency” pp12-13 of the Draft Civil Contingencies Bill Consultation Document.

294 Ibid, p.9, para.2.

295 Ibid, p.12, para. 2.

296 Draft Civil Contingencies Bill Explanatory Notes p.27 para. 41.

297 Consultation Document, pp.28-29.

298 Report by British Institute of International and Comparative Law on “Emergency Planning and Civil Protection in France, Sweden, the European Union and the United States”, p.43.

299 Ibid, p.45 [...] added.

In my view, the documentation accompanying the draft Bill does not adequately explain why a greater degree of differentiation has been rejected, nor how the current draft legislation will better address key ‘generic’ requirements in emergency management such as: clarity of definition, well-understood chains of command and control and clear mechanisms for the provision of assistance.

At present, “clause 1(7) [of the draft Bill] enables a Minister to clarify in regulations whether particular or situations are or are not to be regarded as constituting an emergency”³⁰⁰ The danger here is that regulations will be slow in development, imprecise in scope and/or ineffective. A potential outcome is that, at crucial junctures, Ministers will themselves be looking for guidance in the face of events precisely when coherent leadership and strategic direction is urgently required from this level of government. At such a time, a more clearly defined, structured, conceptualisation of emergency in the primary ‘enabling’ legislation might prove to be highly beneficial. At present these concerns are not properly addressed in the documentation which accompanies the draft Bill.

These are not merely semantic issues. The current structure of the Bill’s terms of reference creates problems and ambiguities regarding the allocation of power and responsibility in the face of unforeseen catastrophe. Resolving these questions at a fundamental level should be a primary purpose of an ‘enabling’ Bill. In its current form, the draft Bill may simply perpetuate these tensions.

2. Risk and Risk Management

As is revealed in paragraph 1 of the Executive Summary of the Consultation Document, risk and risk management are central organising concepts which underpin the structure and approach to civil protection outlined in the Draft Bill. While these are an appropriate conceptualisation of the problem of improving the UK’s vulnerability to disruptive challenge a number of issues do arise.

Quantification of Risk

The Consultation Documents states: “The aim of building resilience is to reduce susceptibility to challenges by reducing the probability of their occurrence and their likely effects.”³⁰¹ This is a fairly standard definition of risk associated in particular with quantified risk assessment (QRA) techniques. That some form of quantitative differentiation is being utilised is also clearly implied by the statement that: “Disruptive challenges exist along a spectrum of severity ranging from local flooding to massive terrorist attack”³⁰²

However, neither the Bill nor the accompanying documentation address where key thresholds lie on this ‘spectrum of severity’. At what point will a ‘local’ emergency become a ‘regional’ or ‘national’ emergency? How are Ministers to make such a judgement? Indeed, the purpose of the Bill is to ‘enable’ Ministers to declare a state of emergency but the framework proposed appears to assume that Ministers, in the face of novel or unforeseen events, will be vested with perfect information and a comprehensive understanding of the substantive essence of the problem they face. Yet risk practitioners themselves all acknowledge (supported by numerous theoretical studies of crisis decision-making) that during periods of crisis, decision-makers are subject to severe limitations, asymmetries and distortions of information as well as being subject to highly stressful, threatening and surprising events requiring rapid response. Is there a case for building in to the Bill itself a clearer structure or clarification of what is meant by ‘severity’ and better guidance as to how different levels of severity should be tackled?

The Draft Bill is supposed to impart a level of ‘consistency’ (i.e. ‘rationality’) in decision-making and emergency response which current UK emergency powers legislation does not achieve. The above points indicate that the new Draft Bill makes some highly contentious assumptions about ‘rational’ decision-making that are very similar to the problems we currently face regarding the existing legislative framework. It is not clear that the proposed changes will be any more effective in addressing these problems.

Moreover, the Consultation Document’s proposed “triple lock” against misuse of Emergency Powers doesn’t provide much in the way of assurance here:

300 Explanatory Notes, p.24, para. 11. [...] added.

301 Consultation Document, p.5, para.1.

302 Ibid. Emphasis added.

- Seriousness – the situation should be serious enough in nature to warrant the use of Emergency Powers
- The need for special legislative measures - ...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.³⁰³

The above appear to be a mix of tautological argument and general aspirational ideals rather than a properly defined mechanism either to assist the appropriate use, or conversely, to prevent the abuse, of the powers envisaged by the Bill. Moreover, this ‘triple lock’ is not contained in the draft bill itself, other than in the context of Her Majesty or the Secretary of State being ‘satisfied’ that a serious threat...exists.” Whether a more clearly defined set of safeguards should be inserted in the Bill proper is clearly an important issue for consideration.

Qualitative concerns

Is it appropriate to neglect qualitative distinctions between ‘disruptive challenges’ such as ‘local flooding’ and ‘terrorist attack’? The Draft Bill Team clearly think so as it is stated that “the purpose of the Civil Contingencies Bill...is to deliver a single framework for civil protection in the United Kingdom” and that, “in a diffuse world of risks this is best delivered through an approach based on generic capabilities.”³⁰⁴ Yet, while the end goals of consistency of structure and flexibility of response are laudable goals, will these be delivered by the framework outlined?

A vital aspect of this problem is revealed in reference to Margaret Thatcher’s recollection of the government’s response to the Miner’s Strike of 1984. In, *The Downing Street Years*, Mrs. Thatcher notes that in response to the declaration of a national dock strike:

We mobilized the Civil Contingencies Unit to prepare to meet the crisis but avoided proclaiming a state of emergency, which might have meant the use of troops. Any sign of overreaction to the dock strike would have given the miners and other union militants new heart.”³⁰⁵

Clearly, for Mrs. Thatcher, the problems of 1984 were a complex mix of ‘economic’, ‘social’ and ‘political’ problems and calculations. Such contextual concerns therefore render highly problematic the idea that emergencies can be easily quantified or universally understood in equivalent terms. What is certainly apparent here is that, faced by the extension of industrial unrest beyond the mining sector, Ministers were not assisted by the structure of emergency powers legislation. If anything, the possibility of military involvement, as well as the political signals which would be sent by using such powers, were disincentives to invoke such legislation. It is not certain that the current structure of the Draft Bill will significantly improve matters. Realistically, any declaration of emergency will always have to be made in a politicised context. Current legislation was obviously unwieldy in 1984, whether these lessons have been learnt in relation to the new Draft Bill need to be explored.

As a corollary to this I would like to sound a note of caution in relation to the deliberations of the Joint Committee. In reference to the Foot and Mouth Epidemic of 2001, it could be said that one cannot conclude that increased powers are necessary to prevent a repetition of the problems in 2001. First the FMD problems were not necessarily related to lack of powers. Second the *Animal Health Act 2002* has increased powers to deal with such an outbreak where inadequacies had been demonstrated. It is hard to believe that even greater powers and less accountability would have improved the situation.

While this is a relevant and important point, there is also a danger to be avoided here. In considering the appropriateness of the Draft Bill, attention should not solely be paid to exploring merely whether an ‘increase’ in powers is commensurate with the ‘severity’ of future disruptive challenges. This restricts our thinking to simplistic (and partial) terms of reference that over-emphasises quantification at the expense of important qualitative concerns about the substantive nature of ‘emergency’ and the context in which crisis decision-making occurs.

303 Ibid, p. 28, para 19.

304 Consultation Document p.5 paras 5-7.

305 Margaret Thatcher: *The Downing Street Years*, p 356.

An effective risk management approach?

Despite the clear aim to modernise the legislative tools available and create a single flexible framework for civil protection, the Bill Team's documentation does not adequately explain why a number of important concepts are considered integral to effective emergency response. In relation to aspects of the "Policy Development" process, the documents state: "Analysis of current practice and procedure informed decisions about the scope and structure of the Bill. The wider resilience agenda, including the capabilities based approach and the Lead Government Department concept."³⁰⁶ No supporting argument is given as to why these are considered effective mechanisms of risk management.

If emergencies have qualitative as well as quantitative characteristics, where does this leave the 'generic' or 'capabilities based' approach outlined? In fact, what does this term actually mean in practice? Similarly problematic is the continued faith in the efficacy of the "Lead Government Department" concept. Certainly the Anderson Report into the 2001 FMD crisis outlines, in paragraph 9.8, a very interesting range of possible reasons why the army's assistance was not sought early on:

The delay may have been due to a desire to avoid sending negative political messages about the gravity of the crisis. They may have been caused by MAFF's reluctance to ask for help. Or they may have occurred simply because central government did not appreciate the size of the task.

Quite clearly, the lead government department concept in 2001 might well have been a contributory factor to the eventual severity of the FMD problem. This criticism is not addressed in the Consultation Document.

Also, no mention of the Lead Government Department mechanism is made in the Draft Bill itself, nor is any further light shed by the Explanatory Notes. Again this raises the question: Why is this process deemed an efficient risk management approach? For further illustration of the potential problems inherent even in designating a 'lead department' one need only briefly refer to the "Matrix of Sector Emergency Powers" Annex J (supplied by the Clerks) and think, for example, of a radiological leak from a civil nuclear power facility contaminating the water supply. In this instance it would appear that a number of major government departments, including DEFRA, the DTI, OPDM and the DOH all appear to have some form of immediate departmental relevance and/or 'capability'. What is still not clear is how the process of designating response authority/responsibility will be rendered more effective/efficient than at present. In other words, as well as considering whether the Draft Bill is merely a simple codification of existing practice one should ask whether the Draft Bill will perpetuate (and even more deeply embed) current problems with UK resilience.

Despite the drive to improve risk awareness and risk management in emergency response, it is not clear that the Bill's aim of ensuring "an effective response capability across the local area to all hazards"³⁰⁷ will be successful. Neither is it certain that 'vertical' integration in the resilience framework will be promoted. Furthermore, as well as the likelihood of delay, departmental prevarication and 'blamism' arising from the 'capabilities based/lead government department' framework, the Draft Bill and accompanying documentation contains some glaring omissions/gaps in terms of the roles and responsibilities of key government agencies/departments. I hope to explore these 'framework' issues further in the following sections but one in particular merits attention here.

Part 1 of Schedule 2 of the Draft Civil Contingencies Bill – Repeals and Revocations - notes that Section 1 of The Emergency Powers Act 1964 will be repealed or revoked by the new legislation.³⁰⁸ Why does the rest of the 1964 Act fall outside of the Draft Civil Contingencies Bill's remit? The Explanatory Notes merely state: "Section 2 of this Act does not relate to Emergency Powers but provides the legislative underpinning for Military Aid to Government Departments."³⁰⁹ The Consultation Document devotes precisely one paragraph of its 42 pages to the issue of the role of the military during an emergency. It states:

Ministers have agreed that the proposed new special legislative measures framework will not affect the operation of military assistance in an emergency situation. Section two of the Emergency Powers Act 1964 provides an important legal basis for the provision of military

³⁰⁶ Consultation Document, p.10, para.8.

³⁰⁷ Partial Regulatory Impact Assessment, p.4, para.18. Emphasis added.

³⁰⁸ Draft Civil Contingencies Bill page 19.

³⁰⁹ Explanatory Notes, p. 29, para.57.

assistance and will remain in place. No new powers will be granted to the military, their role will remain as it is at present.³¹⁰

Given the crucial (and at times highly problematic) utility of military assistance in relation to the Miner's Strike of 1984 and the FMD outbreak of 2001, the assumptions governing such a ministerial decision should be thoroughly explored. The civil-military relationship is critical in promoting UK resilience. Why the current legislative framework governing MACA is considered adequate needs to be examined further.

3. The Local Tier

The Draft Bill proposes to establish a series of duties on local Responder organisations which will reduce the "reliance on permissive powers" and "bring civil protection into the mainstream" of local Responder functions.³¹¹ While such a move is generally to be welcomed it is not certain that, as currently formulated, the scope of such statutory duty will be effective in ensuring that civil protection is "applied consistently across the local Responder organisations."³¹² A number of important questions do need to be addressed:

Why is the statutory duty placed only on the local tier? Why are regional and national tiers of government exempt from a similar process of 'formalisation' of the civil protection duty in the Draft Bill? This relates to earlier comments about the vagueness inherent in the definitions and approaches adopted in the Draft Bill and its accompanying documentation. But it also creates a further problem in that the 'burden' of creating an effective civil protection regime looks to be particularly 'bottom-heavy' in the framework currently envisaged. Local Responder organisations are already stretched in terms of resources and capacity, is there not a case for the Draft Bill to introduce a more equitable distribution of the duty across the 3 tiers of government (local-regional-national)?

The funding of the duty is another key area of concern here. The creation of a statutory duty at the local level is accompanied by a move to merge the current Civil Defence Grant with the Revenue Support Grant (RSG) in line with the wider LGA commitment to removing the amount of specific and ring-fenced grants available to local authorities. Aside from the highly contentious view that the new Civil Protection duty will not carry significant extra cost, this obviously creates the potential for the perpetuation of inconsistency across the local tier as different LGAs will make differing provision for civil protection as they try to balance competing funding priorities and respond to local variations in civil protection needs. Yet, at the same time, no funding provision appears to have been made at the regional level. Neither are there corresponding changes in national provision for emergency financial assistance, instead, it is proposed that the Bellwin scheme be retained. Thus the national financial provision for emergency assistance remains essentially locked into the present response framework and does not appear to be particularly supportive of the statutory changes envisaged in the Draft Bill. The financial structure outlined thus reinforces a 'bottom-heavy' framework and simply perpetuates the problem of permissiveness and inconsistency across the local tier.

Communications issues are similarly not addressed despite the statement contained in the Partial Regulatory Impact Assessment that "Information-sharing and co-operation are the foundations of enhanced resilience."³¹³ However, at present, different Responder agencies have different levels of access to classified information and intelligence. How is information-sharing and resilience to be promoted under the current classification regime? The documentation accompanying the Draft Bill essentially avoids exploring this problem.

Such problems also beset the proposal to create two Categories of Responder organisation. How will the proposed twin categorisation be affected by asymmetry of access to information? Also, why is the nomination of Category 1 and 2 Responders only being made at the local level? Is there not an argument for creating such categories at a regional (if not national) tier as well? This differentiation might well have positive implications for burden and cost sharing which are not explored either in the Consultation Document nor the Partial Regulatory Impact Assessments. In fact the 'three option' cost/benefit analysis outlined in the Partial Regulatory Impact Assessment completely fails to take into account the potential offset to costs by coordinating Category 2 Partnership activities at a regional or national level. For some Category 2 organisations there could well be economies of scale to be achieved by locating the Partnership/co-operation

310 Consultation Document, p. 30, para.37.

311 Ibid, pp.17-18, para. 6.

312 Ibid, p.18, para. 6.

313 Partial Regulatory Impact Assessment p.34, para 18.

function regionally rather than duplicating such activities in a large number of local forums. The Documentation accompanying the Draft Bill makes no mention of the cost/benefit implications of adopting this approach.

If nothing else, these points do undermine some key premises of the argument for adopting: “Option 2: Duty on a limited Range of Organisations” rather than “Option 3: Duty on a larger range of agencies – with co-ordination ensured by a statutory Partnership” at the local level.³¹⁴ Adopting Option 3 might actually bestow a financial advantage in that it could be used as a mechanism whereby Category 1 Responders at the local level can explore means of financial/resource ‘burden-sharing’ with Partner (Cat. 2) organisations (and vice versa).

Moreover, in the documentation accompanying the Draft Bill it is clearly argued that a proactive approach to Business Continuity and Risk Management has positive cost/benefit outcomes for the private sector.³¹⁵ But, if this is the case, doesn’t such logic also suggest that a formal ‘statutory Partnership’ could actually further foster ‘risk awareness’ in the private sector? Also, might such a duty provide a clear, well-defined legislative framework within which Category 2 organisations could seek to limit their exposure to corporate/insurance liability costs and/or claims? None of these avenues of exploration appear to have been adequately investigated.

Such problems are not helped by the fact that Parts 1 and 2 of the Draft Bill have differing territorial extents.³¹⁶ Clause 12 of Part 1 only specifies that the Welsh Assembly should be consulted during emergencies affecting that part of the UK. At present, the Consultation Document merely states that “separate consultation” is being carried out in Scotland and Northern Ireland. What specific provisions are being made arising from the consultation with these assemblies? How will ‘consistency’ of local response be assured and monitored? Also, is there a case for including specific provision in Part 1 of the Bill to include the Greater London Authority?

4. The Regional Tier

Although a number of problems relating to the regional tier have already been alluded to, a number of further areas of concern need to be considered. The Explanatory Notes devote a single paragraph to the creation of “Regional and Emergency Co-ordinators” and simply defines their regional role as, “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...”³¹⁷ Chapter four of the Consultation Document is entitled “A New Regional Tier” but, again, the powers, roles and functions envisaged are so vaguely formulated (being largely centred around “co-ordination”, “support” and “assistance” roles) that it is difficult to achieve a clear sense of just what value is being added by the creation of this new tier.³¹⁸

Furthermore, it should be noted that the Draft Bill itself does not specifically mention the creation of a regional ‘tier’ at all. Indeed, Part 1 of the Bill essentially excludes Northern Ireland and Scotland as it deals with “Local Arrangements for Civil Protection” and, in Clause 12, simply makes provision for “consultation with the National Assembly for Wales.”³¹⁹ In Part 2 of the Bill, Clause 22 concentrates entirely on the appointment of individual regional co-ordinators and Clause 26 stipulates that Ministers in Wales, Scotland and Northern Ireland will be consulted in relation to emergency regulations affecting those parts of the UK.³²⁰ Should a more specific commitment to creating a ‘regional tier’ be included in the Draft Bill? If nothing else, the Scottish and Northern Ireland assemblies appear to fall somewhat between two stools here in that they are at once ‘regional assemblies’ with power to organise ‘local response’. As such they are structurally and constitutionally unlike the proposed English regional agencies. Whether such variations will affect ‘consistency’ of response is not made clear. Furthermore, how will equivalence in the levels of protection afforded between the regions be assessed?

314 Ibid. pp. 36-44.

315 See for example Partial Regulatory Impact Assessment p. 33 paras. 13-14.

316 Consultation Document pp.32-33.

317 Explanatory Notes, p.28. para. 49. Emphasis added.

318 See Consultation Document pp.22-25.

319 Draft Civil Contingencies Bill pp.1 – 9.

320 Ibid, pp.7-13.

Also, why is a statutory duty not being placed on the regional level in the same manner as at the local level? The creation of the new tier, it appears will be done through the general regulatory powers granted to Ministers under this enabling Bill. If nothing else, doesn't this introduce great uncertainty regarding the supposed regional 'leadership' function that is supposed to ensue from this Bill?³²¹ It is not clear that the regional 'leadership' role will be well-understood by other tiers of government nor how the goal of horizontal 'consistency' across the regional tier will be promoted.

Certainly significant concerns have arisen in relation to this proposed 'new' tier of government, not least among emergency planners within the LGAs. In particular there is a widespread view that the regional tier will simply act as another layer of bureaucracy, to which local Responders and other agencies will be required to report, but which does not itself have any significant power or authority and which will not be able to provide support either in terms of resource allocation or strategic guidance. Instead, many fear that the introduction of such a tier will have a detrimental effect on local Responder's effectiveness as it will simply increase their administrative burden and undermine clarity in command and control processes from the national tier down. Lastly, in this regard, how will the regional tier be funded? No mention at all is made of funding provision for this tier of the response framework. Will the regional offices be required to fund the activities? Will there be funds available to the local tier channelled via the regional level? Why are these issues not addressed in the cost analysis contained in the supporting documentation? Given the generality of the conceptualisation of the regional tier as outlined in the Draft Bill and its accompanying documentation, these concerns should be given serious consideration.

Other questions which require clarification include whether the 'regional co-ordinator' role further embeds the 'lead government department' concept by extending it to the regional tier? As has already been observed, this is a highly questionable approach to emergency response which appears to have been adopted as an 'article of faith' by the Bill team. The arguments for extending this process to the regional tier should be clarified.

It does appear that the regional tier might inherit some other problems currently associated with the local level. In particular, how will the civil-military relationship be fostered? Despite the fact the Draft Bill will leave the current legislative underpinning of the MACA arrangements largely intact, it is clear that civil-military co-ordination is to be primarily located at this tier. However, neither the Bill itself nor the accompanying documentation explores or clarifies the advantages/disadvantages of such a decision. The Consultation Document states that "Regional Resilience Forums (RRFs) have been formed to bring together the key players, including central government agencies and the Armed Forces, and representatives of local Responders such as the emergency services and local authorities."³²² But, how will the envisaged regional structure address the problems of asymmetries in access to classified information and/or intelligence? This is a problem which continues to dog the efforts of Responders at the local level, it is not at all clear how the regional tier will escape similar difficulties.

The MOD has already announced its intent to earmark approximately 6,000 reservists organised into some 14 units for a civil defence/protection role under the 'New Chapter' of the Strategic Defence Review. Hence the creation of a regional tier of government, in my view, does impart some advantages. If nothing else, by establishing military-civil cooperative arrangements at this level a measure of 'consistency' is achieved in that, as is noted in the Defence Committee's Report on the Draft Civil Contingencies Bill: "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."³²³ However, the problem remains that the conceptualisation of the regional role is only partially, and vaguely, outlined. In essence, as currently defined, the regional tier is 'neither fish nor fowl'.

As noted above, the lack of specification in the Bill and supporting documentation means that the regional tier could become subject to problems already being experienced at local and national levels and, rather than enhancing resilience, might simply become yet another bureaucratic obstacle to creating an effective response framework. But, within the regional tier there is, in my view, a profound opportunity as well. The process of creating a regional tier, if properly managed, could lead to the establishment of a 'cellular' framework of emergency response that would provide the entire UK with a robust, flexible, interoperable and interdependent system of emergency planning and response. It will also ameliorate the bottom-heavy

321 See Consultation Document, p.23.

322 Ibid. p.23 para. 7.

323 Defence Committee Draft Civil Contingencies Bill 7th Report of Session 2002-3, HC 557, p.17, para. 43.

emphasis of the present framework and provide support for overstretched local Responders. A cellular response framework (or system) is, in my opinion, the most appropriate for fostering UK resilience to disruptive challenge. Whether the regional tier should be considered as the appropriate organisational location to achieve this end is a critical area for further consideration.

5. The National Tier

I have only a few brief comments regarding the national tier since, in my opinion, key points are clearly expressed in documents CC12 and CC3. In particular, I should like to refer the Committee to paragraphs 5-9 of Document CC12 which lists five main areas of concern relating to the national tier. In short these recommendations are as follows:

- The Draft Bill removes the Government duty to have civil contingency plans. This should be reviewed.
- That Central Government should report annually on defence and security in the UK.
- The government should review how it transmits intelligence-based information
- Central rather than regional government should retain the crucial leadership function in emergency response
- Review and reform of the Civil Contingencies Secretariat, led by a dedicated Cabinet Minister other than the Home Secretary is required if a strong central government structure is to be put in place.

It should be noted that the Draft Bill and its supporting documentation appears to have ignored, rejected or discounted these important and relevant criticisms of the national response framework made, in particular, by the House of Commons Select Committee on Defence in two separate and wide ranging reports on this area of concern since the attacks of 11 September 2001.³²⁴

6. Conclusion

That a need exists to update the UK's legislative framework governing domestic resilience to disruptive challenge is widely recognised. However, in its current form, the Draft Civil Contingencies Bill is, in my view, only a partially successful response to the need to enhance UK resilience. The documentation which accompanies the Bill clearly demonstrates that the Bill team have thought hard about the problems the UK is likely to face and have sought to make use of some appropriate concepts and methods in constructing a new legislative framework. However, as this brief has at least partially illustrated, the analysis contained in the supporting documentation, and the structure of the Draft Bill itself, is fraught with lack of specification, inconsistency and omission. I believe that a number of key areas of concern are inadequately explained by the Bill team. I hope that the comments contained in this brief will be of assistance to the Committee in its deliberations on the Draft Civil Contingencies Bill.

³²⁴ Defence Committee Draft Civil Contingencies Bill 7th Report of Session 2002-3, HC 557 and Defence and Security in the UK, 6th Report of Session 2001-02, HC 518-I.

Appendix 5: Note by Professor Clive Walker, Specialist Adviser to the Committee

INTRODUCTION

This submission was completed in August 2003 and with the benefit of the information provided by the substantial briefing packs sent by the Clerks to the Committee. Therefore, many pertinent arguments about the Civil Contingencies Bill have already been submitted to the Joint Committee. There is no purpose in repeating them here, so this submission will be confined either to arguments which in some way advance or refute arguments made previously or are wholly new points not made elsewhere. The submission is divided into three. In this first part will be considered the most basic questions – the need for legislation at all and the strategy adopted, assuming legislation is to be forthcoming. In the second part, attention will be turned to issues of process and the third part concentrates upon points of substance. Throughout, attention will be paid to the principles on which the legislation should rest, so that the critique is normative as well as factual.

There is a strong case for the reform of laws on civil contingencies. The reasons for this assertion are as follows.

First, most of the attention during the past thirty years has focused on the potentiality or actuality of terrorism. The relevant legislation has taken a variety of forms, but expansion and expansion seem the inevitable concomitants to this form of law. Current versions are set out in the Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001. These Acts are currently under scrutiny from a number of sources, and the Civil Contingencies Bill is not the appropriate site to take over that task. However, it should be realised that the laws against terrorism are about the prevention, investigation, detection and punishment of terrorists. They do not address, save for a few aspects,³²⁵ the impact of terrorism on the community.

Second, the existing legislation which is the predominant forerunner to the Civil Contingencies Bill, the Emergencies Powers Act 1920 and the Emergency Powers Act 1964, section 2, is unduly restricted. The 1920 Act concentrates upon industrial strikes, while the 1964 Act assumes that it is the military which will deal with emergencies, and so fails to take account the capabilities and duties of other public services.

Third, the Civil Defence Act 1948 is now little more than an anachronistic empty shell. Planning for major nuclear attack by foreign powers has been overtaken by other priorities and legislation should be more flexible to cope with the changed situation.

Whilst the case for legislation is strong, it is less certain that there should be one, all-encompassing Act to cover most types of future legislation. In fact, terrorist emergency has already been in part considered, and there are other examples of this kind such as legislation dealing with essential services or agricultural or industrial disasters. Examples include the "Seveso Directives"³²⁶ (the Control of Industrial Major Accident Hazards Regulations 1984³²⁷) or the Food and Environment Protection Act 1985. Under the latter, for example, section 1 provides a power to make emergency orders (which must be approved by Parliament within 28 days), and under section 2(3) the Minister may give "any person such directions as appear...to be necessary or expedient" for the purpose of preventing human consumption of the contaminated food. The Act also expressly sets out the role of the Navy in fisheries protection. Other relevant legislation includes the Energy Act 1976, the Water Industry Act 1991, the Animal Health Act 2002.

The New Zealand Law Commission has considered "the difficulty of framing legislation that will, on the one hand, confer sufficient powers to deal with every conceivable situation that might have the character of a "national emergency", and, on the other, prevent the invoking of drastic powers by executive fiat in a situation where that is not justified".³²⁸ The resultant *First Report on Emergencies* of 1990 and *Final Report on*

325 One exception might be the use of cordons under the Terrorism Act 2000 s.33.

326 82/501/EEC (OJ No.L230 5.8.82 p.1), 87/216/EEC (OJ No.L85 28.3.87 p.36), 88/610/EEC (OJ No.L336 7.12.88 p.14), 96/82/EC (OJ L 10, 14.01.97).

327 S.I. No. 1902. See: Hilliard, L., "Local government, civil defence and emergency planning (1986) 49 Modern Law Review 476, at 483-6.

328 Loc. cit., p. 11.

Emergencies in 1991³²⁹ centrally recommended that when emergency powers are required they should be conferred in "sectoral legislation" - legislation deliberated upon and designed in advance of the emergency and tailored strictly to the needs of each particular kind of emergency.³³⁰ This approach was felt to be preferable either to vague prerogative grants of power or last-minute emergency legislation, in respect of which:³³¹

"The choice will be between legislation carefully prepared in advance, conforming to the principles and safeguards...and hastily drafted legislation conferring wider powers than are necessary and omitting appropriate protections against abuse. Moreover, New Zealand and overseas experience suggests that emergency legislation passed in haste is likely to remain on the statute book long after its immediate purpose has been served".

Though the subtlety of having permanent laws available but not necessarily active may be lost on some,³³² there are several advantages flowing from this approach. The most important is that it can reduce the dangers of the passage of badly designed and dangerous emergency laws, so long as it contains within it mechanisms for continued scrutiny. Second, one can seek to build upon the experience of permanent legislation and to impose effective scrutiny. This experience of the Prevention of Terrorism Acts prompted United States Supreme Court Justice Brennan to comment that:³³³

"Prolonged and sustained exposure to the asserted security claims may be the only way in which a country may gain both the discipline necessary to examine asserted security risks critically and the expertise necessary to distinguish the bona fide from the bogus."

The recommendation of a sectoral approach has not been implemented in pure form in New Zealand. The *First Report on Emergencies* was largely implemented by the Defence Act 1990 which had already been drafted as the replacement for the Defence Act 1971.³³⁴ A new, more tightly regulated Civil Defence Act was proposed by the Commission to replace an existing Act of 1983.³³⁵ In the event, the Civil Defence Emergency Management Act 2002 provides for regional, local and national planning and management structures and policies across a broad range of potential emergencies without distinction. With over 120 sections, the Act is far more comprehensive and informative than the Civil Contingencies Bill. At the same time, there is more specialised legislation, such as the Biosecurity Act 1993 to deal with "Public Welfare Emergencies".³³⁶

Though the Canadian Emergencies Act 1988 likewise caters comprehensively for different emergencies under one title, those different emergencies are identified and not treated monolithically. The Act deals successively with public welfare emergencies, public order emergencies, international emergencies and war emergencies. The Act is set out in Appendix III and is again far more comprehensive and informative than the Civil Contingencies Bill and possibly also the Civil Defence Emergency Management Act 2002.

The first lesson from a sectoral strategy for emergency laws might be the worth of pre-emergency legislation. This point will be considered in Part 2 of this submission. It is there argued that such a strategy might avert in part the shortcomings of panic legislation passed at the time of the emergency, which is likely to be badly structured and inadequately principled as to initial invocation, subsequent use and operational demise.

A second lesson from the sectoral approach seems to be the need for a matrix of legislative responses which can address different types and different levels of emergency. In this way, the State's response can be predictable and effective but, at the same time, will be regulated whatever direction it takes. This aspect of the

329 New Zealand Law Commission Report No. 12, *First Report on Emergencies* (Wellington, 1990); Report No. 22, *Final Report on Emergencies*, (Wellington, 1991).

330 *Final Report on Emergencies*, p.x.

331 *Ibid.*, para. 4.12.

332 see Whitty, N., Murphy, T., and Livingstone, S., *Civil Liberties Law* (Butterworths, London, 2001) p.126.

333 "The American experience", in Shetreet, S., *Free Speech and National Security* (Nijhoff, Dordrecht, 1991).

334 *Ibid.* See p.1-2. For the background to the Defence Act 1990, see Robertson, B., "The Defence Act 1990 and Military Assistance to the Civil Power" (1991) 14 *New Zealand Universities Law Review* 254.

335 *Ibid.*, para. 9.80.

336 *Ibid.*, para 8.5.

sectoral approach may paradoxically encourage inter-agency planning and co-operation which cut across the boundaries of the different sectors. An example is given by the New Zealand Law Commission.³³⁷

“In practice the immediate response to an emergency or disaster arising from a natural hazard will come from the police, the fire service and health services, as well as from regional councils, territorial authorities and concerned government departments. At the point that they are unable to mount an effective response Civil Defence will be involved.”

In this way, it is recognised that Civil Defence personnel and powers may be used in other sectors if the designated personnel proves inadequate - a necessary weakening of the sectoral principle.³³⁸ But at the same time, "civil defence participation could ensure that proven systems for inter-agency co-operation were in place".³³⁹ One may again compare the requirements for inter-agency planning, co-ordination and exchanges in the U.K. - it may happen from place to place and time to time,³⁴⁰ but it is not legislated for in the same way as in New Zealand, where there is not only now the Civil Defence Emergency Management Act 2002 but an appointed Director of Civil Defence Emergency Management advising the Ministry of Civil Defence and Emergency Management and developing the National CDEM Plan, technical standards and guidelines.³⁴¹ Equally positive steps towards the facilitation of inter-agency civil contingencies co-ordination and planning have been taken in Canada, where an official agency, the Office of Critical Infrastructure Protection and Emergency Preparedness (OC�PEP, the successor in 2001 to Emergency Preparedness Canada),³⁴² has a duty to further these activities under the terms of the Emergency Preparedness Act 1988, which also designates a Minister Responsible for Emergency Preparedness and obliges all Federal Ministers to develop contingency plans.

Questions arising from this debate include:

- Whether the Civil Contingencies Bill is the appropriate strategy to deal with future emergencies and crises or whether sectoral legislation is either preferable or at least necessary in addition.
- Whether, given that there is in effect already some sectoral legislation (dealing with terrorism and emergency services) there is a deficiency in the Civil Contingencies Bill in that it contains no permanent and proactive central co-ordination mechanism equivalent to, say, OC�PEP.³⁴³ This point about the absence of a central civil contingencies agency has been made already in several submissions, including that of the Defence Select Committee.³⁴⁴ However, the Canadian legislation provides a ready and developed model which should be considered further (the New Zealand model is also worthy of scrutiny but has a short track-record). It is set out in full in Appendix II. Such a body could replace the less transparent and less ambitious Civil Contingencies Secretariat and could also deliver other goals set by the Defence Select Committee such as annual reports and the sharing of information between agencies.³⁴⁵ It would also help to determine government responsibility. At present there is confusion as between the Cabinet Office and the Home Office. It may, of course, also have more tangible duties, such as to set levels and standards for training and protective measures such

337 *Ibid.*, para. 8.65. See also Final Report, paras. 9.6 and 9.7.

338 See *ibid.* para.9.20.

339 *Ibid.* para. 8.76.

340 The central government's co-ordinating agency is the Cabinet Office's Civil Contingencies Secretariat. See: Jeffery, K., and Hennessy, P., *States of Emergency: British governments and strikebreaking since 1919* (Routledge & Kegan Paul, London, 1983) chap.8; Campbell, D., *War Plan UK* (Burnett Books Ltd., London, 1982); Laurie, P., *Beneath the City Streets* (Granada, London, 1983); Hennessy, P., "Whitehall contingency planning for industrial disputes" in Rowe, P.J., and Whelan, C.J. (eds), *Military Intervention in Democratic Societies* (Croom Helm, London, 1985).

341 For details, see its World Wide Web pages at: <http://www.mcdem.govt.nz/memwebsite.nsf>.

342 For details, see its World Wide Web pages at: http://www.ocipep.gc.ca/home/index_e.asp. The authority for military aid is granted by the Emergencies Act 1988 Part XI. For the background, see McDonald Commission Report of the Commission of Inquiry concerning certain activities of the Royal Canadian Mounted Police, Freedom and Security (2nd Report, Ottawa, 1981).

343 Note also in the USA the Federal Emergency Management Agency which is established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC s.5121). See further the document submitted by the BICHR and Bentz, J.A., "The National Response Plan" and "Government and voluntary agencies" in Ghosh, T.K., Prelas, M.A., Viswanath, D.S., Loyalka, S.K., (eds.), *Science and Technology of Terrorism and Counterterrorism* (Marcel Dekker Inc., New York, 2002).

344 Defence Committee, *Defence and Security in the UK* (2001-02 HC 518), and Defence Committee, *Draft Civil Contingencies Bill* (2002-03 HC 557) para.24.

345 Defence Committee, *Defence and Security in the UK* (2001-02 HC 518).

as vaccines,³⁴⁶ to maintain a certain stock level of rations of food and fuel, to set standards for telecommunications protection and usage,³⁴⁷ for the protection of emergency workers³⁴⁸ and for business resilience within government. The Cabinet Office booklet, *Dealing with Disaster*, claims that it would not be helpful to have a single agency but then sees the CCS as “pivotal”.³⁴⁹ If that is so, then the rule of law surely demands legal authority and clarity, especially at time of crisis.

PRINCIPLES AND PROCESSES

Principles of process

In this part of the submission, it is intended to set out the principles which should govern laws which deal with emergencies and the processes which should be inserted into the Civil Contingencies Bill in order to ensure that those principles are observed.

Perhaps the most important lesson which can be learnt from the considerable experience of anti-terrorism legislation is that the rule of law demands as much clarity in the law before the crisis or emergency arises.³⁵⁰ The broad approach implicit in the Terrorism Act is that there is a continuing need for extensive legislation against political violence now and for ever after. The Anti-terrorism, Crime and Security Act 2001 reinforces that stance, though there are in both Acts “sunset” clauses which ensure that some parts of the legislation must terminate after a set period. Amongst the disadvantages of special laws are that they may be unnecessary (either because of the level of threat or the existence of other powers), there will be abuse of the wide powers and there will be damage to the country’s international reputation.³⁵¹ Therefore, this claim to a need for a permanently based Civil Contingencies Act should be examined at the outset. It can be justified at two levels.

The first level concerns the powers and duties of states. In principle, it is justifiable for Liberal democracies to defend their existence and their values, even if this defence involves some limitation of rights. In the words of one American judge, a democracy is not a suicide pact and measures can be taken against clear and present dangers.³⁵² This point is also reflected in Article 17 of the European Convention of Human Rights:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

It is also very much the point of the power of derogation from the Convention in time of emergency under Article 15:

“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”

Aside from the power to take action, there is a state responsibility to act against political or paramilitary violence. Each state has a duty, at least in international law, to safeguard the right to life of its citizens (as

346 See the list of “achievements” in the Consultation Paper, para.2.12. Without discussion and external oversight, how is it to be determined whether these really are “achievements”?

347 Compare the details of the Access Overload Control, Government Telephone Preference Scheme, and the Emergency Communications Network, which all rightly exist but are wholly beyond public scrutiny: Cabinet Office, *Dealing with Disaster* (3rd ed., London, 2003) chap.3.

348 Compare in the USA the Occupational Safety and Health Administration, Hazardous Waste and Emergency Response Standard (29 CFR 1910.120). See Lippy, B., “Protecting the health and safety of resilience and recovery workers” in Levy, B.S., and Sidel, V.W., *Terrorism and Public Health* (Oxford University Press, New York, 2003).

349 Op. cit. paras.1.8, 1.12.

350 See Walker, C., *A Guide to the Anti-terrorism Legislation* (Oxford University Press, Oxford, 2002) chap.1.

351 Inquiry into Legislation against Terrorism (Cm.3420, London, 1996) paras.5.6-5.9.

352 *Terminiello v. Chicago* (1949) 337 U.S. 1 at p.37 per Douglas J.

under Article 2 of the European Convention). In addition, states should more generally ensure the enjoyment of rights and democracy (under Article 1).³⁵³

It is therefore established that states can and must take protective action against activities which seriously threaten the well-being of its citizens or its democracy.³⁵⁴ It follows that recent United Kingdom governments have been correct to reject the call, inspired by events in Northern Ireland, “No emergency, no emergency law” (Committee on the Administration of Justice, *No Emergency, No Emergency Law* (Belfast, 1995)). Assuming a new model of legislation, a stance of “Break glass in case of emergency legislation” is to be preferred. It is illogical to oppose all conceivable forms of special laws on a platform of concerns for human rights. Rather our collective concern for human rights should lead us to the conclusions that we should do our utmost to protect citizens against disaster. This contingency model of a permanent legislative code reflects the philosophy of constitutionalism and democratic accountability – that the legislature can secure an important input if it can speak in advance in a way which cannot be drowned by the screams of a crisis. There is ample evidence to suggest that governments of wholly different complexions will, in a tight corner, wish to resort to much the same measures and react in much the same ways. Thus, if the legal field is left unattended, the power élite will very soon fill it with architecture which, in the circumstances of an emergency, will be rather ugly. One cannot coherently complain about “panic” legislation but at the same time deny to the state the principled and refined means to defend itself and to allay its genuine fears (and often those of the majority of the general public and in Parliament). It is foolish not to plan for contingencies in this way, especially as the planning process can allow the legislature to have its say. This preferred stance reflects what the New Zealand Law Commission called sectoral emergency laws - legislation carefully tailored in detail to respond to each type of emergency, as discussed in Part 1 of this paper.³⁵⁵

The main danger associated with the permanent availability of special laws is the inclination towards overuse - that there will be too much smashing of the glass to take out the special laws and they will be utilised in ways which are inappropriate. There must be an adherence to limiting principles which reflect the values of individual rights,³⁵⁶ constitutionalism (respect for the rule of law and proportionality between emergency and measures used) and democratic accountability and review. As a result, “The true test of the viability of any legal system is its ability to respond to crisis without permanently sacrificing fundamental freedoms”³⁵⁷

One may ask next how we can be sure that the powers will adhere to these standards? For example, how can we be sure that Civil Contingency Bill powers are only triggered by serious threats, are proportionate to them, and will end when the serious threat has dissipated either through the efforts of the special measures or otherwise? Three procedural safeguards should be incorporated.

The first feature is to make debates about the legislation whenever it is invoked, especially in Parliament, more principled and informed and less emotional. This process could be aided by stating explicitly some of the desirable limiting principles adduced earlier. So, for each part of the special Act there should be expressed criteria by which to judge its value or dispensability and its proportionality so that there can be a distinct and informed assessment and vote on each part. It might also be suggested that regulations be subject to a sunset clause, so that there is a debate in full and *de novo* after a set time, such as is required for part VII of the Terrorism Act 2000.

The next safeguard is to enforce observance of these preconditions. This vigilance should be undertaken not simply by Parliament in debate but also by the mechanism of a joint committee, the establishment of which could be triggered by any invocation under the Civil Contingencies Bill and which would investigate and report on any proposed institution of the legislation, its working whilst in force, its renewal and its compatibility with international obligations.

The third restriction is that, once invoked, the actual application of each special law should be subjected to judicial control so far as possible. Judicial review is distinct from the second safeguard as it concentrates more on the individual rather than the collective, though compatibility with the European Convention on Human

353 This point is also reflected in the view of the Joint Committee on Human Rights, *Scrutiny of Bills and Draft Bills* (2002-03 HC 1005) para.3.4.

354 This conclusion was also reached by the Inquiry into Legislation against Terrorism (Cm.3420, London, 1996) para.5.15.

355 Report No. 12, *First Report on Emergencies* (Wellington, 1990); Report No. 22, *Final Report on Emergencies*, (Wellington, 1991).

356 See especially Council of Europe, *Guidelines on Human Rights and the Fight Against Terrorism* (Strasbourg, 2002).

357 Lee, H.P., *Emergency Powers* (Law Book Co., Sydney) (1984) p.ix. See further Hope Report, *Royal Commission on Intelligence and Security* (4th Report PP. 249 (Cth) (Canberra, 1977).

Rights under section 4 of the Human Rights Act 1998 does veer more towards the latter. It is not expected that judicial review will have more than marginal impact. There is much evidence that the courts are usually indulgent of the uses of emergency powers,³⁵⁸ and the only reported successful challenge to emergency regulations occurred in *Smith v Wood*,³⁵⁹ concerning the prosecution of union official for threatening to withdraw safety cover at a coal mine, a prosecution depending on a regulation which was unlawful as it effectively made it an offence to take part in a strike.

Civil libertarians can only hope to secure the principles of constitutionalism and democratic accountability if they confront, rather than ignore, future possibilities of emergency and apply to them all possible mechanisms of governance - executive, legislative and judicial. The simplistic repeal of all emergency laws abnegates the influence of the legislative and judicial branches and gifts absolute power to the executive, making the smash and grab of new powers an even greater danger than the precipitate smashing of glass to get at well-conceived provisions already behind the glass. The alternative to principled security laws is to trust the Home Secretary to design his own laws and to produce them from his secret filing cabinet at a time when everyone (Parliament, the media and the public) will be too frightened to listen to civil liberties pleadings. Better to encourage a vibrant and inclusive democracy which can try to discern the difference between an over-weaning executive and a measured response to a measured assessment of danger.

Specific comments and recommendations on process

Much of the strategy for responding to crisis in the Civil Contingencies Bill seems to be focused at the local and regional level – that level is “the building block”.³⁶⁰ In principle, this approach is sensible since crisis response requires swift and flexible reaction and so inevitably demands local structures already in theatre and without the necessity to await central orders. However, the appointment of the Emergency Coordinators and Regional Coordinators in section 22 raise issues about democratic accountability.³⁶¹ These concerns may be lessened in the case of the non-English Emergency Coordinators where one can conceive a direct link to a devolved administration, a link which seems to be encouraged by the operation of section 26 (consultation with devolved administrations about regulations). But it may be asked:

- What is the structure of accountability for regional coordinators. They must answer upwards to a Minister. But is there meant to be any downward accountability?
- Why is there no requirement equivalent to section 26 for England? A simplistic answer is, of course, that there is no devolved authority or authorities for England. But it would be possible to set up for the purposes an ad hoc council consisting of representative from each local government area affected by the emergency.

The requirement in section 19 of the Human Rights 1998 for a Minister to make a statement of legislation in regard to primary legislation do not apply to secondary legislation. But in the case of the Civil Contingencies Bill, many regulations may be far wider in terms of their impact on rights than ordinary primary legislation.

- It is suggested that the section 19 requirement should equally apply to regulations issued under the Civil Contingencies Bill. Though the short history of section 19 has not been a happy one, one should seek to apply all possible safeguards.

PRINCIPLES AND SUBSTANCE

Principles of substance

An examination of the substance of the contents of the Civil Contingencies Bill will utilise principles already adduced in relation to process, including respect for rights, constitutionalism and democratic accountability. In addition, laws must in substance achieve effectiveness (achieve their aims), economy (do not take up unnecessary resources) and efficiency (provide cost-effective solutions to problems).

358 See Walker, C., “Constitutional governance and special powers against terrorism” (1997) 35 Columbia Journal of Transnational Law 1.

359 (1927) 43 TLR 178.

360 Cabinet Office, Consultation Document (Cm.5843, London, 2003) para.2.

361 It is realized of regional commissioners that the concept derives from models going back to 1925 and first used in 1926.

Specific comments and recommendations on substance

Fundamental to the legislation is the triggering concept of “emergency” in clauses 1 and 17. The following issues might be considered:

- The most controversial aspect of the new definition would appear to be the extension compared to the 1920 Act version of a definition (in section 1(1)) in terms of the essentials of life for the community to include also the essentials of life for the government, as stated in clauses 1(1)(c) and 17(1)(c). One is reminded here of debates about the meaning of “subversion” in section 1(2) of the Security Service Act 1989 (“actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means”), where the concern was likewise to distinguish threat to the political interests of the government from the threat to the more public trust interests of the government. The current formulation in the Civil Contingencies Bill prompts the criticism that, “In Britain, the idea of ‘civil’ defence has been turned on its head. Home defence is about the protection of government – if need be, against the civil population.”³⁶²
- Questions arise concerning the relationship between the ability to declare an emergency on a regional basis and the wording of Article 15 of the European Convention on Human Rights, which envisages an emergency threatening the life of “the nation”. Of course, not every invocation of the Civil Contingencies Bill will require resort to a derogation under Article 15. Nor is it requirement for Article 15 that the emergency and emergency powers must be national – most derogations since 1951 within the United Kingdom have been confined to the region of Northern Ireland. Nevertheless, the effect must be that a different range of regulations are possible when a localised crisis affects the national position and a localised crisis which does not. This should perhaps be reflected in the Bill to avoid error and to ensure due consideration.
- For all the criteria, there is no reference to any requirements of necessity or proportionality. In this way, it should be specified for all triggering reasons that it is reasonably believed that (i) the use of powers and resources normally available without the invocation of the Civil Contingencies Bill will not be sufficient to deal with the emergency and (ii) that the invocation of the Bill will be a proportionate response to the emergency. These requirements should apply to clauses 1 and 17, though there is some attempt already to reflect necessity in clauses 18(1)(b) and 21(4)(e) as a condition to making Part 2 regulations. As a result, the idea of the “triple lock” in the Consultation Paper³⁶³ becomes more than rhetoric³⁶⁴ and should certainly not be left as a matter for the government to consider (or not) at will.³⁶⁵ These formulations could be very significant in dealing with farm animal disease. If the Animal Health Act 2002 is sufficient to deal with an emergency, the effect would be that it should be used in priority to the Civil Contingencies Bill. The further effect would be that compensation is then payable for sure.

As well as questions about the over-inclusiveness or under-inclusiveness of the statutory definitions in clauses 1 and 17, a number of questions may be asked about the relation between the Civil Contingencies Bill and residual common law powers to act in emergencies. The only mention is in Part 1, section 14(5) which refers to the preservation of other statutory powers but does not mention common law. But lurking under the folds of pomp and tradition relating to the Crown are effective and often draconian powers, especially to tackle episodes of crisis. The precise scope of the Crown's powers to intervene in emergencies has been a perennial matter for fierce debate. The disputation has been conducted not only at a theoretical level³⁶⁶ but has occasionally provoked notable legal challenges, ranging from the Seventeenth century controversies, such as the cases of *Saltpetre*³⁶⁷ and *Ship Money*,³⁶⁸ to more recent litigation. The contemporary cases amply demonstrate that prerogative powers continue to be vibrantly exercised in response to a wide range of

362 Campbell, D., *War Plan UK* (Burnett Books Ltd., London, 1982) p.15.

363 para.5.19.

364 As demanded by the Defence Committee, Draft Civil Contingencies Bill (2002-03 HC 557) para.64.

365 This seems to be suggestion in the Consultation Paper para.5.20.

366 Eveleigh, R., *Peacekeeping in a Democratic Society* (Hurst, London, 1978); Jeffery K., and Hennessy, P., *States of Emergency: British governments and strikebreaking since 1919*, (Routledge & Kegan Paul, London, 1983); Winterton, G., "The Prerogative in Novel Situations" (1983) 99 *Law Quarterly Review* 407; Greer, S. C., "Military Intervention in Civil Disturbances" [1983] *Public Law* 573; Peak, S., *Troops in Strikes* (Cobden Trust, London, 1984); Bonner, D., *Emergency Powers in Peacetime* (Sweet & Maxwell, London, 1985); Rowe, P.J., and Whelan, C.J. (eds), *Military Intervention in Democratic Societies* (Croom Helm, London, 1985); Campbell, C., *Emergency Laws in Ireland 1918-1925*, (Clarendon Press, Oxford, 1994).

367 *The Case of the King's Prerogative in Saltpetre* (1606) 77 ER 1294.

368 *R v Hampden* (1637) 3 Cobb.St.Tr. 826.

perceived emergencies, such as the destruction of oil installations so as to deny them to an invading enemy (the *Burmah Oil* case³⁶⁹), the banning of trade union membership amongst civil servant engaged in signals intelligence work (the *GCHQ* case³⁷⁰), the provision of plastic bullet rounds to chief constables in defiance of the wishes of local police authorities (*R v Secretary of State for the Home Department, ex p Northumbria Police Authority*³⁷¹) and, finally, the requisitioning of ships at the time of the Falklands conflict.³⁷² It is conceivable that the sponsoring department is relying upon the alleged “general principle in law that statutes do not bind the Crown unless by express provision or necessary implication.”³⁷³ In general, the law does tend to immunize the Crown in the way suggested. In *Lord Advocate v Dumbarton District Council*,³⁷⁴ Lord Keith argued that

“I consider it to be no longer a tenable view that the Crown is in terms bound by general words in a statute but that the prerogative enables it to override the statute. As to the considerations which may be applicable for the purpose of finding a necessary implication that the Crown is bound, it is clear that the mere fact that the statute in question has been passed for the public benefit is not in itself sufficient for that purpose.”

Whilst the use of the prerogative to deal with matters of national security is well-established in the common law, there is also wide agreement amongst observers as to the need for both clarification and reform, the aim of which would be to reflect such hallowed principles of parliamentary democracy as the rule of law and the assertion of checks and balances.³⁷⁵ The present lack of a statutory footing in the U.K. can certainly lead to disputes over when and how the military can intervene in emergencies. To take one illustration, Eveleigh, a commentator with the benefit of impressive military experience as well as legal research, asserts that:³⁷⁶

“It is startling to reflect that in strict constitutional theory, a corporal with ten privates in a lorry who happened to drive through Grosvenor Square in London when a crowd of demonstrators had burst through a police cordon and were attacking an embassy, would have not merely a right to intervene and suppress the disorder with lethal weapons if necessary, but an absolute duty to do so, in spite of anyone from the Prime Minister to the senior policeman on the spot telling him not to.”

By contrast, another academic commentator, Greer,³⁷⁷ firmly refutes the suggestion that soldiers have a legal duty to intervene³⁷⁸ but is forced to the observation that “no clear conclusion on these matters can be derived.”³⁷⁹ More positively, Greer suggests that:³⁸⁰

“It seems preferable that this uncertainty should be clarified through democratic processes in advance of such intervention, *i.e.* an informed public debate followed by legislation, rather than

369 *Burmah Oil Co Ltd v Lord Advocate* [1965] AC 75.

370 *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374. See: Lee, S., “G.C.H.Q.: Prerogative and public law principles” [1985] Public Law 186; Wade, H.W.R., “Procedure and prerogative in public law” (1985) 101 *Law Quarterly Review* 180; Walker, C., “Review of the prerogative” [1987] Public Law 62.

371 [1989] Q.B. 26. See Benynon, H.J., “Prerogative to supply plastic baton rounds and C.S. gas to the police” [1987] Public Law 146; Bradley, A. W., “Comment” [1988] Public Law 298.

372 Requisitioning of Ships Order, 1982 (SI No.1982, p1693). See Turpin, C., *British Government and the Constitution* (2nd ed., Weidenfeld & Nicolson, London 1990) pp. 383-4.

373 HL Debs vol.613 col.241 16 May 2000, Lord Bach.

374 [1989] 3 W.L.R. 1346 at p.1360; see also *Attorney-General v Hancock* [1940] 1 KB 427; re *Lockerbie Air Disaster* (1992) *The Times* 20 May. Compare *Terrorism Act 2000* s.105.

375 The case for reform of national security laws in general and the principles upon which it should be based are exhaustively examined by Lustgarten, L., and Leigh, I., In *From the Cold* (Oxford University Press, Oxford, 1984), Part V. See also: Royal Commission on Intelligence and Security, 4th Report (Australian Government Publishing Service, Canberra, 1977) Vol.1, C, paras.122, 123; Commission of Inquiry concerning Certain Activities of the RCMP, Second Report: Freedom and Security under the Law (Ottawa, 1981) Pt.V, chap.4 para.2.

376 *Op. cit.*, p. 8.

377 *Loc. cit.*, p.591.

378 *Loc. cit.*, p.595.

379 *Ibid.*, p.599. Any conclusion must also take account of the powers to intervene derived from the Criminal Law Act 1967 s.3 or of the duties in common law of public officers (*R v Dytham* [1979] Q.B. 722; *R v Bowden* [1995] 4 All ER 505; Nicolson, D., “The Citizen’s Duty to Assist the Police” [1992] *Criminal Law Review* 611).

380 *Ibid.*, p.599.

merely leaving the matter either to the courts to settle in the legally obscure aftermath or to civil servants to determine behind the closed doors of the Ministry of Defence.”

It is proper that there is concern. The deployment of the military outside their wartime roles must always be a matter of public interest, if not controversy. However, it is not the wartime/peacetime distinction *per se* that is in issue. Constitutional concern arises through what might be termed the "democratic deficit" - that troops can roam the streets without effective political accountability either locally or nationally and without effective control (political, legislative or judicial) over their actions either locally or nationally. The deficit becomes most acute when the soldiers are ordered to engage in any activity under the heading of military aid to the civil powers ("M.A.C.P.") (maintaining or restoring public order)³⁸¹ which involves contact with civilians in a confrontational or coercive relationship, though even the operation of troops in aid to the civil community ("M.A.C.C.") (for example natural disaster or civil emergency relief) has the potential for contention.

From this debate, it may be concluded that

- It would be helpful to clarify the roles of the military and to set them out on a statutory basis in a new Defence Act.³⁸² Any reform process must involve the injection of constitutional precepts of both a substantive and a structural kind.³⁸³ It should: (i) specify the legitimate/illegitimate uses of military intervention (the principled parameters); (ii) provide a clear basis in detailed law for intervention and for the termination of intervention; (iii) clarify the chain of command; (iv) specify the powers available to soldiers which then arise; and (v) ensure accountability to democratic and judicial oversight.
- At very least, the relationship between the Civil Contingencies Bill and residual common law should be explored.

Two questions arise in regard to the list of Category 1 and 2 Responders in clause 2 and Schedule 1:

- Why is there no need for the appearance in Category 1 of national organisations (leaving aside the failure to consider central government departments or even their regional offices, as already mentioned)? Examples include the Security Service and also the National Criminal Intelligence Service and the National Crime Service (the latter actually being derived from regional police squads). Only the British Transport Police is mentioned.
- Should Category 2 include principal suppliers of petroleum products?

By clause 16, Part 1 is applied only to England and Wales. It would surely be desirable in the context of an emergency to avoid different legal sources.³⁸⁴

The list of exceptions to the power to make regulations in clause 21(4) should mention all those rights which are effectively absolute in the European Convention on Human Rights, including the right to life (Article 2), the right not to be tortured (Article 3), the right not to be subjected to forced labour (Article 4, which is wider than clause 21(4)(a)), the right to a fair trial (Article 6) and the right not to be subjected to retrospective penalties (Article 7).³⁸⁵ Without such mention, it is difficult to see how the claim that the Bill is compatible with the European Convention on Human Rights³⁸⁶ is easily sustainable, since powers to breach the Convention are granted. It might also be useful to mention the requirements of international humanitarian law.

The level of Parliamentary scrutiny under clause 24 is inadequate to achieve democratic accountability.³⁸⁷ Any royal proclamation (clause 18) or emergency declaration (clause 19) must be made subject to a

381 See Bonner, D., *Emergency Powers in Peacetime*, (Sweet & Maxwell, London, 1985) chap.5; Rowe, P., *Defence: The Legal Implications* (Brassey's Defence Publishers, London, 1987) chap.4.

382 See Walker C., and Reid, K., "Military aid in civil emergencies: lessons from New Zealand" (1998) 27 *Anglo-American Law Review* 133. The idea is rejected by the Consultation Paper (para.37) without argument.

383 Kay, R.S., "Substance and structure as constitutional protections" [1989] *Public Law* 428, at 430-1.

384 The plans in Scotland and Northern Ireland may already be different: Defence Committee, *Draft Civil Contingencies Bill* (2002-03 HC 557) para.53.

385 Compare the more extensive list at Joint Committee on Human Rights, *Scrutiny of Bills and Draft Bills* (2002-03 HC 1005) para.3.31 and see also para.3.35.

386 Consultation Paper, para.5.30.

387 See Defence Committee, *Draft Civil Contingencies Bill* (2002-03 HC 557) para.73.

substantive vote rather than simply notification. Likewise, regulations should be subject to the affirmative procedure (subject to urgency).

In terms of ensuring respect for human rights, clause 25 stands out as a startling departure from accepted standards the need for which should be “compelling”.³⁸⁸ The accepted standard in this case is that only Parliament, through the medium of primary Acts, has the sovereign authority to pass legislation which is immune from possible striking down, though it is expressly subjected to the possibility of a declaration of incompatibility (Human Rights Act 1998, section 4) as if primary law. The Joint Committee on Human Rights expresses concern about this provision.³⁸⁹ It is here recommended that

- In the light of the arguments given by the Joint Committee on Human Rights, it would be undesirable to pass clause 25 in its present form. It sets a dangerous precedent which is not only inimical to the principle of rights but also to the principle of democratic accountability. Parliament is capable of passing legislation in an emergency (for example the Criminal Justice (Terrorism and Conspiracy) Act 1998 appeared and was passed within days in late August 1998).
- Additional to the argument, it might be suggested that a limited procedural change could be made to the power to grant remedies under section 8 of the Human Rights Act 1998. For example, the relevant court could be required to stay any remedial order (i) until the date for appeal has passed and no appeal has been made; (ii) if an appeal is made, then the appeal court should have a presumptive requirement to stay the order of the lower tribunal. At the same time, it must be remembered that such a special exception was not considered necessary in connection with challenges to detention without trial under section 30 of the Anti-terrorism, Crime and Security Act 2001.

The other vital issue in relation to rights concerning the protection of rights relates to the restrictions in clause 21(4). One uncertainty is whether the relevant provisions rule out detention without trial. The explanatory notes suggest that the Civil Contingencies Bill has this effect, but this contention has never been confirmed by the courts or accepted by academic commentators who point to a difference between creating an offence punishable without trial and the power of detention without trial which can then be enforced through disciplinary offences tried in the usual way.³⁹⁰ As a result:

- It is suggested that detention without trial be specifically excluded in clause 21(4). Such a drastic step ought to be sanctioned expressly by Parliament.

In so far as official act under powers under the Civil Contingencies Bill, there may be a very wide range of officials and a wide range of powers. Especially in the panic of an emergency, there should be some kind of official identity tag which is visible to the public and must be produced on request.

The issue of compensation for emergency action against property is left too vague in the regulation-making power in clause 21(3). At very least, there should be a presumption in favour of compensation, so that any attempt to remove that right would have to be explicit and explained. The government has considerable experience through the Pool Re scheme in 1993 onwards for commercial property and the Troika scheme in 2001 for airlines in ensuring that emergency insurance can be offered. Such a scheme should be considered so that insurance might be available through commercial sources, even if it is no longer possible to offer direct government compensation in all cases.

Special protection should be given to the protection of means of communication of public information. So, the powers of the authorities to interfere with media such as newspapers should be subject to special restraint. This idea would follow other legislation, such as the Contempt of Court Act 1981, section 10 and the Police and Criminal Evidence Act 1984 section 13.

Along the same lines, and with added importance, special importance and immunity from the impact of emergency measures, should be accorded to (i) Members of Parliament for the purposes of transacting the business of Parliament and (ii) members of the judiciary for the purposes of transacting judicial business. Any effort to detain any Member of Parliament or members of the judiciary should be subject to specific approval by Parliament within a certain time.

388 Defence Committee, Draft Civil Contingencies Bill (2002-03 HC 557) para.68.

389 Joint Committee on Human Rights, Scrutiny of Bills and Draft Bills (2002-03 HC 1005) para.3.26.

390 Morris, G.S., “The Emergency Powers Act 1920” [1979] Public Law 317 at p.324.

The apparently full code of draft regulations produced by the Cabinet Office in 2001 under the Emergency Powers Act 1920 is an unremarkable update of the last used version in 1974 and follows a very familiar pattern of interferences with property, controls over public services and utilities, controls over transport, and public order and enforcement measures, as in the last published Emergency (No.3) Regulations 1974.³⁹¹ As the Cabinet Office states that the Civil Contingencies Bill has “a wider scope than existing legislation”.³⁹² As a result, Parliament is being kept in the dark. The government is seemingly not prepared to indicate what really it has in mind in terms of powers and procedures and will reveal only the outdated portions relating to major industrial disputes. The lack of available information on the contingencies envisaged for forms of WMD attack means that, if ever needed, there will be an absence of considered debate by both Parliament and a lack of preparedness on the part of agencies affected.³⁹³ One might compare the position in the USA, where responsibilities for 12 Emergency Support Functions under the Federal Response Plan have been prepared and published.³⁹⁴

- It is recommended that the Committee should ask whether corresponding drafts exist under the Bill. It should ask what approach is being, or will be, taken to the drafting and publication of such draft regulations. It will probably be unwieldy to have just one set of regulations, and it is also that sets of guidelines alongside regulations will be necessary for diverse sectors such as health care and petroleum distribution. The drafts should be published not just for the purposes of Parliamentary deliberation on the Bill but in the interests of open government.³⁹⁵

For the sake of completeness, it would be useful to include within the Civil Contingencies Bill the power to use military resources in the Emergency Powers Act 1964, section 2. Even if, contrary to previous arguments, a more ambitious Defence Bill is rejected, the opportunity should at least be taken to clarify the processes for request, the ensuing powers and the allocation of costs.³⁹⁶

391 1974 SI no.350. In Northern Ireland, see Emergency Powers 1974 SI no.88.

392 Questions for the Bill Team, Appendix 9, question 22.

393 See New Zealand Law Commission, Report No. 22, Final Report on Emergencies, (Wellington, 1991) para.6.79.

394 See Bentz, J.A., “The National Response Plan” and “Government and voluntary agencies” in Ghosh, T.K., Prelas, M.A., Viswanath, D.S., Loyalka, S.K., (eds.), Science and Technology of Terrorism and Counterterrorism (Marcel Dekker Inc., New York, 2002). The relevant legislation is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC s.5121). See further the document submitted by the BIICHR.

395 Compare Defence Committee, Draft Civil Contingencies Bill (2002-03 HC 557) para.13.

396 The idea is rejected by the Consultation Paper (para.37) without argument.

Appendix 6: Note by Professor Clive Walker, Specialist Adviser to the Committee – The Resilience of the Crown

The resilience of the Crown

1. The resilience of the office of the Crown is vital to the operation of Part 2 of the Civil Contingencies Bill. The Crown is relied upon to deal with

- the proclamations of emergencies (cl.18)
- the making of Orders in Council (clause 20)
- the requiring of the meeting of Parliament (clause 24)
- and the appointment of Secretaries of State and Ministers of the Crown (*passim*)

2. It follows that it is important to ensure that in any dire emergency, the existence of the Crown in person is assured and that the exercise of Crown powers remains feasible.

3. As regards the existence of the Crown, succession is settled by the Bill of Rights 1689, as amended by the Act of Settlement 1700 and the His Majesty's Declaration of Abdication Act 1936. The key condition is of course an hereditary relationship, though the foregoing legislation also imposes the conditions that a Roman Catholic is specifically excluded from succession to the throne; nor may the Sovereign marry a Roman Catholic. The Sovereign must, in addition, be in communion with the Church of England and must swear to preserve the established Church of England and the established Church of Scotland. The Sovereign must also promise to uphold the Protestant succession. According to the official royal website (<http://www.royal.gov.uk/output/Page389.asp>), there are 37 people in line of succession, but one could presumably go further if necessary in line with the rules so specified. When a sovereign dies, or abdicates, a successor is immediately decided according to these rules – there is no interregnum. The coronation of a new sovereign is an important ceremony which confirms to the public the succession (including the promises required).

4. Given the number of available office holders and the ease of transition, the Crown would appear to enjoy a high degree of resilience. The only circumstance which could give rise to difficulty is where a minor (under 18 years) or succeeds to the Crown (section 1) or where the office holder is incapacitated by infirmity of mind or body or (under section 2) is 'for some definite cause not available' (being held captive by the enemies of the Crown might be an example). These events trigger the Regency Act 1937. A declaration as to incapacity can be made by any three or more of the Sovereign's spouse, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice and the Master of the Rolls. No doubt, plans have been considered for such an eventuality from time to time, and the procedure does again secure a fair degree of resilience.

5. In addition under the Regency Act 1937, section 6 (as amended in 1943 and 1953), the sovereign may appoint Councillors of State when suffering from a lesser degree of incapacity or intends to be absent from the realm. The Councillors of State can exercise specified royal functions (except dissolving Parliament or granting titles):

Power to delegate royal functions to Councillors of State

1. In the event of illness not amounting to such infirmity of mind or body as is mentioned in section two of this Act, or of absence or intended absence from the United Kingdom, the Sovereign may, in order to prevent delay or difficulty in the despatch of public business, by Letters Patent under the Great Seal, delegate, for the period of that illness or absence, to Councillors of State such of the royal functions as may be specified in the Letters Patent, and may in like manner revoke or vary any such delegation:

Provided that no power to dissolve Parliament otherwise than on the express instructions of the Sovereign (which may be conveyed by telegraph), or to grant any rank, title or dignity of the peerage may be delegated.

2. Subject as hereinafter provided, the Councillors of State shall be the wife or husband of the Sovereign (if the Sovereign is married), and the four persons who, excluding any persons disqualified under this section, are next in the line of succession to the Crown, or if the number of such persons next in the line of succession is less than four, then all such persons:

Provided that, if it appears to the Sovereign that any person who, in accordance with the foregoing provisions of this subsection, would be required to be included among the Counsellors of State to whom royal functions are to be delegated, is absent from the United Kingdom or intends to be so absent during the whole or any part of the period of such delegation, the Letters Patent may make provision for excepting that person from among the number of Counsellors of State during the period of such absence.

..any person disqualified under this Act from being Regent shall be disqualified from being a Counsellor of State.

3. Any functions delegated under this section shall be exercised jointly by the Counsellors of State, or by such number of them as may be specified in the Letters Patent, and subject to such conditions, if any, as may be therein prescribed.

4. The provisions of this section shall apply in relation to a Regent with the substitution for references to the Sovereign of references to the Regent, so, however, that in relation to a Regent subsection (2) of this section shall have effect as if after the word "next," where that word first occurs therein, there were inserted the words "after the Regent".

5. Any delegation under this section shall cease on the demise of the Crown or on the occurrence of any events necessitating a Regency or a change of Regent.”

6. Given that there are around four hundred available members of the Privy Council but no clear rules as to quorum other than the requirement that the monarch (or the regent or councillors of state) must preside, it should never be impossible to arrange for orders in council. The business is in any event purely formal – this successor to the feudal King and Council does little more than record the decisions already taken elsewhere, and members traditionally stand throughout the short meetings. Some secondary legislation is issued in this format for reasons of tradition and status (such as in the case of colonial constitutions or treaty confirmation matters). But the Crown is informed in advance of the business, which affords the usual opportunities to advise, encourage and warn.

7. The Crown appoints Secretaries of State and Ministers of the Crown. There is complete legal discretion to do so under the Royal Prerogative, but, increasingly over the past three hundred years, there has grown a firm convention that the Crown acts on the basis of the advice of the Prime Minister and does not exercise personal discretion to appoint “favourites”. The Crown’s powers are subject to the House of Commons Disqualification Act 1975 and the Ministerial and Other Salaries Act 1975, which set limits to the maximum number of Ministers. Paradoxically, there is greater regulation of Ministers than Secretaries of State by the Ministers of the Crown Act 1975. Ministers can be designated under the Act, thus avoiding the prerogative powers. Most Ministerial offices have been designated by legislation. The office of Lord Chancellor is by contrast an ancient creature of the prerogative and so is the plaything of the Prime Minister’s advice; the Chancellor of the Exchequer is likewise prerogative in nature.

Appendix 7: Note by Mr Garth Whitty, Specialist Adviser to the Committee

Introduction

In the absence of legal expertise I have confined myself to considering the requirement to mount an effective response to ‘disruptive challenges’ and where the draft Bill might benefit from consideration of enhanced or additional elements.

There are four criteria against which the draft Civil Contingencies Bill has been assessed:

- Necessity
- Requirement
- Meeting the requirement
- Affordability

Is it necessary?

Existing Legislation

While existing legislation has served its purpose it is evident that in the light of existing and emerging threats, increasing technological dependence and associated vulnerability, diminishing individual self-reliance, the culture of self-indulgence at the expense of community welfare, risk aversion and an expectation that ‘others’ will neutralise all uncertainties, there is a requirement for a major overhaul of catastrophic event legislation.

Preparedness Limitations

It is a matter of public record that the preparation for and the management of the response to national and regional emergencies (floods, BSE/VCJD, FMD, the fuel crises, FBU strike) have not always been executed in the most effective way. One of the consequences of this perceived or actual mismanagement has been an increased negative impact rather than the desired mitigation. It seems likely that the shortcomings of current legislation have contributed to unsatisfactory outcomes.

Command and Control

The premise that the senior subject matter expert (SME) is best suited to the command and control of a specific ‘disruptive challenge’ event is not borne out by the record thus far. While leadership and subject matter expertise are not mutually exclusive effective leadership supported by advice from SMEs is essential in ensuring the satisfactory resolution of emergencies. The absence of leadership even in the presence of significant expertise will result in operational failure.

Risks

The risks that we face constitute natural (acts of God) and man-made (accidental/negligent) hazards lacking in intent and man-made (deliberate) threats in which intent is present. These disruptive challenges whether natural or human influenced/instigated threaten ‘normality’ creating uncertainty and impacting negatively on society.

Catastrophic Terrorism

Catastrophic (unconditional) terrorism is manifest in al Qaeda’s enabling objectives – the destruction of Western and non-compliant Islamic governments – to facilitate the realisation of its primary objective – the establishment of an Extremist Islamic Caliphate. Much is made of the UK’s expertise in countering coercive (conditional) terrorism, which is undoubtedly impressive; however the breadth of resources and expertise potentially necessary in the response to coercive terrorism is significantly greater and needs to be legislated

for. Catastrophic terrorism has also increased the probability of the use of CBRN payloads, digital attacks, multiple vehicle borne improvised explosive devices, man portable anti aircraft weapons and suicide attacks.

9/11

It is a salutary fact that while the modus operandi employed by the 9/11 attackers was novel and the casualty count, psychological impact, economic consequences, foreign policy implications and scale were extreme the physical consequences – crashed aircraft, burning and subsequently collapsed high rise buildings – were not outside the emergency response preparedness parameters. The response was effective because the Category of catastrophic event had been trained for/experienced by Responders, the New York Police and Fire Department were particularly well resourced, there was outstanding leadership in Mayor Guiliano and the citizens of New York demonstrated a high level of resilience. It is only possible to speculate at the outcome of a CBRN attack but it is reasonable to assume, in view of al Qaeda's record for technological expertise, meticulous planning and execution that it would have resulted in a significantly higher casualty count and extended recovery period.

What is the requirement?

Determining the Requirement

Determining the requirement for 'disruptive challenge' event legislation necessitates defining an emergency within the context of the legislation, identification of the generic 'disruptive challenge' types and outlining the essential characteristics of an effective response. The detailed response requirement may be established by comparing the probable disruptive challenges (based on historical precedent, identified weaknesses, declared intent of enemies and blue sky thinking) with existing response capability to expose the degree of vulnerability and neutralising response requirement.

Definition

The draft Bill definition:

'An emergency is an event or situation which presents a serious threat to human welfare ..., the environment ..., political, economic or administrative stability ..., or of the security of the UK ...' fails to identify the point (scale of the emergency) at which it might be expected to trigger the implementation of Emergency Powers. The definition for 'major emergencies' in 'Dealing with Disasters' usefully states '... 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.'

Disruptive Challenges

Loss of:

- Life
- Physical well-being
- Psychological well-being
- Abode
- Livelihood

Disruption of:

- Food supply
- Water
- Energy
- Communications
- Transport
- Healthcare
- Education
- Government
- Commerce
- Administration

Contamination of: (including by chemicals, biological agents and radioactive material)

- Population
- Land
- Water
- Air
- Food
- Flora and Fauna
- Structures
- National herd/flock

Flooding

Fire

Explosions

Structural collapse

Maritime, rail, road and air catastrophic events

Earthquake

Climatic conditions

Response Requirements

At the national (strategic) level an effective response to potential ‘disruptive challenges’ requires:

Will

Clarity – of intent, command and control

Legislation

Executive Focus

Standardisation – of requirement, equipment, performance

Resources –financial, equipment, trained personnel

Integration

Cooperation

Public engagement

Audit

Monitoring, Warning and Reporting

Demonstration

Does the draft Bill meet the requirement?

Overview

New legislation to better facilitate an effective response to ‘disruptive challenges’ is long overdue and will be widely welcomed. It is nevertheless essential that the legislation fully meets the requirement and while there is much that is good about the work that has been undertaken there may be scope for further development and consideration in a number of areas.

Devolved Responsibility

While the devolution of operational responsibility to the lowest practicable level is often a sound principle there should be real advantage in doing so and the introduction of additional levels of command and control may cause complications when clarity is required. It is questionable whether when it is necessary to declare an emergency (the trigger point has yet to be defined) local authorities will have the necessary resources to manage disruptive events. An alternative may be the deployment of a forward Regional HQ. It would appear to be advantageous to include the responsibilities of both the regional and national tiers and to define more tightly the responsibilities of the Category 1 and 2 Responders.

Executive Focus

Emergencies most frequently develop into disasters because of the inadequacies of command and control. Confidence in commanders is established before an incident occurs and is dependent on a number of qualities

the most important of which is leadership but which include a deep understanding, and ideally experience, of the generic principles of the response to ‘disruptive challenges’ (not necessarily subject matter expertise). Considering the wide number of agencies likely to be involved this would seem to demand full-time attention at all levels. It is not clear that the draft bill allows for this. An analogy is to be found in the military where individuals who will undoubtedly have a particular specialisation are selected for command appointments primarily for their leadership skills. In these appointments they command operations but receive specialist input from SMEs, the SME, an artillery officer for example does not command the operation because artillery is the key component of that particular operation.

Operational Effectiveness

When a catastrophic event is developing there is an inevitable and proper human tendency toward anxiety and concern on the part of the designated Responders. This can be mitigated by the standardisation of equipment and procedures and the integration of the contributing agencies primarily through the medium of regular training and test exercises (demonstrations not exercises are an important mechanism for public reassurance and enemy deterrence). Operational effectiveness is best overseen by an inspectorate which it is suggested might best be ‘for purpose’ rather than those already established such as HM Inspectorate of Constabulary/HM Fire Services Inspectorate.

Resource Allocation

Resources necessary for the response to ‘disruptive challenges’ should be allocated on the basis of the probability of individual or multiple incidents of a particular Category occurring within a given geographical area and time-frame. There will inevitably be a high level of ‘guesstimating’ of resource requirement but it would seem prudent that the legislation includes the provision for both trained personnel and equipment. It may also be helpful if the expected capability/standard of trained personnel is detailed.

Responder Categorisation

The categorisation of Responders is a sound principle but extension of the existing Category 2 list to accommodate voluntary organisations would appear to provide a level of uniformity. There may also be a case for additionally creating categories 3 and 4. One of the great strengths of the 30 year campaign against Irish Terrorism was the engagement of the public, both the commercial sector and individual citizens, thereby enabling them to provide information that prevented or disrupted attacks, to alert the authorities of the possible presence of explosive device or other suspicious item or activity and to minimise the probability of becoming victims of terrorist action. While the prevailing official view is that to initiate greater public engagement will increase anxiety there is a counter argument based on the premise that an informed and involved society is a resilient society and their inclusion would facilitate mobilisation of the full complement of resources.

Monitoring, Warning and Reporting

To facilitate the earliest possible response to a developing ‘disruptive challenge’ and to mitigate its effect requires an effective monitoring, warning and reporting mechanism.

Is it affordable?

Affordability

Affordability is dependent on an assessment of the level of resources required in light of the probability of disruptive challenges materialising. Nevertheless there is a view that currently the requirement is insufficiently resourced.

Conclusion and Recommendations

It seems entirely appropriate that the draft Civil Contingencies Bill has been published and there is substantial eagerness on the part of the Responder community and the public at large that the Bill be introduced soon. It

is nevertheless essential that the Bill accurately reflects the requirement and in this regard it is recommended that consideration be given to the following:

- Will the introduction of 3 tiers unduly complicate when simplicity is desirable?
- Should the Bill include Central Government and Regional responsibilities?
- Is the Executive Focus correct?
- Should standardisation, integration and an inspectorate be addressed within the Bill?
- Should the level of resource allocation be included?
- Might voluntary organisations be included with Category 2 Responders?
- Should additional categories be created for the commercial sector and individual citizens?
- Should a monitoring, warning and reporting mechanism be included?

Appendix 8: Note by Mr Garth Whitty, Specialist Adviser to the Committee – Military Support

Military Support

Military Support is provided to government departments, the civil powers and the civil community under the auspices of MACA (Military Aid to the Civil Authorities). There are four categories of military support potentially available.

Regular Forces

- Dedicated assets – military capability that will be provided on request through the appropriate channels by specialist units. The most obvious example is bomb disposal teams.
- Non-dedicated assets – local or specialist military units that subject to commitments may be available on request.

Volunteer and Reserve Forces

- Dedicated assets – Civil Contingency Reaction Forces of 500 volunteer personnel in each region. Not yet available.
- Non-dedicated assets- local Royal Navy Reserve, Territorial Army and Royal Air Force Reserve units that may be available on request.

Reaction Forces (from SDR: the New Chapter)

- A Reaction Force of, on average, some 500 Volunteer Reserves would be established in each region - in principle giving a total of some 6,000 or so Volunteer Reserves in Reaction Forces nation-wide.
- We would use the Army's regional brigade areas for this purpose, since this corresponds to the system of Government Offices for the Regions and to the Devolved Administration structure.
- Reaction Forces would comprise only individuals who agree to take on this additional commitment, drawn from all Volunteer Reserve units within the regional brigade area.
- The organisational framework for Reaction Forces would be provided by an existing major Volunteer Reserve unit in each region - most probably a Territorial Army infantry battalion.
- The decision to deploy a Reaction Force would follow a request from the civil authorities for military assistance. A recommendation to deploy a Reaction Force would then be made by the regional military commander with responsibility for home defence and security, who would exercise his judgment as to which of the forces at his disposal, including the Reaction Force but also Regular Forces, best match the requirements of the situation.
- To avoid holding up the deployment of Reaction Forces pending the issue of an appropriate mobilisation order, initial reporting would be on a voluntary basis. To give the Volunteer Reservist the necessary employment protection, the Government would expect to initiate mobilisation procedures after 36 hours, under the Reserve Forces Act 1996.

Appendix 9: Questions for the Bill Team

No.	Question	Reply
1.	<p>Definition of emergency</p> <p>How do you respond to the view that the provision for emergency powers in the Bill has been drawn too widely because, for example, the powers in the Animal Health Act 2002 already provide adequate means to deal with an emergency such as foot and mouth disease and therefore the powers at clause 21(2)(j) and 21(3)(c) in respect of animals is unnecessary?</p>	<p>Where possible, Governments have enacted legislation to deal with specific emergencies. As a consequence, a large body of sector-specific emergency legislation exists. Where possible, the Government would turn to the powers available under such legislation first in the event of an emergency.</p> <p>However, this sector specific emergency legislation can only cover those events and subsequent courses of action foreseeable at the time of drafting.</p> <p>If circumstances were to change over time, and outside the context of an emergency, the Government could introduce new legislation in the usual way should additional powers be required.</p> <p>But in an emergency new legislative measures might need to be put in place immediately, thus requiring a different (albeit temporary) legislative mechanism. It is that which Emergency Powers provides.</p> <p>This is reflected in the Bill itself. So a declaration of emergency can only be made if it is “necessary” to make regulations under the Bill (clauses 18(1)(b) and 19(1)(b)). Clause 21(4)(e) provides that regulations may only include a provision which could be made by virtue of a subsisting legislative provision (for example, the animal health legislation) if use of the subsisting provision would be insufficient or would occasion a serious delay.</p>
2.	<p>There were five states of emergency between 1970 and 1973, but there have been none since. It would appear therefore that a decision may depend on the political situation and the attitude of the Government of the day. What weight does the Bill Team consider has been, and should be, attached to political considerations in proclaiming a state of emergency? Should the mechanism only be triggered where there is a consensus to use it across the main political parties?</p>	<p>Part 2 of the draft Civil Contingencies Bill guards against governments using emergency powers in a discretionary way. The ‘triple lock’ ensures that emergency powers would only be used in situations of sufficient seriousness, and only then if necessary.</p> <p>The Government will also be constrained by the requirement to seek the approval from Parliament of the regulations (clause 24). The regulations lapse seven days after they have been laid before Parliament unless each House approves the regulations. This ensures that all Parliamentary parties will have the opportunity to scrutinise and comment on the Government’s course of action.</p> <p>Provision is made (clause 24) to ensure that, should an emergency be declared when Parliament is prorogued or either House is adjourned, Parliament will be recalled. This should ensure that any declaration of emergency and any regulations are subject to Parliamentary scrutiny without undue delay.</p> <p>(Note: The unusually high number of States of Emergency between 1970 and 1973 seems likely to have been the consequence of a number of factors, rather than simply the attitude of the Government of the day. The early 1970s saw a combination of serious</p>

		<p>emergencies coupled with an increasingly interdependent and technologically dependent society. The available legislation was in many cases inadequate to deal with the nature of the emergencies being dealt with.</p> <p>As a consequence, the 1970s saw a growth in sector specific emergency legislation which helped to reduce the reliance on the Emergency Powers Act 1920.)</p>
<p>3.</p>	<p>Given the absence of a definition of a 'serious threat', as specified in clause 1 of the draft Bill, what criteria would it be measured by?</p>	<p>The term 'serious threat' as used in subsection (1) of clause 1 is qualified by subsections (2) to (6). These qualifications add detail about either the cause of effect of serious threats. A serious threat to, for example, human welfare is illustrated by the events listed at 1(2).</p> <p>While the intention of this clause is to define 'emergency' and thus to establish a threshold below which a situation should not be regarded as such, the Government does not believe that an overly tight definition is sensible. For example the reference to loss of human life at 1(2)(a) could be qualified by a minimum number of deaths that would have to occur. Problems would arise when palpable emergencies did not cross inflexible thresholds. Delay would be occasioned while it was ascertained whether an incident met the relevant threshold.</p> <p>(Note: many other jurisdictions have adopted far less precise approaches to the question of what constitutes an emergency, relying either on not defining the term or using more general language such as 'grave and immediate threat' or 'emergent danger'.)</p>
<p>4.</p>	<p>The powers in the draft Civil Contingencies Bill could be characterised as "one size fits all" based on worst case scenarios. Given that the Cabinet Office is proposing to limit the use of the powers to the areas affected by the emergency, what consideration has been given to restricting the powers by category of emergency tailored to particular emergencies or the effects of emergencies?</p>	<p>Clause 21(1)(a) states that emergency regulations can be made only so far as it is necessary for the purpose of preventing, controlling or mitigating a serious aspect or serious effect of the emergency. This has the effect of restricting the content of emergency regulations to that needed to deal with the emergency at hand only but allows new powers to become available should the situation demand it. Any attempt to use emergency powers beyond those necessary in a given situation could be ruled to be <i>ultra vires</i>.</p>
<p>5.</p>	<p>Why does flooding offer access to the whole range of emergency powers, when only the power to evacuate people would appear to be needed? Why is the legislation drafted in such a general manner that there is no distinction between the powers appropriate to a</p>	<p>Clause 21(1)(a) states that emergency powers can only be used in so far as it is necessary for the purpose of preventing, controlling or mitigating a serious aspect or serious effect of the emergency. If flooding is the cause then only those powers necessary for dealing with the particular flooding incident at hand are available. The necessities would not be driven by the type of flooding, but by the specifics of the incident.</p> <p>Nevertheless, the Government would not agree that the only action necessary in the event of serious flooding would be evacuation (whether of people or animals). Serious flooding can disrupt water supplies, power, transport and food distribution. Action might be</p>

	flooded river and those appropriate to sea flooding?	<p>necessary to reduce, control or mitigate the effect of the flooding, for example the diversion of flood waters or the erection of temporary flood defences. In the aftermath, special arrangements might be necessary to support recovery.</p> <p>Although the expectation would be that most of these could be achieved without recourse to emergency powers, the most extreme flooding situations might require, for example, emergency powers to requisition property or restrict movement.</p> <p>This is equally true of both coastal and fluvial flooding. Coastal flooding has traditionally had the potential to cause greater damage, but fluvial flooding threatens more areas. Both can and have caused loss of life and dislocation of essential services.</p>
6.	<p>In the context of animal diseases, the only relevant additional power that the draft Bill would offer over and above the <i>Animal Health Act 2002</i> would appear to be the power to slaughter animals without paying compensation. If that power is to play a part in the Government's animal health strategy, why was not it included in the 2002 Act?</p>	<p>Where possible, an animal health emergency would be dealt with by the Government under its existing powers, up to and including the Animal Health Act 2002.</p> <p>However, an animal health emergency might have a collateral impact on the national infrastructure in an unexpected way that cannot be catered for by the Animal Health Acts. For example, an animal health emergency might affect the food supply, or necessitate movement bans. In such circumstances recourse might be needed to powers in the draft Bill to address the wider impact.</p> <p>A fuller explanation of the policy on compensation is set out at answer 37.</p>
7.	<p>There are currently provisions in statutes such as section 3 of the Animal Health Act 2002 to provide the authorities with emergency powers. What criteria will the Government apply in reaching a decision to use the powers in the Civil Contingencies Bill rather than in another statute?</p>	<p>Emergency powers are used when there is a need for special temporary legislation. If the situation can be dealt with using existing legislation special legislative measures will not be invoked. Clause 21(4)(e) states that emergency regulations cannot make provision of a kind which is made by or could be made under existing legislative provision unless use of that provision would be insufficient or occasion serious delay. This is an essential element of the 'triple lock'.</p> <p>So in the case of the example in question, use of special legislative measures would only be considered if those in the Animal Health Acts were determined to be insufficient or their use risked serious delay that could otherwise be avoided.</p>
8.	<p>Decision to Use Emergency Powers</p> <p>The Consultation document states that the decision to use emergency powers should be based on three guiding principles which represent a "triple lock" against possible misuse – seriousness, the need for special legislative measures and relevant geographical extent (p28). How is this protection against misuse given</p>	<p>The "triple lock" is set out explicitly in the draft Bill. Clause 17(1)(a) states that the emergency must present a "serious" threat. In addition, clause 21(1)(a) provides that emergency regulations may only make provision in relation to a "serious" aspect or effect of the emergency. Clauses 18(1)(b) and 19(1)(b) state that a declaration of emergency may only be made if the use of emergency regulations must be necessary. Clause 21(1)(a) reinforces this by providing that emergency regulations can only make provision in so far as that provision is necessary for the purpose of preventing, controlling or mitigating a serious aspect or serious effect of the emergency. Clauses 18(2)(b) and 19(2)(b) require the declaration of emergency to state the parts or regions of the United Kingdom in relation to which the regulations may have effect. Clause 21(4)(f) provides that regulations may not relate to anything in, or done in, a part or region which is not specified in the declaration. Even within the region or part specified in the declaration, if the emergency is occurring</p>

	<p>legal effect in the draft Bill?</p>	<p>in a geographical area that is not affected it will not be necessary, and therefore possible, to use emergency powers in that area.</p>
<p>9.</p>	<p>How would the “triple lock” criteria be applied in a case where an emergency was possible but not certain? For instance, in the case of flooding, action needs to be taken when there are warnings that waters are rising too high, rather than when they are already flooding.</p>	<p>The Government believes that it is important that where possible risks should be addressed before they become emergencies. That is why the Government has arrangements to monitor and manage risk, and to scan the horizon for future threats. Preventative action is often taken – for example flood defences or inoculation programmes.</p> <p>This principle of pre-emption is also true in situations where an emergency becomes not just possible but probable or imminent. In those circumstances, the Government will seek to take action as soon as possible to prevent the emergency happening or to reduce its impact.</p> <p>In a serious and urgent situation, that action might require the exercise of emergency powers. So in line with that overall policy aim, the Bill has been drafted with the intention that pre-emptive action should be possible.</p> <p>That is why clause 18(1)(a) refers to ‘an emergency [that] has occurred, is occurring or is about to occur’. This provides for pre-emptive (and indeed retrospective) action. And the “necessity” test in clauses 18, 19 and 21 envisages that action may be taken where necessary to “prevent” an aspect or effect of the emergency.</p> <p>In the case of pre-emptive action the ‘triple lock’ still applies – the key difference would be that the judgements about seriousness, necessity and extent would be based on a likely rather than actual impact.</p>
<p>10.</p>	<p>In the case of using powers under the draft Bill for animal health or flooding, the use of the triple lock would surely mean delay. Yet the problem in the foot and mouth epidemic in 2001 was that existing powers to ban animal movement were not used for three days, thereby doubling the scale of the eventual epidemic. If it was necessary to wait until the triple lock could be opened, would this not create further delay and potentially a more severe emergency?</p>	<p>The Government believes that the right safeguards should be in place to prevent the misuse of emergency powers. That is the purpose of the ‘triple lock’ and the constraints in clause 21(4). The Government also believes that delays in taking action should be avoided wherever possible. That is why the draft Bill includes fall back options to prevent delay, such as clause 19 and clause 26(4). A balance has to be struck.</p> <p>The triple lock is intended to be a significant hurdle, but its requirements are focussed on evidence rather than process – a demonstration of seriousness, extent and necessity. The Government does not consider that the triple lock will result in a bureaucratic delay.</p> <p>Of the three elements, seriousness and extent are a key information requirement for Government and evidence on these issues would almost certainly be available. It would be possible to establish very quickly whether these tests were satisfied.</p> <p>Although the necessity question might seem more demanding (and thus time consuming), in practice Government takes regular legal advice during emergencies. Departments have a clear sense of the scope of their existing powers, in part a consequence of the periodic process of drawing up draft emergency regulations Departments would be careful to ensure that they acted within their powers and would raise any concerns about shortfalls – indeed this would be likely to be the starting point for consideration of the use of emergency powers.</p>

11.	<p>What criteria would Ministers use to decide whether or not a threat is “serious” for the purpose of clause 17(1)?</p>	<p>The term ‘serious threat’ as used in subsection (1) of clause 17 is qualified by subsections (2) to (7). These qualifications add detail about either the cause of effect of serious threats. A serious threat to, for example, human welfare is illustrated by the events listed at 17(2).</p> <p>While the intention of this clause is to define ‘emergency’ and thus to establish a threshold below which a situation should not be regarded as such, the Government does not believe that an overly tight definition is sensible. For example the reference to loss of human life at 17(2)(a) could be qualified by a minimum number of deaths that would have to occur. Problems would arise when palpable emergencies did not cross inflexible thresholds.</p> <p>There is also an element of the definition of ‘serious threat’ in Part 2 of the draft Bill that will be left for the process of Royal Proclamation (Section 18). A key element of that proclamation process is a decision that an emergency is occurring. If a situation was felt to constitute a ‘serious threat’ the other two parts of the ‘triple lock’ would still have to be satisfied before special legislative measures could be used.</p> <p>(Note: many other jurisdictions have adopted far less precise approaches to the question of what constitutes an emergency, relying either on not defining the term or using more general language such as ‘grave and immediate threat’ or ‘emergent danger’.)</p> <p>(See also: Question 3)</p>
12.	<p>Would all incidents falling within the definition of major incidents at annex A of “Dealing with Disaster” fall within the definition of “serious” for the purpose of clause 17(1)? If not, please explain the difference.</p>	<p>The definition of ‘major incident’ given in Annex A of ‘Dealing with Disaster’ is: “A major incident is any emergency that requires the implementation of special arrangements by one or more of the emergency services, the NHS or the local authority for:</p> <ul style="list-style-type: none"> • the initial treatment, rescue and transport of a large number of casualties; • the involvement either directly or indirectly of large numbers of people; • the handling of a large number of enquiries likely to be generated both from the public and the news media, usually to the police; • the need for the large scale combined resources of two or more of the emergency services; • the mobilisation and organisation of the emergency services and supporting organisations, e.g. local authority, to cater for the threat of death, serious injury or homelessness to a large number of people.” <p>This definition is referenced to the emergency planning manuals produced by the emergency services. The definition is widely used by the emergency services, the NHS, local authorities and others. It is generally used in the context of localised emergencies. It is likely that most, if not all, would satisfy the definition of emergency in Part 1 of the Bill.</p> <p>But as a localised emergency, it would be unlikely to be sufficiently serious to trigger special legislative measures. If, however, the effects described above affected a region or greater area, that situation could be judged to be an emergency for the purposes of clause 17(1).</p>

		<p>(Note: 'Dealing with Disaster' is published by the Cabinet Office, and provides guidelines to assist those who plan for emergencies. It was revised earlier this year</p> <p>The current edition of 'Dealing with Disaster' is not intended to be read alongside the draft Bill. The Government's intention is that the current edition will be withdrawn once the Civil Contingencies Bill is enacted and replaced by a comprehensive local responder civil protection document which will be the vehicle for the guidance under the Bill.)</p> <p>A summary of payments under the Bellwin Scheme over the last 15 years is attached as Annex A.</p>
13.	<p>Would any of the emergencies for which payments have been made under the Bellwin scheme since 1983 have triggered a use of the emergency powers at Part 2 of the Bill (i.e. would they have met the triple lock criteria at page 28 of the consultation paper)?</p>	<p>The emergencies for which the payments were made would be unlikely to trigger the use of emergency powers under Part 2 of the Bill. While a number of the emergencies were serious, few attained sufficient geographical extent. Of those that might have, all were manageable within existing powers available to responder organisations.</p>
14.	<p>Would the Docklands or Manchester bombings in 1996, the fuel crises in 2000, or September 11th have triggered a use of the emergency powers at Part 2 of the Bill (ie would they have met the triple lock criteria at page 28 of the consultation paper)?</p>	<p>Any consideration of whether the emergency powers available in the draft Bill might have been used had they been available in the past should focus on the triple lock, just as any future use would do. Situations would have to be serious, they would have to require special legislative measures, and they would have to a geographical area as large as a region or greater.</p> <p>In light of those requirements, it seems unlikely that either the Manchester bomb or the Docklands bomb would have led to special legislative measures as the geographical impact would not have met the requirements of the Bill. Single seated events would not be expected to pass this test unless consequential effects were significant (for example, mass casualties requiring a national NHS effort, massive disruption to transport networks). Both incidents, while serious, had relatively localised consequences.</p> <p>Both events would also be likely to fail the 'necessary' test. Successive Government's built up a range of legislative practical measures to combat Northern Irish terrorism and so even large bombings would be within the legislative and practical competence of the response agencies.</p> <p>A September 11-style event occurring in the UK might require the use of special legislative measures, though much would depend on the characteristics of the situation. It would pass the 'seriousness' test, and would be likely to pass the 'extent' test for a regional emergency. Whether the incident met the 'necessary' test would depend on whether new powers were 'necessary', for example to restrict movement in affected areas or to restrict access to the vicinity of other potential targets. A massive multi-seated attack might also put strain on available resources, and so powers of requisition might be needed.</p> <p>The fuel crisis of 2000 is typical of the sort of serious, wide area emergency during which the Government might consider the use of emergency powers. It would pass both the 'seriousness' and 'extent' tests of the 'triple lock'.</p>

		<p>In dealing with problems with the fuel supply, the Government's principle legislative tool is the Energy Act 1976. This Act allows the Government to take action in relation to the supply of fuel and its use. The Act does not allow the Government to deal with consequential effects - for example the impact on essential public services.</p> <p>The fuel crisis of 2000 had a significant impact on essential public services. However, the crisis was resolved before remedial action became necessary. Had the situation continued, measures might have been required that went beyond the existing legislative provision. In that sort of circumstance the special legislative measures that the draft Civil Contingencies Bill makes available would have been used.</p> <p>It is a long established part of the UK's constitution that the Queen only ever acts on the advice of Her Ministers.</p>
15.	<p>Is it the Cabinet Office's view that the prerogative power at clause 18 would never be exercised without, or against, ministerial advice even in an extreme situation?</p>	<p>In the event that a Royal Proclamation of emergency could not be arranged without occasioning serious delay, the draft Bill provides for the Secretary of State to make the declaration of emergency and the emergency regulations. The Government believes that this is a sensible precaution.</p> <p>The draft Bill constrains the actions of the Secretary of State in two ways. Firstly, clause 19 makes clear that the fallback can only be used in a very narrow range of circumstances. Secondly, the Secretary of State is still subject to the 'triple lock'. Any possible action would be reviewed against both these constraints.</p> <p>The Ministerial decision would also be reviewed within Government. The convention of collective decision making by Cabinet would apply, and the decision to use special legislative measures would require collective agreement. Clause 26 extends this review process to the Devolved Administrations.</p>
16.	<p>The consultation paper invites views on an alternative method for making a Proclamation of Emergency (page 31). What is the scope in the process for a Minister's decision to be reviewed before a state of emergency is declared?</p>	<p>The Bill does not affect in any way the powers of Her Majesty under the Regency Act 1937 to delegate her functions to Counsellors of State. If Her Majesty had delegated her functions under the Bill to Counsellors of State, any proclamation would be made by the Counsellors, unless it would cause serious delay that may result in serious damage (clause 19(1)(c) and 19(3)). The Secretary of State's powers under clause 19 would not therefore be invoked automatically.</p>
17.	<p>Do you envisage a role for the Council of State in declaring an emergency in the case of the unavailability of The Queen (for whatever reason)? Or would the Secretary of State's powers under clause 19 be invoked automatically in such circumstances? A proclamation by the Council of State was used on 9 February 1972 when the Queen was on a visit to South East Asia)?</p>	<p>Declarations of emergency can be made under the Bill by The Queen (or a Secretary of State if it would cause serious delay to arrange</p>
18.	<p>What arrangements would be followed if</p>	<p>Declarations of emergency can be made under the Bill by The Queen (or a Secretary of State if it would cause serious delay to arrange</p>

	<p>a state of emergency had to be proclaimed while Parliament was dissolved?</p>	<p>for a Royal Proclamation). Such a Proclamation is made at a meeting of the Privy Council (the Privy Council still exists regardless of any period of dissolution). The Queen can therefore declare an emergency even when Parliament has been dissolved.</p> <p>When Parliament has been dissolved Ministers still retain office during the ensuing general election. Thus even when Parliament has been dissolved the Secretary of State is also in a position to declare an emergency should there be serious delay in obtaining a Royal Proclamation.</p> <p>It is not possible to 'undissolve' Parliament. If Parliament stands dissolved then there is no Parliament to recall/reinstate. Under clause 24(6), the Secretary of State must as soon as is reasonably practicable, lay any regulations made under clause 21, before Parliament. As during a dissolution there is no Parliament, it would be necessary for the Secretary of State to wait for the new Parliament to be convened. In the meantime, the regulations would still carry legal force.</p>
	<p>Human Rights</p> <p>If, as the Government suggested in the Consultation document, there is nothing in the draft Bill that conflicts with the Convention on Human Rights, why is it proposing to prevent a statement of its compatibility being made before Parliament (as is required under the Human Rights Act 1998)?</p>	<p>The Minister in charge of the Bill will make a statement of compatibility as required by the Human Rights Act when the Bill is introduced. The statement will be published on the face of the Bill and in the explanatory notes, in the usual way.</p> <p>As indicated at paragraph 61 of the Explanatory Notes that accompany the draft Bill, the Government considers that the Bill as it currently stands is compatible with the Convention rights.</p>
<p>20.</p>	<p>Will the Government's powers under the Act be subject to the <i>International Covenant on Civil and Political Rights</i>, ratified by the UK in May 1976? Would it help to clarify the UK's position under international law if a clause were included stating that actions taken under the Bill must be compatible with the Covenant (as in the Canadian Act)?</p> <p>Article 4 of the Covenant states that at a time of a "public emergency which threatens the life of the nation", States may take measures "derogating their</p>	<p>Although the ICCPR has not been incorporated into UK law, the Government would certainly take into account the international obligations of the United Kingdom before taking action under the Bill.</p>

	<p>obligations under the existing Covenant to the extent strictly required by the exigencies of the situation". These measures must not be inconsistent with other obligations under international law and must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. There can be no derogation from the articles proclaiming the right to life, protection from torture, degrading treatment or slavery, recognition as a person before the law, and freedom of thought, conscience and religion. There can also be no derogation from articles forbidding the conviction of a criminal offence which did not constitute an offence when it was committed, and imprisonment on the grounds of inability to fulfil a contractual obligation.</p>	
<p>21.</p>	<p>What is there in <i>the draft Bill</i> to ensure that the powers granted by the Bill will not be abused in the event of an emergency?</p>	<p>Clause 21(1)(a) states that emergency regulations can be made only so far as it is necessary for the purpose of preventing, controlling or mitigating a serious aspect or serious effect of the emergency. Attempts to make regulations beyond that which is necessary may lead to judicial review proceedings. Clause 21(4) also specifically bars emergency regulations from interfering with certain rights e.g. clause 21(4)(a), which prohibits the regulations from requiring a person to provide military or industrial service, reflects the provisions of Article 4 ECHR (forced labour).</p> <p>In addition, the Human Rights Act will operate so as to limit the exercise of the powers under the Bill (albeit that clause 25 would, if enacted, affect the remedies which may be sought in relation to emergency regulations.)</p>
<p>22.</p>	<p>Regulations (clause 21) When will drafts of the principal regulations and orders to be made under the Bill be ready for consideration by the Committee?</p>	<p>The Government intends to make as much information available as possible to the Joint Committee about the shape and content of the regulations to be made under the Bill.</p> <p>Regulations to be made under Part 1 of the Bill are still under development. While the Government has this process well underway, significant changes might be necessary as a consequence of the consultation process (particularly questions 1, 2, 3, 4 and 5). In light of</p>

		<p>this, the Government intends to make further detail on the regulations available to the Committee during October.</p> <p>In order to provide an indication of the sort of regulations that might be made under Part 2, a copy of the existing draft emergency regulations has already been passed to the Committee to consider, on the understanding that it should be treated as confidential. A review of these is now underway and includes an exercise to identify an indicative list of draft regulations that would be possible under the draft Bill as this has a wider scope than the existing legislation.</p>
<p>23.</p>	<p>Is there any reason why "standard" regulations cannot be attached to the Bill, allowing them to be debated and approved by Parliament as part of the enabling legislation, while still allowing discretion to introduce additional, event-specific, regulations when an emergency is declared. In the state of emergency called in November 1973, the then Home Secretary stated: "It has been the practice of successive Governments – I am sure that it is a wise one – to make a complete set of emergency regulations at the outset."³⁹⁷</p>	<p>The Government believes that the draft Bill should offer a fuller indication of the likely uses of special legislative measures than the 1920 Act currently does. That is why Clause 21 of the draft Bill sets out a list of likely uses for the regulations which Parliament should consider as indicative of the type of regulations that could be made.</p> <p>There are three strong arguments against making the full set of draft regulations available.</p> <p>Firstly, the draft regulations are subject to frequent change. They are updated at least every two years, and more often if necessary.</p> <p>Secondly, 'standard' (or publication of draft) regulations would not necessarily offer a clear indication of the content of future emergency regulations. By their very nature emergencies are unpredictable and can occur in, and include, a very wide-range of circumstances and events. Emergency regulations will in large measure be tailored to the particular emergency at hand. The draft regulations are very much a starting point, and it is highly likely that any actual regulations would diverge from the standard draft.</p> <p>Thirdly, draft regulations will be designed to respond to emergencies including terrorism and disruptive industrial action. Wide access to draft emergency regulations could highlight both potential weaknesses or targets and likely counter-measures.</p>
<p>24.</p>	<p>Regulations issued during an emergency which relate wholly or partly to Scotland, Northern Ireland and Wales "may not be made unless the Secretary of State has consulted with" Scottish Ministers, the First Minister and deputy First Minister in Northern Ireland or the National Assembly for Wales (clause 26 (1-4)).</p>	<p>The devolved administrations have a direct involvement in the legislation making process. As a consequence, the Government believes this involvement should continue where possible if the use of special legislative measures is necessary. This involvement is also crucial because of the important role the devolved administrations play in co-ordinating response to emergencies.</p> <p>There are currently no administrations in England which enjoy comparable levels of legislative competence. This situation will continue to be reviewed as part of the development of the Government's policy on English Regional Assemblies. Where responsibilities have not been devolved in England, those responsibilities continue to sit with UK Government Ministers. Those Ministers will obviously be part of the process to agree and deploy emergency regulations.</p>

	What reasons are there for not applying the same levels of consultation in England?	In practice, consultation might run even more widely. In making decisions about the use of special legislative measures, the Government would work closely with local agencies or their representatives which would be delivering the front line of any response.
25.	What format is envisaged for the consultations with devolved administrations under clauses 12 and 26? Would they be consulted about the content of draft regulations? Would they be consulted about: i) which regulations would apply? ii) who should be appointed emergency coordinator in their area and about the terms of the appointment?	Officials are in discussion with the devolved administrations as to the exact format of consultation under clause 26, which is likely to be enshrined in concordat. The starting point is that they should play as full a role as possible so far as this does not risk delaying effective response. This would include consultation on the use and nature of regulations and the identity and functions of the emergency co-ordinator wherever possible.
26.	In what possible circumstances does the Government envisage needing the powers to prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times? How would it respond to the view that this is simply a power to crush political dissent?	A range of circumstances exists in which the Government might need to prohibit large gatherings of people. Such gatherings may be undesirable if, for example, there is a contagious epidemic, a risk of a mass-casualty terrorist attack or severe disruption to transportation. In light of these and other examples, the Government believes that it is necessary to provide for such situations under the draft Bill. The ‘triple lock’ would continue to provide a safeguard against misuse.
27.	Under clause 21(3)(l), regulations may “confer jurisdiction on a court or tribunal (which may include a tribunal established by the regulations)”, but under clause 21(4)(d), regulations may not “create an offence which is punishable without trial before a magistrates’ court, the Crown Court, the district court or the sheriff.” What is the envisaged point of a tribunal established under Clause 21 (3)(l), and what cases would it be likely to handle?	Clause 21(4)(c) provides that emergency regulations may not create any offence other than that of failing to comply with the regulations or action taken under the regulations or obstructing a person in the performance of a function under or by virtue of the regulations. The class of criminal offences that can be created under emergency regulations is therefore very limited. It is unlikely that it would be necessary to establish a new tribunal to deal with these offences. However, there would be scope, for example, to confer the jurisdiction of one tribunal on another type of tribunal where it was necessary and not possible in the emergency situation for the first to hear it (e.g. if those who would normally sit on the Tribunal are caught up themselves in the emergency situation). It is more likely that a tribunal would need to be established to deal with non-criminal matters. For example, it might be appropriate to establish a tribunal to assess claims under any compensation provision made by emergency regulations.
28.	Which Royal Prerogatives does the	All of this is of course bound by the test in clause 21(1) of necessity. Prerogative powers are powers, privileges, rights and other interests that are recognised in law as pertaining to the Crown even though

	<p>Cabinet Office consider would fall within the powers conferred by clause 21(3)?</p>	<p>they have not been vested in the Crown by Acts of Parliament, All of the Royal Prerogatives would fall within clause 21(3) but it would be impossible to list them all.</p> <p>Examples would include the Prerogatives of issuing passports, creating a corporation by a royal charter of incorporation, pardoning offenders and powers in relation to coinage.</p> <p>Once again the overall test of necessity would have to be established.</p>
<p>29.</p>	<p>Which discretionary functions of Ministers of the Crown do you consider would fall within the powers conferred by clause 21(3)(a)?</p>	<p>Any discretionary function could be conferred on Ministers of the Crown by clause 21(3)(a) provided it is necessary to confer it.</p>
<p>30.</p>	<p>The Civil Defence Act 1948 imposes the duty on Ministers to take steps necessary or expedient for civil defence purposes. What duties will the draft Bill impose on Ministers in respect of civil defence? If they are not provided on the face of the Bill, what duties will rest on Ministers? Where are the provisions in respect of duties?</p>	<p>The Civil Defence Act 1948 provides for “the designated Minister to take such steps as appear to him from time to time to be necessary or expedient for civil defence purposes”, in particular the formation of civil defence forces, civil defence activities at the local level, instruction of members of the public for civil defence, holding civil defence equipment and the carrying out of civil defence works.</p> <p>The 1948 Act also defines civil defence as “any measures not amounting to actual combat for affording defence against hostile attack by a foreign power or for depriving ... the whole of part of its effect.”</p> <p>These provisions will be repealed by the draft Bill. There is wide acceptance that civil defence no longer constitutes a stand alone activity as envisaged in 1948. This is very much part of a longer term trend with civil defence activities regarded as a subset of a much broader spectrum of emergencies requiring a generic response capacity – an approach known as integrated emergency management. This approach was given legislative effect by the 1986 Civil Protection in Peacetime Act, which provided for the use of civil defence resources for other types of emergency, and the 1993 regulations issued under the 1948 Act.</p> <p>In practical terms, many of the measures outlined in the 1948 Act have been rendered redundant by the changing nature of the threat of hostile attack – civil defence forces were disbanded in the 1960s and civil defence works are no longer regarded as a necessary counter-measure.</p> <p>The Bill does not impose any duties on Ministers in respect of civil defence. The Government believes that sufficient legislative provision already exists to allow the Government to take the necessary action in respect of civil defence, both as a subset of civil contingencies and of home defence. This existing provision is supported by the mechanisms outlined in answer 31.</p> <p>The Bill does provide for civil defence planning to be undertaken if necessary by local responders. Duties in regard to Civil Defence are at 1(1)(d), 1(5), 1(7)-(10), Clause 2 et sub. It is not proposed to develop regulations in relation to these powers at the present time. The</p>

		scope of the regulation making powers in Part 2 of the draft Bill also includes civil defence.
31.	How does the Government ensure and test that all departments fulfil their responsibilities to plan, prepare, train and exercise for handling incidents and emergencies (chapter 5.5 of the Consultation Document)?	<p>The Government is committed to ensuring that departments are able to plan for and respond to emergencies. There are several key strands which underpin this preparedness:</p> <ul style="list-style-type: none"> - Clear responsibilities. Under the Lead Government Department principle, departments take the lead for contingency planning and emergency response in their own areas of responsibility. The Lead Government Department list is a public document, laid before Parliament, and updated whenever necessary. - Co-ordination and delivery. The Civil Contingencies Secretariat of the Cabinet Office supports the work of departments, co-ordinating cross-departmental initiatives and monitoring delivery. The Capabilities programme, based around 17 broad workstreams, is the cornerstone of this delivery management. - Training. The Emergency Planning College, working with the Centre for Policy and Management Studies, ensures that the right training is available for those staff in central government involved in this area. - Exercising. The Government is developing a comprehensive exercise programme to test planning (see answer 40). - Audit. A regime based upon the embedding of contingency planning assurance into the overall Departmental Assurance process is at present under development. The Government expects to make details of the new audit regime available during the autumn. <p>Research by the Bill Team has not identified any instances in which the intervention powers in section 2 of the 1948 have been used.</p> <p>While the power in the 1948 Act has not been repeated in the draft Bill, powers of intervention will still be available to Ministers.</p> <p>Part 1 of the draft Bill gives powers to the Minister under clauses 5 by order and 7 to be more directive in his approach to the performance of local responders, if that is necessary. If need be, enforcement action can be taken under clause 9.</p> <p>More generally, the Government believes that the powers to intervene in the Local Government Act 1999 provide a more appropriate mechanism for dealing with failing performance. These powers apply to the generality of local authority functions and bring civil protection further into the mainstream.</p>
32.	The Civil Defence Act 1948 contains a power at section 2 that empowers the Minister to act in place of a local authority or police authority which fails or refuses to act and to charge them for the costs incurred. Has this power ever been used? It appears that the power has not been repeated in the draft Bill. What considerations led the Cabinet Office to the view that the provision was no longer required?	<p>No. Suspension or modification of an Act of Parliament can only be achieved through regulations. All regulations lapse when a proclamation or ministerial order stating that use of special legislative measures is necessary lapses (see clause 23). Therefore any suspension or modification of an Act of Parliament is only possible while regulations are extant.</p>
33.	Would the suspension or modification of an Act of Parliament under the powers at clause 21(3) continue beyond the end of the state of emergency and the lapsing of regulations made under clauses 20 and 21?	
34.	What is the position of the National Criminal Intelligence Service and National Crime Squad under the Bill? Would they be expected to attend forums	<p>Local police forces will act as a Category 1 responder in accordance with their functions and in the light of risk assessment. Although many emergencies occur as the result of a crime – and the police will protect the emergency site as a potential “scene of crime” for investigation by specialist officers – officers with a focus on crime are not normally included in multi-agency emergency planning arrangements. Their interests are represented by police officers concerned with public order and emergency planning.</p>

	<p>or pass on information?</p>	<p>So neither NCIS nor NCS would be expected to attend local resilience forums. They would instead continue to provide support to individual police forces, which in turn would feed it into the emergency planning process as necessary.</p>
<p>35.</p>	<p>What is the difference between “functions conferred or imposed by or by virtue of an enactment”, “functions of Ministers of the Crown (or their departments)”, and “functions of persons holding office under the Crown” (clause 1(6))?</p>	<p>“Functions conferred or imposed by or by virtue of an enactment” means functions conferred on anyone (e.g. Ministers of the Crown, regulatory bodies) by way of an enactment.</p> <p>“Functions of Ministers of the Crown (or their departments)” would include functions conferred on a Minister of the Crown by virtue of an enactment but would also include functions conferred by contract, common law or the prerogative.</p> <p>“Functions of persons holding office under the Crown” would include functions conferred by virtue of an enactment but would also include functions conferred by contract, common law or the prerogative. Whether a person holds office under the Crown will depend on the circumstances.</p> <p>While these categories of functions do overlap, the Government considers that it is necessary to refer to each of these categories to ensure that the concept of a threat to the political, administrative or economic stability is sufficiently flexible.</p>
<p>36.</p>	<p>The draft Bill mentions the Secretary of State at some points and Minister of the Crown at other places. Why, and what is the significance?</p>	<p>The reference to “Secretary of State” means any of Her Majesty’s Principal Secretaries of State (see the Interpretation Act 1978).</p> <p>“Minister of the Crown” is defined by the Ministers of the Crown Act 1975 as the “holder of an office in Her Majesty’s Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council”. Thus “Minister of the Crown” has a broader meaning and includes Ministers who are not Secretaries of State</p> <p>Functions under Part 1 of the Bill are conferred on Ministers of the Crown. This reflects the range of Ministers who may need to take action under that Part of the Bill. In particular, it should be noted that the Minister currently responsible for the Civil Contingencies Secretariat is not a Secretary of State.</p> <p>Functions under Part 2 of the Bill are conferred on the Secretary of State. This reflects the Government’s view that action under Part 2 is a major undertaking and so should only be taken by a senior Government Minister.</p>
	<p>Compensation</p>	
<p>37.</p>	<p>In what possible circumstances could the Bill Team envisage the Government needing the powers to:</p> <ul style="list-style-type: none"> • provide for or enable the requisition or confiscation of property without compensation; or • provide for or enable the 	<p>The Government believes that there are circumstances in which it might be appropriate to offer compensation to individuals or organisations if they are negatively affected by emergency regulations. That is why the Bill allows for legitimate compensation in appropriate circumstances.</p> <p>However, there should be no assumption that compensation would be automatic in all circumstances. In some situations, for example in respect of insured losses or where an individual or organisation is in part to blame for their own losses, automatic compensation would not be appropriate.</p>

	<p>destruction of property, animal life or plant life without compensation?</p> <p>How would you respond to the argument that compensation should be paid, both because of natural justice and so as to gain consent?</p>	
38.	<p>Why has this draft Bill broken with UK and international precedent regarding compensation if chattels/land is damaged as a result of action taken under emergency planning legislation? During the state of emergency declared in 1973, regulations 30 and 31 required the Government to pay compensation if they requisitioned chattels or took possession of land. Civil contingencies legislation in New Zealand and Canada also makes provision for compensation if property, animal or plant life is damaged through action taken under the Acts.</p>	<p>See answer 37.</p> <p>It is also worth noting that the Emergency Powers Act 1920 does not require the payment of compensation. Compensation was provided for in relation to action under that Act when the Government considered it appropriate. Thus the position under the Bill replicates that under the current legislation.</p>
	<p>Funding</p>	
39.	<p>The Consultation document states that “the centre needs to be able to [make] the resources of central government available if required and tackl[e] the most serious emergencies using the full range of its powers”(p6). The draft Bill makes provision for central government to use the full range of its powers, but where does it provide for making the resources of central government available? What arrangements would be put in place to assess the resources required and to</p>	<p>The purpose of Part 2 of the draft Bill is to allow the Government to take emergency powers. The provision of resources to support these special legislative measures does not necessarily require specific legislative support (authority for expenditure already exists in many instances). Where additional authority was required it could be conferred through the emergency regulations.</p> <p>Resource requirements would be assessed on the same basis whether the resources were being deployed using existing powers or emergency powers. Assessments would take place on the basis of discussions between central government departments, drawing on evidence including the nature of the situation, existing resources and likely future requirements. The current public expenditure framework has the flexibility to allow the Government to manage any unexpected changes, and to target resources where they are needed.</p>

40.	<p>enable the resources to be paid?</p> <p>Central Government has stressed the importance of carrying out exercises (Ms Susan Scholefield to the Defence Select Committee on 20 March 2003). How many more exercises need to be carried out, how much would it cost to finance the optimum number of exercises and where will the finance come from?</p>	<p>The Government believes that it is right for contingency planning for emergencies to be tested through exercises. This is an important element of the validation and review process. A distinction should be made between exercises carried out at the instigation of central government and regional government offices to test central and regional arrangements, and those carried out at a local level. The series of exercises should also not be regarded as a closed project with a beginning and end; rather, exercises are always a part of the emergency planning process. It is therefore not possible to say how many more exercises need to be carried, as exercises will continue as long as there is emergency planning.</p> <p>Nevertheless, the Government does see a need to ensure the right level of exercising at all levels.</p> <p>The draft Bill provides for exercising as part of the emergency planning process at clause 2(3)(k). Generally, local exercise programmes would be a matter for local determination, and driven by local planning requirements. While powers exist in the draft Bill for Ministers to determine how often these exercises should be carried out, it is proposed that this would be a matter for guidance rather than regulation in the first instance. Local exercises are and will continue to be funded from within local civil protection resources.</p> <p>The Government also has a national exercise programme. A cross-governmental working party provides a formal mechanism for reviewing Departmental exercise plans covering a comprehensive range of domestic challenges and counter terrorist areas of activity.</p> <p>The aim of this group is to create a prioritised programme of exercises that will reflect and test effectively the range of Lead Government Department responsibilities and the involvement of the Devolved Administrations, regional and local authorities and interdependent communities of interest. As at the local level, the programme runs on a rolling basis to validate and review government contingency plans.</p> <p>In addition, the UK is increasingly being engaged in exercises with foreign partners, either on a bilateral basis or through multilateral forums i.e. NATO and the EU.</p> <p>Costs for exercises are a departmental responsibility and, therefore, are incorporated within respective departmental budgets. No central exercise budget exists, nor are there any plans to establish one.</p>
41.	<p>Does the Government consider that the civil contingency arrangements which have emerged since 2001 and which would be enacted by the Bill require greater resources than those in operation before 2001?</p>	<p>The Government has recognised significant new resource pressures in the UK's resilience since 2001. The changing risk assessment has led to substantial new investment in a range of areas. A summary of this additional expenditure was set out in the <i>Draft Civil Contingencies Bill Consultation Document</i> (p 13-14). The Government keeps this issue under close review.</p> <p>The Government believes that the current level of funding is sufficient to support the basic responsibilities that flow from the Bill. In large measure the draft Bill consolidates existing practice, for which organisations are already funded. The consultation process specifically invites views on this position.</p>

		<p>The same funding neutrality is broadly true for private sector bodies impacted by the draft Bill. Most of the organisations in Category 2 are already subject to civil protection requirements as part of their regulatory regime. A fuller assessment of this is set out in <i>the Partial Regulatory Impact Assessment Part 1</i>. This RIA shows that overall the benefits outweigh the costs, and that the regulatory impact is minimal.</p>
42.	Does the Government propose to increase or reduce the resources for civil contingencies distributed via Revenue Support Grant once Civil Defence Grant is abolished?	<p>The Government has no plans to change the level of funding for civil contingencies outside of the usual public expenditure processes. The switch from specific grant to Revenue Support Grant should be regarded as nothing more than a change in the funding mechanism.</p>
43.	If Civil Defence Grant were replaced with funding provided through Revenue Support Grant, how would Parliament know how much support the Government was giving to local authorities to support planning for civil contingencies?	<p>The overall amount provided by Government to local authorities for civil contingencies will be identifiable, as a Cabinet Office transfer to ODPM. The amount will be set out in the material provided to local government at the time of the announcement of the Government's proposals for funding of local authority expenditure. Provision currently stands at £19million. If additional funds are thought to be appropriate, Cabinet Office will bid for them in the usual way and transfer the approved amounts to ODPM, for distribution through RSG.</p>
44.	Will the Government provide additional resources for local authorities to: (a) enter business recovery contracts with private sector providers; (b) purchase spare capacity when acquiring a new system or facility in order to be able to provide assistance to other local authorities under a mutual support arrangement; or (c) meet the costs of carrying out exercises?	<p>The Government expects that the funding currently provided to local authorities would cover all these elements:</p> <ul style="list-style-type: none"> (a) many local authorities already have well developed business recovery arrangements from within existing resources. (b) many mutual aid agreements already exist between local authorities. This mutual aid is provided on the basis of existing capacity, rather than a spare capacity over and above that. (c) Exercising is regarded as a central element of the planning process. The costs of exercising therefore already fall within existing civil protection budgets.
45.	If a voluntary organisation wished to become involved with contingency planning, would local authorities be able to include them in, for example, local meetings and to pass papers to them? Would local authorities be able to pay their costs of attending meetings or carrying out civil contingency work?	<p>The Government continues to place a high value on the role the voluntary sector plays in the response to emergencies, and will continue to encourage their involvement in local multi-agency planning and response through the guidance that will underpin the new legislation.</p> <p>So local authorities would be able to include voluntary agencies in local planning, and would be able to pay their costs of carrying out civil contingencies work.</p>
46.	Why does the Bill not include a mechanism to release funds to those	<p>Emergency regulations under Part 2 of the draft Bill could, if necessary, be used to release funds as described.</p>

	carrying out functions under emergency powers regulations seeking to prevent or control a crisis?	
47.	Why has the Government decided not to bring the Bellwin scheme within the Civil Contingencies Bill?	<p>The Bellwin Scheme is based on a statutory provision (Section 155 of the Local Government and Housing Act 1989) which gives Ministers discretion to reimburse local authorities for immediate action to safeguard life and property or to prevent suffering or severe inconvenience in their area following an emergency or disaster in which they were endangered. It is not designed to supplement main spending programmes. As a result it has not been used for incidents such as terrorist bombs in London and Manchester, riots in various parts of the country or block of flats in danger of falling down due to deteriorating conditions of maintenance.</p> <p>A review of the Scheme was conducted in 2001 following which it was felt that a change to the statutory basis of the Scheme would not be appropriate.</p>
48.	On average how long does it take for funds to be released under Bellwin?	Ministers are committed to making payments within 15 working days of receiving valid claims. The majority of payments are made within this time.
49.	Does Bellwin include interest on moneys borrowed pending reimbursement under the scheme?	No. The statute provides for reimbursement of costs incurred on relevant activities only.
50.	How many applications for reimbursement under Bellwin have been refused since the scheme came into operation? What matters were the subject of these applications and how much money was involved?	Detailed statistics are not kept in relation to the number of successful and unsuccessful applications made. In practice, however, rejections are very rare because detailed guidance is issued at the beginning of each financial year setting out the criteria for reimbursement. This reduces the likelihood of authorities submitting claims which do not qualify under the scheme..
	Military	
51.	What is the significance and differences between the terms used to cover military support to the civil authorities? For example, "Dealing with Disaster" refers to Military Aid to the Civil Community (page 14) but the Minister of State for the Armed Forces (Mr Ingram) in replying to a question from Mr Lansley referred to Military Aid to the Civil Power (<i>Official Report</i> , 25 Feb 2003, Column 444W).	<p>Military Aid to the Civil Authorities is the generic term for all military assistance to the civil authorities. It is divided into three main categories, depending upon the precise circumstances in which it is provided, as follows:</p> <p>Military Aid to the Civil Power (MACP) is the provision of military assistance to the Civil Power in the maintenance of law, order and public safety using specialist capabilities or equipment, in situations beyond the capacity of the Civil Power.</p> <p>Military Assistance to Other Government Departments (MAGD) is assistance provided by the Services on urgent work of national importance or in maintaining supplies and services essential to life, health and safety of the community, especially but not exclusively during industrial disputes.</p> <p>Military Aid to the Civil Community(MACC) falls into three categories:</p>

		<ul style="list-style-type: none"> • Category A: Assistance in times of emergency such as natural disasters or major accidents. Assistance is generally provided to the emergency services (police, fire, ambulance, maritime search and rescue support to HM Coastguard and - when under direction - the mountain/cave rescue service.) • Category B: Short-term routine assistance on special projects of significant value to the civil community. • Category C: The full-time attachment of volunteers to social services (or similar) organisations for specific periods."
52.	<p>In the past 20 years, on how many occasions, and for what purposes, has Military Aid to the Civil Community been provided and, if there is a difference, to the Civil Power? How much of the cost has been recovered from the beneficiaries? In how many instances have costs been waived and what value of charges has been waived?</p>	<p>It is not possible to provide full details of all deployments undertaken over the last 20 years or to provide details of costs charged and waived. It is, however, possible to illustrate the extent of the provision of the three categories of Military Assistance and the principles under which charges are raised.</p> <p>Military Aid to the Civil Power (MACP) is defined as 'the provision of military assistance to the Civil Power in the maintenance of law, order and public safety using specialist capabilities or equipment, in situations beyond the capacity of the Civil Power.' (Provision of support to the Police Service of Northern Ireland is based on the same principles as MACP, but is treated as a separate sub-category of the overall provision. It has therefore been excluded from further consideration.)</p> <p>As the Minister of State for the Armed Forces (Mr Ingram) indicated in his reply to Andrew Lansley on 25 February 2003, MACP support is for the most part routine, and is linked to active police investigations and operations. By far the largest single category concerns explosive devices. There were 957 occasions in 2001 when experts from the Armed Forces were asked by the police to provide support in the investigation of improvised explosive devices, and 431 occasions in 2002. The provision of other support, the nature of which varies considerably, is authorised on a case by case basis. On average between 30 and 40 of these requests are authorised each year. A small proportion of MACP requests are related to the terrorist threat, but by no means all. (<i>Official Report</i>, 25 Feb 2003, Column 444W).</p> <p>The figures quoted in the <i>Official Report</i> on 25 February illustrate the average number of calls on MACP support. Details of the kinds of incidents attended and the capabilities deployed cannot be provided in an unclassified format.</p> <p>Military Assistance to Other Government Departments (MAGD) is defined as 'assistance provided by the Services on urgent work of national importance or in maintaining supplies and services essential to the life, health and safety of the community, especially but not exclusively during industrial disputes.' MAGD support has been provided regularly during local authority fire strikes as well as during the recent national fire dispute. It was also provided (in support of the DTI) during the fuel dispute in the autumn of 2000 and (in support of MAFF/DEFRA) during the 2001 foot and mouth epidemic. A list of MAGD operations since 1983 is attached (at Annex B).</p> <p>Military Aid to the Civil Community (MACC) falls into three categories:</p> <ul style="list-style-type: none"> • Category A: Assistance in times of emergency such as natural disasters or major accidents. Assistance is generally provided to the emergency services (police, fire, ambulance, maritime search and rescue support to HM Coastguard and - when under direction -

the mountain/cave rescue service).

- Category B: Short-term routine assistance on special projects of significant social value to the civil community.
- Category C: The full-time attachment of volunteers to social services (or similar) organisations for specific periods.

An illustrative list of MACC Category A incidents since 1983 is attached at Annex C. In view of the fact that Category A incorporates the immediate response to an emergency, we cannot guarantee that this covers all of the incidents for which this support has been provided. MACC Category B and Category C support fall outside the scope of support to the civil authorities during emergencies.

COSTS

Regrettably it is impossible to provide detailed information on the costs charged for Military Aid to the Civil Authorities. Costs of individual operations are generally low and are by and large reimbursed direct to the budgets which incurred the costs. Some standing operations are partially funded by other government departments (for instance the Home Office contributes about £2M per annum to the cost of explosive ordnance disposal support to the police).

MAGD operations tend to lead to the greatest costs and a table showing the costs charged to other government departments as a result of recent MAGD operations is therefore attached at Annex D. We would suggest caution when comparing the costs of these operations. In particular, during the fuel dispute and foot and mouth epidemics the costs of additional equipment, vehicle hire etc, were generally borne directly by the requesting department. During the fire dispute the MOD purchased additional equipment and hired vehicles etc and then sought reimbursement of these costs from the requesting Department.

CHARGING PRINCIPLES

MOD policy is based on Chapter 23 of *Government Accounting* (GA). Goods and services provided to the department or other agency or authority having policy and therefore financial responsibility should be charged for unless there are exceptional circumstances. The purpose is to ensure visibility and to give the customer department a greater incentive to use assets efficiently and economically.

Parliament votes MOD its money for defence purposes only. If defence assets are used to carry out tasks for which another government department has prime responsibility, charges need to be raised or else MOD will be left bearing improper expenditure on its budget.

Levels of Charge: Government Accounting takes as its starting point the full cost of an activity. In deciding whether to depart from full-cost charging for unfunded activities, however, MOD takes account of whether the activity can be carried out from within spare capacity, the detriment to core defence tasks and the training value to MOD. Abatement generally means charging a rate variously referred to as “no-loss”, “extra” or “additional” cost – i.e. the amount which would not have been incurred had the activity not taken

		<p>place. In sum, MOD seeks to ensure that the defence budget does not suffer as a result of the unscheduled activity but that it makes no gain either.</p> <p>Areas where MOD should in strictness charge full costs are where the activity is considered</p> <ol style="list-style-type: none"> to bring detriment to a priority defence task, and/or to require MOD to increase its number of military personnel specifically to support another department's responsibilities. <p>A prime example of the former is an activity that becomes sufficiently protracted to be regarded as routine rather than emergency in nature. Even with due regard to an interdepartmental agreement (dating from 1982) concerning no-loss charging regime for fire strikes, MOD has for some years supported the need to change to full-cost charging for firefighting during an extended strike period.</p> <p>Cost Waivers: In 2001 MOD simplified its charging regime in the UK for MACC assistance, allowing emergency assistance to be given free where there is a danger to life (rather than only "immediate" danger which applied previously), and at full cost once the danger has passed. Emergency MACC is a rapid response by the Services to sudden disaster: it and its charging regime should not be confused with MACP or MAGD. Non-emergency MACC attracts charges the level of which largely depends on the extent of the activity's advantage to MOD.</p> <p>All deployments of the Armed Forces are authorised under the Royal Prerogative, the Prerogative being vested in the Defence Council, and in particular in its chairman, the Secretary of State for Defence. With the Secretary of State's agreement, other MOD Ministers can also authorise deployments. In practice, most MACA deployments are authorised by the Minister of State for the Armed Forces.</p> <p>Use of the Royal Prerogative must accord with common, statute, and international law. The general legal basis which enables the Secretary of State to authorise the deployment of the Armed Forces in support of the police (MACP) is that outlined in the answer given to Mr Lansley on 25 Feb 2003: i.e. the common law duty of every citizen to provide reasonable support.</p> <p>The general legal basis for MAGD is section 2 of the Emergency Powers Act 1964. This enables the Defence Council to instruct the Armed Forces to undertake 'agricultural and other work of urgent national importance' that would not normally fall within the remit of the Armed Forces. Procedures exist within the MOD to ensure that the powers under this Act are properly and reasonably exercised, including, in particular, the need for a specific Defence Council Order to be signed by two members of the Defence Council, on the same day, prior to any deployment. (MAGD.)</p> <p>MACC Category A is authorised under a Defence Council Order signed in 1983 (described in Queen's Regulations). Unit commanders are authorised to provide support (generally to the police or other emergency services) on their own authority, but only when lives are in danger, using resources under their direct command, and following a clear request from the police or other emergency services for that support. They then seek full authorisation through their command chain, which includes MOD Ministers. Sustaining support past the point when lives are in danger requires explicit prior authorisation from a Defence Minister.</p>
53.	<p>What is the basis on which military support to civil authorities is provided? In a written answer to Mr Lansley on 25 Feb 2003, the Minister of State for the Armed Forces (Mr Ingram) said that, in common with all armed forces deployments, the provision of Military Aid to the Civil Power (MACP) is authorised by a Minister within the Ministry of Defence, following a request from the police. The legal basis for this is the common law duty of every citizen to provide reasonable support to the police should they request it. The primacy of the police is recognised at all times. (<i>Official Report</i>, 25 Feb 2003, Column 444W).</p> <p>Would troops deployed following a state of emergency be deployed under this common law power? What other powers could be used? Can forces be moved or</p>	

	<p>deployed by Royal Prerogative?</p>	<p>Support to the police in the investigation of explosive devices has been provided at least since the First World War. Exceptionally, individual approval for each investigation into explosive ordnance is not required, though significant and unusual events are reported to MOD Ministers.</p> <p>In addition to the need to ensure proper authorisation under the Royal Prerogative, MOD Ministers also consider the ‘reasonableness’ of any request and any other issues which may arise, before approving a deployment. These considerations include policy and cost issues, and the impact on the Armed Forces of agreeing to the request. Since the Armed Forces are by definition undertaking duties for which other authorities are responsible, they should only be called upon as a last resort and when other possibilities have been exhausted. Requests for support that do not meet these criteria are, by definition, unreasonable.</p> <p>MOD Ministers also take into account any specific legal factors arising from a particular request, to ensure that the Armed Forces are acting fully within the law. They would not, for instance, authorise the Armed Forces to undertake directly any action that requires police powers, since these powers are not vested in the Armed Forces (and even from a practical perspective, the Armed Forces are not trained to use these powers). Defence Council Orders authorise the Armed Forces to undertake specific tasks in support of the civil authorities, rather than commissioning the Armed Forces with generic powers.</p> <p>The use of the Royal Prerogative should not, therefore, be taken as implying that the Armed Forces have any powers or authority over and above those of the ordinary citizen. The power to deploy the Armed Forces is vested in the Defence Council, but civil primacy and responsibility is recognised at all times, with the Armed Forces acting under military command but under the supervision of the police or other civil authority. Clearly, therefore, the MOD would not authorise the deployment of the Armed Forces in support of the police without a clear request from the police and (in view of its overall responsibility for police issues) the agreement of the Home Office. Nor would it authorise a MAGD deployment without a clear request from the relevant central government department (including, in the case of the devolved regions, the Scotland, Wales, or Northern Ireland Offices).</p> <p>The declaration of a state of emergency under the Civil Contingencies Bill will not alter any of the factors outlined above. It will not be necessary to wait for a state of emergency to be declared, and emergency powers introduced, before consideration is given to a request for armed forces support. Nor would a state of emergency automatically lead to the engagement of MOD support. It is, however, reasonable to expect that (in practice) the factors which might lead to the declaration of a state of emergency would also influence the Secretary of State for Defence when judging the ‘reasonableness’ of a request from the police or a central government Department to provide support.</p>
<p>54.</p>	<p>Would the powers and arrangements under which the Regular Army is deployed apply automatically to the Territorial Army?</p>	<p>All the arrangements outlined in answer to questions 52 and 53 apply equally to the deployment of the Territorial Army and other reserve forces.</p> <p>In addition, it is not MOD policy to employ the Reserves in undertaking duties directly associated with industrial disputes. Although MOD support in these cases is provided solely to ensure that basic levels of essential services are maintained, care is taken not to cause</p>

		<p>tension within local communities, or to provoke a division of individual loyalties, that might result from Reserve personnel undertaking these activities.</p> <p>For the most part, Reserves involvement in MACA operations is purely voluntary. Nonetheless, sections 51, 52, 54 and 56 of the Reserve Forces Act 1996 provide the necessary legal powers for rapid mobilisation by MOD Ministers for MACA tasks, should they be required. As part of the introduction of Civil Contingencies Reserve Forces, regulations are being drafted that will allow callout notices to be produced and served very quickly after Ministerial authority has been granted and a Callout Order signed.</p>
55.	<p>Local authority duties</p> <p>The Cabinet Office states that the Bill ‘gives[s] a statutory basis to what is largely existing practice, providing a coherent framework across areas, leading to consistent expectations.’ (Consultation document, p40). How do the duties envisaged in the draft Bill differ from the duties local authorities already undertake in this area?</p>	<p>Currently, local responders in Categories 1 and 2 carry out their functions and powers according to their own managerial decisions and on the basis of general guidance, Dealing with Disaster, and specific guidance relating to their particular functions. There is no overarching framework.</p> <p>The Bill introduces an over-arching framework which will oblige all the local responder bodies to make some adjustments towards greater consistency. Regulations and guidance will clarify the expected framework; and to what extent changes are required will vary depending on current practice of individual authorities. Key differences are likely to include a greater emphasis on risk management and stronger business continuity management.</p>
56.	<p>Under the Civil Defence Act 1948 local authorities had powers to compulsorily acquire land for civil defence purposes. Under what powers would they exercise these functions if the Civil Contingencies Bill became law?</p>	<p>The Civil Defence Act 1948 gave a power to compulsorily acquire land for civil defence purposes to local authorities identified in section 8(1) of the Acquisition of Land (Authorisation Procedure) Act 1946 (now, in England and Wales, replaced by the Acquisition of Land Act 1981.)</p> <p>The Government has not reproduced this provision. It does not consider that local responders require powers (or, in the case of local authorities, further powers) to compulsorily acquire land in the course of contingency planning.</p> <p>However, if a declaration of emergency is made under Part 2 of the Bill, under clause 21(3)(a) emergency regulations can confer a function on a specified person, which could be someone at local authority level, and under clause 21(3)(b) regulations could be made to enable the requisition or confiscation of property.</p>
57.	<p>Does the responsibility imposed on local authorities for ‘preventing’ an emergency make them unduly susceptible to litigation in the event of failure to achieve that objective?</p>	<p>No. The requirement to plan for the effective prevention/ mitigation of emergencies requires local authorities (and other Category 1 responder bodies) to carry out their normal services in such a way as to limit the possibility that an incident may develop into an emergency. Effectively it makes the local authority no more liable for charges of negligence in performance of its functions than it is at present.</p>
58.	<p>Why were the BBC and the media in</p>	<p>The Government does not believe that it is appropriate for media organisations to be included within the list of Category 2 responders.</p>

	general excluded from the Category 2 responders list?	To make their participation a legal requirement might impact on their independence as news reporting and investigating bodies in the context of emergencies. In practice, media organisations have shown themselves to be valuable partners in local multi-agency planning arrangements on a voluntary basis. Media organisations play a key part in local media plans for informing the public during and after an emergency. This is expected to continue.
59.	The Defence Committee's report, <i>Defence and Security in the UK</i> , noted that there is little conformity about giving security clearance to emergency planners at local level. As a result, many of those attending the same cross-agency meetings have different levels of access to sensitive information. Given the statutory duties being imposed on local responders, is there a policy regarding granting security clearance to the individuals who must perform those duties?	Decisions about the vetting of individuals are made on the basis of individual need. Local responders receive security clearance only where that is necessary, and to different levels as appropriate. This Government has no plans at present to change this approach.
	Regional and Emergency Coordinators (clause 22)	
60.	What kind of training will be provided to putative regional and emergency coordinators?	Regional and emergency co-ordinators would vary according to the nature of the emergency, but would be individuals appointed on the basis of considerable experience and a proven track record. As such, they would be able to bring significant capability to bear including specialist subject knowledge, strong leadership and effective emergency management. Given the responsibility of the post, carefully tailored training would be available to supplement those existing skills. While training packages would depend on the final shape of the Co-ordinator role and the individuals in question, core elements of training to be implemented across the board would be likely to include the doctrine of regional response, central government crisis machinery and media handling. There are three broad areas of expertise in which regional and emergency co-ordinators might specialise:
61.	Will the regional and emergency coordinators be leaders or providers of specialist expertise? Which range of skills is the more important in a regional and emergency coordinator?	<ul style="list-style-type: none"> - Subject matter specialisation. Some Regional Nominated Co-ordinators (RNCs) might be appointed on the basis of expertise in particular types of emergency. For example, a senior health professional might be nominated to take on the role in the case of an epidemic in humans. - Crisis management. Some RNCs might be appointed on the basis of strong track records in leadership positions during

		<p>emergencies. An example of this might be a senior police officer.</p> <p>- Regional knowledge. Some RNCs might be appointed on the basis of experience in a particular region, and experience of working closely with key players. An example of this would be the Director of a Government Office.</p> <p>Establishing the right mix of skills would be a task for the planning phase during which the nomination would take place. Training would be tailored to build up nominees' capabilities in the three identified areas to ensure they could function effectively in any of them.</p> <p>The number of individuals nominated for the RNC role in any region would be a matter for determination by that region, forming part of the effective planning stage. In part, decisions would depend on the mix of nominees a region opted for – for example, a smaller number of crisis managers as opposed to a larger number of subject specialists.</p> <p>Nominations would be reviewed on a regular basis, and in a variety of ways. Regional Resilience Forums would take the lead, drawing on advice from central government. They would consider nominations as and when they reviewed regional plans, and in the event that current nominees became unavailable. In addition, central government departments with national plans making use of RNCs would also review nominations as and when they reviewed their plans.</p>
62.	<p>According to the Consultation document, the identity of regional nominated coordinators “would depend on the nature of the incident and which organisations had the lead for dealing with it” (p.24, para 18). Up to how many people in each region would be ‘pre-nominated’, in order to account for all potential incidents? How often would these ‘pre-nominations’ be reviewed?</p>	
63.	<p>What status would regional nominated coordinators have in a non-emergency? Would they have a contract or salary?</p>	<p>A RNC would not have any formal status or salary unless emergency powers were invoked. Emergency regulations would make provision as to the RNC’s terms of appointment and conditions of service (including remuneration) (see clause 22(2)).</p>
64.	<p>It is proposed that a regional nominated coordinator “would not be formally appointed unless special legislative measures were to be taken” (Consultation document, p. 24, para 19). What would these “special legislative measures” be?</p>	<p>The function of emergency powers legislation is to make temporary “special legislative measures” in the form of emergency regulations. This therefore simply means that he/she would not be formally appointed unless emergency powers are invoked.</p>
65.	<p>Will regional and emergency coordinators be able to call upon the armed forces or issue orders to the forces?</p>	<p>Regional and emergency co-ordinators would be able to request military assistance under existing MACA arrangements (see answers 51-54). They would have no powers to issue orders to any armed forces personnel.</p>
66.	<p>Will regional and emergency coordinators be able to call upon the Civil Contingency Reaction Force or issue orders to this force?</p>	<p>The CCRFs are part of the armed forces. Regional and emergency co-ordinators would be able to request military assistance under existing MACA arrangements but they would have no powers to issue orders to any armed forces personnel.</p>
67.	<p>Will regional and emergency</p>	<p>ACCOLC invoke is currently by the request of the Cabinet Office or the Police Incident Commander. The Government is currently</p>

	coordinators be able to invoke Access Overload Control (ACCOLC)?	reviewing these arrangements. If it becomes apparent that RNCs should be able to invoke ACCOLC then the Government will consider making that possible.
68.	To whom will regional and emergency coordinators report and who will they take orders from once an emergency is proclaimed?	Regional and emergency co-ordinators would be appointed by the Secretary of State to whom they would be accountable. They will take direction and guidance from the Secretary of State. (See 22(4) of the draft Bill.)
69.	Once emergency powers have been invoked, what scope will regional and emergency coordinators have for independent action? If communication with the centre were not possible, would they act on their own initiative? Could they call for military support?	The level of discretion regional and emergency co-ordinators will have will depend on the nature of the emergency. The powers and duties given to the RNCs will be set out in the emergency regulations, and would be adjusted to suit the circumstances. The regulations would also set out the extent to which RNCs would use powers at their own discretion, and the extent to which they might require authority from the Secretary of State. They would be able to act independently if communication with the centre was made impossible, though only within the parameters established by the regulations. They will be able to request military aid if appropriate through established MACA arrangements.
70.	Once a state of emergency has been proclaimed, will elected local representatives, such as councillors or mayors, have any role or responsibilities in dealing with the emergency?	The declaration of an emergency would not, in most cases, alter existing powers and duties. Roles and responsibilities of any individual would only change if explicitly provided for in the emergency regulations. It is likely that local elected representatives would continue to fulfil their usual role, albeit in the context of the emergency in question (for example, they might find themselves heavily involved in the local response for their area). In addition, functions could be conferred on local bodies under the emergency regulations.
71.	Where an emergency has arisen, or is threatened, does the Government envisage that regional and emergency coordinators will be able to issue directions to the police, the fire services, health authorities, the Coastguard, Coroners, local authorities, Maritime and Coastguard Agency, the Environment Agency and government employees?	The Government believes that, wherever possible, usual lines of command and control should not be altered in times of emergency. The purpose of this is to avoid confusion and disruption of established procedures and relationships. This principle is widely supported across the civil protection community. Nevertheless, in the most serious emergencies, it might be necessary for the Government to be more directive. This is particularly true in situations where local areas do not have a full appreciation of the national picture. That is why the draft Bill enables, where appropriate, regional and emergency co-ordinators to be empowered to give strategic direction to local agencies in terms of setting priorities and facilitating co-ordination.
72.	What role would Regional Assemblies have in contingency planning and dealing with emergencies? How could the	The Devolved Administrations have a direct involvement in the legislation making process. As a consequence, the Government believes this involvement should continue where possible if the use of special legislative measures is necessary.

	proposed arrangements be changed to allow any future Regional Assemblies to have a role?	There are currently no administrations in England which enjoy comparable levels of legislative competence. This situation will continue to be reviewed as part of the development of the Government's policy on English Regional Assemblies.
73.	Where an emergency arises from, or is threatened by, a maritime emergency will regional and emergency coordinators be able to issue directions to the Secretary of State's Representative (SOSREP)?	It could be provided for under emergency regulations if necessary in the circumstances.
74.	How would regional and emergency coordinators be removed?	The post will expire when a Royal Proclamation (clause 18) or a Declaration by the Secretary of State (clause 19) lapses.
75.	Can the Cabinet Office provide the example of a case where an emergency was managed using the three levels of management (local, regional and national) proposed in the consultation paper?	<p>In addition, if required the Secretary of State could remove and replace regional and emergency co-ordinators.</p> <p>The involvement of both the local and central levels in the response to emergencies is a long-standing arrangement. The involvement of the regional tier is a more recent development.</p> <p>Nevertheless, this regional role has steadily increased in significance. Regional structures were put in place during the foot and mouth outbreak in 2001, the Fuel Crisis in 2000 and the firefighters strike of 2002. Regional offices also played a role in the co-ordination of Y2K contingency planning.</p> <p>These situations highlighted two key issues:</p> <ul style="list-style-type: none"> - With increasingly complex social and economic networks, it was difficult to handle the volume of information coming directly to the centre from so many local areas and flowing back out again. This was leading to ad hoc regional arrangements. - Regional arrangements put in place in an ad hoc fashion did not always perform as well as established structures. <p>It is these key issues that have led to the Government's decision to establish a regional civil protection tier.</p>
	Miscellaneous	
76.	Why does the Cabinet Office consider that a single central co-ordinating body within central Government dealing with all emergencies is not appropriate?	<p>Different emergencies require different types of response and the Government believes that this is best delivered through the lead government department principle, with strong central co-ordination where required, which allows the experts in any particular field to lead the response.</p> <p>Each of the central government departments must take responsibility for its own sectoral area and not be tempted to try to dislodge its responsibilities onto a central body. Revisions to the lead government department doctrine have put in place a robust system which will be audited annually by the centre to ensure conformance and good practice.</p> <p>Clear leads at Ministerial and Departmental levels have been established and central resources provided to plan and co-ordinate contingency planning.</p>

		<p>Sir David Omand was appointed as Security and Intelligence Co-ordinator and Permanent Secretary to the Cabinet Office in July 2002 to enhance capacity at the centre to co-ordinate security, intelligence and contingency management.</p> <p>The Civil Contingencies Secretariat was set up in June 2001 to improve the UK’s resilience to disruptive challenge through working with others inside and outside Government on anticipation, preparation, prevention and resolution.</p> <p>The Government believes this arrangement of central co-ordination, accountable to Ministers, coupled with Departmental responsibility for delivery of response is the best resilience structure. It engages a wider pool of expertise, avoids the need for a huge new bureaucracy at the centre while at the same time has a clear chain of command.</p>
<p>77.</p>	<p>How will the “standards and audit regime” (chapter 5.2 of the Consultation Document) operate? Will it monitor central as well as local government?</p>	<p>The standards and audit regime referred to in Chapter 5 of the Consultation Document relates only to central government. Further details are set out in answer 31.</p> <p>Monitoring of the performance of local responders against the duties in the draft Bill will be carried out by existing audit bodies such as the Audit Commission as part of their established performance management processes. Further detail is set out in paragraphs 37 and 38 of the Consultation Document.</p>
<p>78.</p>	<p>Is there currently in place, or does the Government plan to propose, legislation similar to the Civil Contingencies Bill for the Isle of Man or the Channel Islands? Are the Isle of Man or the Channel Islands included within the new arrangements? Have, for example, Resilience Forums been set up?</p>	<p>Civil protection arrangements in the Channel Islands and Isle of Man are a matter for their respective administrations. The Government is currently consulting both on the possible extension of the draft Bill to include their territories.</p>
<p>79.</p>	<p>Why is the Maritime and Coastguard Agency defined at paragraph 8 of schedule 1 of the Bill as “the Secretary of State, in so far as his functions relate to maritime and coastal matters”, whereas the Environment Agency itself is specified at paragraph 7 of Schedule 1?</p>	<p>The Maritime and Coastguard Agency is an Executive Agency of the DfT. It is part of the DfT and does not have legal personality in its own right.</p> <p>The Environment Agency is an non-departmental public body (NDPB) sponsored by DEFRA. The Environment Agency was established under the Environment Act 1995 as a body corporate.</p>
<p>80.</p>	<p>What arrangements would be made to preserve a record of oral directions given by Ministers under the powers at clauses</p>	<p>An oral direction is valid with no requirement to maintain a written record. Nevertheless, the Government is currently considering how the draft Bill might be amended to include the requirement to record directions in writing.</p>

81.	7(3) and 21(3)? Does the Emergency Communications network include all category 1 and 2 responders? If not, why not?	<p>The Emergency Communications Network (ECN) is a private switched telephone network, discrete from the public network. It provides a robust emergency communication system via dedicated private automatic branch exchange (PABX) switches. The ECN is managed by the Cabinet Office. The ECN is continuously available and can have a role in support of the Public Service Telephone Network (PSTN) through all stages of traffic overload management. The ECN enables direct access to the PSTN and Break-In from the PSTN; these features can facilitate communication with mobile telephones at the scene of an incident.</p> <p>The ECN is available to any 'essential service' which has an involvement with planning for, managing and/or responding to an emergency situation. All the Category 1 and 2 responders are eligible to connect to the ECN, and under current arrangements the Government funds the connection of local authority sites, Police and Fire HQs.</p> <p>A number of other Category 1 and 2 responders are not connected to the ECN. They have chosen to use alternative methods of communication based on their own operational needs.</p>
82.	Does the Emergency Communications Network include key voluntary organisations such as the Red Cross, St John's Ambulance? If not, why not?	<p>The ECN is available for connection to voluntary organisations. None are currently connected to it, choosing instead alternative methods of communication based on their own operational needs.</p>
83.	Do Lords-Lieutenant have any role in dealing with, or during, emergencies?	<p>Lords-Lieutenants have no formal role in the response to emergencies.</p>
84.	Have Lords-Lieutenants or sheriffs any residual powers to mobilise a militia (or <i>posse comitatus</i>) which could be used in an emergency?	<p>No. Under section 6 of the Regulation of the Forces Act 1871, all jurisdiction, powers, duties, command and privileges of Lord Lieutenants in relation to the militia reverted to the Queen, save in relation to appointing a deputy lieutenant and raising the militia by ballot.</p> <p>The abolition of the militia in its entirety came about under section 4 of the Territorial Army and Militia Act 1921.</p>
85.	What role will utility and other regulators have in planning to meet civil contingencies?	<p>The Government believes that the utility and other regulators have an important role to play in planning to meet civil contingencies. Utility companies are often responsible for supplying essential services and may have a key role in the response to emergencies. The regulatory framework within which they operate is crucial to that response. The regulatory framework is also the principle vehicle through which the Government ensures that utilities discharge their responsibilities to plan for emergencies.</p> <p>Discussions will take place with regulators before regulations and guidance are produced affecting Category 2 responders in order to clarify the respective regulatory regimes of each type and how their existing regimes fit with what is proposed under the draft Bill.</p>
86.	When will the Treasury task force under the chairmanship of Sir Andrew Large	<p>The Task Force on Financial Sector Operational Disruption has been asked to produce an interim report by November 2003 and make final recommendations by February 2004.</p>

87.	<p>report on contingency arrangements for financial markets?</p> <p>The Cabinet Office commissioned a comparison of other civil contingencies legislation (Consultation document, p41). Are there any countries that the Bill team think have got it right?</p>	
		<p>The draft Bill's policy development process drew on lessons from overseas. Several jurisdictions were the subject of a formal analysis by the British Institute for International and Comparative Law – France, Sweden, USA and the EU. Officials also established bilateral contacts with Canada, Australia, and New Zealand. Further research covered the legislative frameworks for civil protection in several other countries.</p> <p>Of the systems considered, each had both strengths and weaknesses. These often mirrored strengths and weaknesses in the systems of government more generally. No one country could be said to have got everything right.</p> <p>The exercise has highlighted that good arrangements found in one country are not necessarily easily transferable to another. Much depends on the nature of the systems of governance the countries employ, their size and the nature of the risks and threats they face.</p>

ANNEX A

SUMMARY OF PAST BELLWIN GRANT PAYMENTS

1. The Bellwin scheme of emergency financial assistance to local authorities was given a statutory basis in Section 155 of the Local Government and Housing Act 1989.
2. Since 1983 it has been activated several times in each financial year. On two occasions there were emergencies of a wide ranging nature but in other years the number of cases arising has totalled less than 10 in any one year and the amounts of grant claimed less than £1 million. Amounts paid by way of Bellwin grant over the last 15 years were as follows (in several years most of the money paid was in respect of incidents reported in the previous year):

1987/88 - £20m (Severe snows and hurricane)

Severe snows in Kent and Norfolk, 1987: Conditions in Kent were estimated (from Met Office observations) to be a one in 30 to 50-year event.

'Hurricane' of 16 October 1987: The scheme was activated on 21 October 1987.

1988/89 - £6.2m (Storms)

Amounts paid in this year were final claims arising out of incidents occurring in the previous year.

1989/90 - £0.6m (Storms and floods)

Storms of 16/17 December 1989 and 25 January 1990: Ministers agreed to activate the scheme on the day of the 25 January storms based on information to hand at the time. Ministers extended the scheme to cover expenditure incurred by authorities in the south-west following storms in December.

1990/91 - £4.9m (Floods)

Storms of 16/17 December 1989 and 25 January 1990: Ministers agreed to activate the scheme on the day of the 25 January storms based on information to hand at the time. Ministers extended the scheme to cover expenditure incurred by authorities in the south-west following storms in December.

1991/92 - £0.3m (Floods)

1992/93 - £0

1993/94 - £0.2m (Storms)

North Norfolk DC - storms of 20/21 February 1993: An activation was approved on the basis that the met office considered the storms to have a return period in the area of around 17 years.

Cornwall - storms and floods, 9/12 June 1993: A scheme of assistance was established in respect of flooding in Cornwall in early June 1993, which followed exceptionally heavy rainfall. Conditions were reportedly the worst for generations. Many homes had to be evacuated.

1994/95 - £0.6m (Floods and landslides)

Floods in West Sussex - January 1994: This activation of the scheme took place in respect of widespread flooding in West Sussex after a period of exceptionally heavy rainfall in late December 1993 and January 1994. The NRA confirmed that this was a once in 200 year event in West Sussex. Around Chichester groundwater levels reached their highest since records began in 1836, and evacuating people from their homes was necessary on three separate occasions. The Department received requests to activate the scheme from three authorities, and paid a total of £597,100 in grant.

Floods and Landslides on the Isle of Wight - January to February 1994: The scheme was activated for South Wight Borough Council when it was activated for West Sussex, and in respect of the same period of rainfall. Severe frosts followed this rainfall, which caused several massive landslides and more than 100 cliff fall incidents.

1995/96 - £0.1m (Unexploded bomb and fire)

Unexploded bomb on the Island of Portland - 1 to 3 April 1995: A Bellwin scheme was activated for Weymouth & Portland Borough Council for the costs of dealing with a 1000lb unexploded German WW2 bomb found on the Island of Portland. These costs included evacuation of 5000 residents from 1000m radius around the bomb, housing for 2000 evacuees in nearby holiday camps, overtime for council employees and the some additional policing costs. This was the largest such evacuation since WW2 and the first time the Bellwin scheme has been activated for a non-weather related incident.

Fire on Thorne Moor near Doncaster - 25 August to 19 September 1995: Ministers activated the scheme for the South Yorkshire Fire and Civil Defence Authority for the costs incurred during an extensive fire on Thorne Moor between 25 August and 19 September 1995. Costs included staff overtime, hire of extra equipment, increased fuel costs and additional maintenance costs resulting from the exceptionally heavy use of equipment during the emergency.

1996/97 - £0.2m (Storms and flooding)

Storms in Torbay - 20-24 January 1996: A scheme was activated to reimburse costs arising from exceptional storm conditions in January 1996.

North Norfolk - Storm on 19 February 1996: North Norfolk District Council requested the activation of a scheme following flooding and damage during a storm on 19 February.

Flooding in Folkestone - 12 August 1996: Activation was approved to assist Shepway District Council with emergency costs incurred following severe flooding in Folkestone. On 12 August an intense rain storm caused widespread flooding in the Ashford and Shepway District Council areas. Rainfall was particularly heavy in Folkestone, where 97.7mm was recorded in less than two hours - estimated by the Met Office to be a 1 in 500 year event.

Storms in North Devon - 28 October 1996: A scheme was activated in respect of costs incurred by North Devon District Council following exceptional storms on 28 October 1996. The Met Office estimated the wave height (10 metres) resulting from the particular combination of wind and sea conditions as a 1 in 50 years occurrence. It caused significant damage to sea defences and placed life and property at risk. The Council estimated its qualifying expenditure at £108,000 (£87,000 above its Bellwin Threshold). In the event, eligible spend did not exceed its threshold and no grant was paid.

1997/98 - £0.17m (Storms and flooding)

Amounts paid in this year were final claims arising out of incidents occurring in the previous year. In addition, a further £0.13m was paid as special grants. These included payments to Tower Hamlets and Manchester in respect of terrorist attacks.

1998/99 - £0.44m (Floods)

Easter floods scheme. 11 authorities received grant in respect of the Easter floods of 1998. They were: Wychavon DC, Northampton PA, Warwick DC, Stratford on Avon DC, Worcester City Council, Warwickshire CC, Northampton BC, Cherwell DC, Melton BC, Huntingdonshire DC and Herefordshire DC.

Other schemes were announced later in the year for the Autumn, January and February floods. 4 authorities received grant: Shrewsbury & Atcham, Worcester CC, South Lakeside DC and Ryedale.

In a separate scheme North Wiltshire DC also received a Bellwin grant

1990/00 - £0.35m (Floods)

Amounts paid in this year were final claims arising out of incidents occurring in the previous year.

2000/01 - £4.1m (Floods, unexploded bomb and plane crash)

14 authorities received payments following the activation of the scheme on 3 November to cover the severe weather events between 1st October to 31 December 2000. They were : Bridgnorth DC, Canterbury City Council, East Sussex CC, Elmbridge BC, Lewes DC, Maidstone BC, Newark & Sherwood DC, Shropshire DC, Shropshire CC, Tonbridge & Malling BC, Wealden DC, West Sussex CC, Woking BC, Wyre BC and York City Council. 5 other schemes were activated that year for: Herefordshire DC, Melton DC, Wear Valley DC, Copeland DC and East Sussex Police. These were in respect of separate flooding incidents from previous years, an unexpected World War II bomb and the plane crash at Stansted in December 1999.

ANNEX B

MAGD DEPLOYMENTS SINCE 1983

DATE	DEPLOYMENT
Mar 1984 – Mar 1985	National Coal Industry strike. Military logistic assistance provided to civilian police.
Apr – Aug 1986	Royal Engineers provided assistance to Prison Service – conversion of military camp at Rolleston for use as temporary prison – at time of dispute with Prison Officers Association. Troops did not actually deploy to operate the prison.
May – Jun 1986	Temporary field post office set up in York (4-6 June) to handle official mail, at time of Post Office dispute in west Yorkshire. Self Help.
Jun – Nov 1987	Sappers converted Rolleston camp as a temporary prison for civilian use at a time of prison overcrowding.
Oct 1987	Fire dispute in West Glamorgan: 1 R Hamps Bn Gp with 320 personnel including 17 RN, and 20 RAF) manned 15 GGs and 3 FRTs.
Mar – Dec 1988	Sappers converted and operated Rolleston and Alma-Dettingen camps as temporary prisons at a time of prison overcrowding.
Sept 1988	Field post offices set up in the UK to provide emergency postal facilities for MOD and HM Forces during a Post Office dispute. Self Help.
Jul – Aug 1989	LT/BR dispute. Sappers laid trackway in Regents and Hyde Parks.
Nov 1989 – Mar 1990	Ambulance dispute. 128,727 call outs (50% in London). 209 service ambulances (+ crews) deployed locally.
Aug 1995 – May 1996	Fire Service dispute (Merseyside) – not a continuous dispute, nor a continuous deployment. A battalion-commitment plus RAF Fire Rescue Teams (FRTs). Army personnel manned GGs.
Jun – Sept 1996	Fire Service dispute (Derbyshire) – a Bn (-) commitment (109 personnel with 12 GGs) plus 6 RAF FRTs (40 personnel).
May 1997	Fire Service dispute (Essex) – a Bn (-) commitment. Service personnel c450 in all – attended 1,315 incidents including (618 fires).

Sep – Nov 2000	<p>Fuel Crisis.</p> <p>1st phase, 13 – 16 Sept – involved deployment of 107 tankers and 681 tri-service personnel. In addition bulk refuelling vehs were made available.</p> <p>2nd phase, Nov – involved the training of 1,000 tri-service drivers to drive and operate mil and civilian tankers – none of whom were deployed; in addition, 8x Foden recovery vehicles were deployed in London, at Met Police request, in the event of a vehicle blockade there.</p> <p>20 Nov – all military assets stood down.</p>
Mar – Oct 2001	<p>Foot and Mouth outbreak. First confirmed case on 20 Feb; formal request from MAFF for mil assistance 9 Mar; mil vets first deployed 14 Mar. Extensive military assistance to MAFF (later DEFRA). Mil strength (tri-service) peaked at 2,100 personnel in mid April 2001. Last military personnel withdrawn 12 Oct 2001. Mil assistance requested for a range of tasks including veterinary assistance, coordination, logistic support. Slaughter and disposal of carcasses.</p>
Jul –Aug 2001	<p>Fire Service Dispute (Merseyside) – not continuous dispute or continuous deployment. 539 Armed Forces personnel (203 each from RN and RAF, 136 from Army – Armed provided command and control). 25 Green Goddesses and 11 FRTs deployed.</p> <p>(DTLR)</p>
Nov 2002 – Jun 2003	<p>Fire Service dispute. Extensive assistance nationwide to the ODPM during a series of non-continuous 24-hr and 48-hr strikes. Involving some 19,000 service personnel.</p>

ANNEX C

MACC IN THE UK SINCE 1983 (ILLUSTRATIVE LIST)

DATE	LOCATION	SUPPORT PROVIDED
1985 (10-16 Dec)	Leeds	Main water supply to Leeds disrupted; 1/4 million people without water. Some 193 tri-service bowzers (at peak) deployed plus RE pumping teams.
1986 (26 July)	Yorks	Personnel from Army School of Motor Transport, Leconfield assisted Fire Service after rail crash at unmanned crossing.
1986 (26 Aug)	Yorks	Sappers and elements of Catterick Garrison deployed to Richmond to rescue stranded civilians after flooding.
1987 (Mar-Apr)	English Channel	Substantial RN and RAF assistance off the coast whilst British Forces Germany assisted at the Belgian end of the operation.
1987 (October)	Nationwide	'The Big Storm'. Service assistance after a short but very severe period of bad weather nationwide.
1988 (July)	North Sea	Piper Alpha oil rig fire.
1988 (23 Dec) – 1989 (25 Jan)	Scotland	Tri-service mil assistance in aftermath of the Lockerbie air crash. Most of this effort directed at search for bodies and wreckage. Some 7,442 man-days were expended by a number of different units including men from the RHF and Gordon Highlanders who were directly involved after the event along with up to 12 helicopters, photo recon flights, RE and RAF repair and salvage and subsequent support to the AAIB. CAD Longtown provided hangar accommodation for the wreckage.
1989 (8-10 Jan)	Leicestershire	Army/RAF assistance after Kegworth air crash. 70/80 personnel from Army plus RAF helicopters, mountain rescue teams, salvage, recovery and transport of the wreckage.
1990 (Aug)	Dorset	124 mil personnel from RAC Centre and Gurkha Sig Sqn assisted police in search for missing child.
1990 (8-11 Dec)	North + West	Extensive Army and RAF assistance in wake of severe snow storms. TA provided bulk of Army contribution. 350+ personnel, 120 vehs, 8 helos and 2 Hercules.
1991 (6 May)	Norfolk	Personnel from 39 Engr Regt RE and RCT laid 14 rolls of trackway to enable civil authorities to deal with chemical spillage on coast.

1993 (15-18 Jan)	Scotland	Assistance by Army, R Marines + RAF to emergency services at time of snow storms then severe floods.
1993 (14-18 Jun)	N Wales	Assistance to local authorities during bad weather (1 pltn from 1 Staffords).
1994 (10 Jan - 7 Feb)	Sussex	Assistance in Chichester during bad weather (4 x bailey bridges, sandbags, and elements of 36 Regt RE (12 man maintenance team).
1995 (1-2 Feb)	Yorks-Durham	Assistance during bad weather: elements of various units including 9 Regt AAC (102 personnel), 1 RRF (5 personnel) and ITB Ouston (45 personnel).
1995 (22 Feb)	Hexham	Assistance during bad weather. 26 local Army personnel.
1995 (11 Apr)	Northumberland	100 personnel assisted with combating forest fire (Harbottle Forest near Otterburn).
1995 (25 May)	Yorks	Assistance to civil police at scene of air crash – 4 landrovers (incl 10 crews) from 24 Fd Amb, 40 personnel ex 2 Sig Regt + a class 30 trackway laid by 38 Engr Regt.
1995 (18-19 Aug)	Hereford	25 RE personnel assisted with combating grass fires on Malvern Hills.
1995 (20-21 Aug)	Preston	Fulwood Barracks used as emergency evac site at time of toxic chemical spill.
1996 (6-12 Feb)	UK: West Midlands and Scotland especially	55 personnel, 42 landrovers, 8 lorries + 2 ambulances, helicopters and 1 Hercules (plus lots of blankets and sleeping bags, RN, RAF + Army helos + 1 Hercules) assisted the civil authorities during severe weather. In addition personnel provided meals-on-wheels in North Wales and 4 landrovers employed in Lancashire in Cumberland.
1996 (20 Feb)	Kent	6 TA personnel + 3 landrovers provided assistance to the local hospital in Canterbury during bad weather.
1997 (Jan)	Wilts	250 personnel assisted civil police in search for soldier's missing child.
1997 (2-3 Jul)	Scotland	40 personnel ex 3 HLDERS + RAF, incl tpt, assisted emergency services to deal with flooding in Elgin and Forres.
1997 (11 Dec)	Glasgow	Regulars and TA personnel ex 3 RHF manned water distribution points when the water supply to 250,000 residents was disrupted.

1998 (Apr – Easter weekend)	E Anglia, Midlands, Home Counties	Assistance during severe weather. Over 300 personnel from a variety of units, both regular and TA plus boats and sandbags. Including: Northampton – 70 TA Peterborough – 60 TA St Ives – 40 personnel Banbury/Milton Keynes – 130 TA Stratford/Lemington Spa – 50+ personnel
1998 (Apr)	Humberside	320 mil personnel ex 2 Div deployed to assist civil police in search for missing woman.
1998 (Jun)	Cheshire	1 pln ex 1 PWO assisted civil police in search for missing child.
1998 (22 Oct)	Wales – Powys	30 personnel ex ITC Brecon assisted with aftermath of flooding - sandbags + evacuation of an OAP home.
1999 (Jan)	Sussex	50 personnel ex GRC + 1 PWRR assisted civil police in search for missing schoolgirls.
1999 (May)	Yorks	Personnel from Defence School of Transport, Driffield, assisted with evacuation of civilians after fire at chemical plant.
1999 (Aug)	Forest of Dean	35 personnel ex 1 Cheshire assisted civil police to search for missing light aircraft.
1999 (19 Sept)	Northern Ireland	Flood relief in Ballyclare. Elements of 9 R Irish deployed.
2000 (Sept)	Portsmouth	HM Naval Base provided pumps and personnel to help with sewage problem after heavy rain.
2000 (Oct-Nov)	Various	Op Waterfowl: Flood relief after heavy rain in early October. – 12+14-15 Oct – 150 personnel ex 1 PARA and RGR, plus boats, divers and vehicles of 36 Engr Regt deployed in Sussex and Kent – 30 Oct – minor support given in various parts of the country – blankets in Wilts, 1/2 tp Marines in Somerset, vehicles + drivers in Glos + Kent, and 10 boats at Waltham Abbey, Essex.

		<ul style="list-style-type: none"> - 30 Oct – Op Waterfowl commenced. - 31 Oct – limited assistance at Yalding, Kent (R Medway), Glos and Somerset. - 2 Nov 00 – significant deployment in Worcestershire (Severn Valley) – elements of 1 RWF and 214 Bty RA (V) in Worcester city to help evacuate a flooded hospital - elements of West Midland Regt, TA, stood by in Kidderminster - at this time some 1,200 troops were now deployed or held contingent. This level held until 10 Nov 00. - Early Nov significant flooding in Yorkshire on R Ouse: <ul style="list-style-type: none"> - Mil deployment co-ordinated by HQ 15 (North East) Bde - 267 troops deployed in the city of York (plus a further 330 held at 1/2 hr NTM) - 460 troops deployed in Selby (+2 x RAF Chinook helicopters) - mil vehicles (+ drivers) deployed in the West Midlands (plus 100 personnel ex 1 RWF on standby) - 60 troops deployed in Nottingham (R Trent) - smaller deployments continued on the R Medway in Kent - Op Waterfowl was terminated on 14 Nov owing to stabilised waterlevels.
2000 (early Dec)	Severn Valley	Flooding – vehicles ex 104 Regt RA(V) and elements of 1 RWF deployed.
2001 (Feb)	Kent	40 personnel ex 1 R Irish deployed to help with localised flooding.
2001 (Feb)	Northern Ireland	A helicopter and divers assisted the NI Environment Agency in removing an aircraft which had become trapped in marshland near Londonderry airport.

2001 (Feb)	Yorks	SAR helicopters assisted at the immediate scene of the Selby train crash. Subsequently an emergency mortuary was established at the nearby RAF station.
2001 (Feb-Mar)	Scotland	Helicopter and light aircraft helped provide assistance during bad weather in the south of Scotland.
2001 (May)	Northern Ireland	A Wessex helicopter helped douse a fire on Camlough Mountain.
2001 (July)	Kent	Army personnel helped deliver bottled water to communities of Romney and Lydd when their water supply was contaminated.
2001 (Dec)	SW England	RN Sea King helicopter flew members of the Devon Fire Brigade to Lundy Island to deal with a heath fire.
2002 (Feb)	Northern Ireland	Helicopter and infantry helped search for missing teenager.

ANNEX D

Serial	OPERATION	CIRCUMSTANCES	DATES MoD INVOLVED	CHARGING REGIME	COST
1	Op Fresco (Zulu) (See Note 1)	National Firefighters' Strike	Aug 02 to June 03	"No loss" cost being communicated to ODPM	Approx £75M FY2/03 alone; FY03/04 cost not yet available
2	Op Fresco (Merseyside)	Merseyside Firefighters' Strike	Jul-01	"No loss" cost being communicated to DTLR	Approx £0.7M
3	Op Peninsular	Foot and Mouth Disease	Mar-Oct 01	"No loss" cost communicated to DEFRA	Approx £7M
4	Op Sabellian	Military assistance during fuel crisis	Sep-00	"No loss" cost captured	Approx £2.5M

Note 1: No loss cost regime applied only after consultation with HM Treasury

Appendix 10: Note by Jennifer Smookler, Committee Specialist - Summary of Responses from Category 1 and 2 Responders

In July, the Committee sent letters to organisations in the NHS and energy, media and food sectors, asking them if they would like to be included as Category 1 or 2 Responders.

This is a summary of their responses.

In brief:

- 22 NHS bodies in England and Wales replied, all of which considered that some or all of the NHS should be included as Category 1 or 2 Responders.
- Three organisations from the energy sector replied, none of which thought they should be included as Category 1 or 2 Responders.
- The Food and Drink Federation stated that the food and drink industry should be included as a Category 2 Responder.
- The BBC did not consider that it should be included in either Category 1 or 2.

Organisation	Recommended for inclusion as Responders:		Comment
	Category 1	Category 2	
NHS Health Protection Agency	<ul style="list-style-type: none"> ▪ Health Protection Agency ▪ Strategic Health Authorities 		
Office of the Strategic Health Authorities	<ul style="list-style-type: none"> ▪ Acute Hospital Trusts ▪ Primary Care Trusts ▪ Strategic Health Authorities ▪ Foundation Trusts (if legislation is passed) ▪ Health Protection Agency 		All NHS bodies have a specific role to play in the event of an emergency as defined in Part 1 of the draft Bill, and the NHS is obliged regularly to review its readiness to comply with emergency planning measures. It is therefore of some concern that the draft Bill does not adequately reflect the current structure of the NHS, nor its potential development.
Avon, Gloucestershire and Wiltshire Strategic Health Authority	<ul style="list-style-type: none"> ▪ Acute Hospital Trusts ▪ Primary Care Trusts ▪ Ambulance Trusts ▪ Strategic Health Authority 		Each of these agencies provides an immediate response to Major Incidents in certain circumstances. The role of the Strategic Health Authority in such an incident would be to ensure the immediate and correct response by the parts of the NHS that would provide the emergency service. In a widespread incident we have a role in co-ordinating the NHS's response.
Bedfordshire and Hertfordshire Strategic Health Authority	<ul style="list-style-type: none"> ▪ NHS 		The NHS is already fully involved in the assessment of the risk of emergencies and the construction of contingency plans through membership of both the Hertfordshire and Bedfordshire County Emergency Planning Committees. (Chief Exec representation). Other colleagues, e.g. the Director of Public Health of the lead Primary Care Trust and Consultants in Communicable Disease working for the new Health Protection Agency, are also involved in support of local emergency planning.
Birmingham & the Black Country Strategic Health Authority	<ul style="list-style-type: none"> ▪ Ambulance Service Trusts ▪ Primary Care Trusts 		The main responsibility for emergency planning rests with Primary Care Trusts, but our experience in the recent Iraq war situation for example demonstrates that the Strategic Health Authority and Acute Hospital NHS Trusts had a major part to play too.
North & East Yorkshire & Northern Lincolnshire Strategic Health Authority	<ul style="list-style-type: none"> ▪ Primary Care Trusts ▪ Ambulance Trusts ▪ Accident and Emergency Units in Acute Trusts 	<ul style="list-style-type: none"> ▪ Strategic Health Authorities ▪ Rest of hospital (not A&E) 	Mental Health Trusts may require more consideration and may need to be Category 1 due to classification of inpatients but routinely would be Category 2. The role of NHS Direct and NHS Logistics must also be considered, the former in terms of information giving during an emergency and

			<p>the later regarding the overall long-term resilience of the health service.</p> <p>It goes without saying that if some or all of the organisations mentioned above are to be included in either category, clear guidance will be needed as to the implications and requirements across health economy organisations.</p> <p>All NHS Trusts and Primary Care Trusts are expected to have emergency plans and at Strategic Health Authority we work to ensure that there is a co-ordinated approach to emergency planning. This work is in conjunction with the local teams of the new Health Protection Agency who have specialist staff in public health protection.</p> <p>In terms of Emergency planning, we also share and are part of the overall Thames Valley Police emergency plan. In emergency situations, the Police service is in charge of initiating the "Gold Command" centre and Health is just one of the many agencies that are represented at Gold command. Furthermore local NHS Trusts will be represented at Police "Silver" and possibly "Bronze" command levels.</p> <p>Overall, my thoughts are that if Local Authorities are Category 1 responders, then the local NHS should also be Category 1 responders (which probably will be best co-ordinated at Strategic Health Authority level).</p>
Thames Valley Strategic Health Authority	<ul style="list-style-type: none"> ▪ Strategic Health Authorities 	<ul style="list-style-type: none"> ▪ Mental Health Trusts 	
Trent Strategic Health Authority	<ul style="list-style-type: none"> ▪ NHS ▪ Ambulance Trusts 		<p>The NHS has traditionally taken a major part in managing the health impact of civil emergencies - this is a broader role than just the response of the Ambulance Service - recent discussion with the DOH following the last, recent reorganisation of the NHS places responsibility on Strategic Health Authorities (SHA) to ensure emergency preparedness of the NHS. The NHS is therefore obliged to have plans which are developed in conjunction with other local agencies. It would seem unhelpful to not have the NHS involved in the local planning for emergencies. It would also be unfortunate if the</p>

				<p>Ambulance Service - essentially a reactive front line service was categorised as Category 1 rather than the NHS. It has taken several years to make to the police and local Las aware of the more strategic role of the NHS in planning for disasters - emergency plans recently developed by SHAs make this distinction quite clear.</p> <p>There are very few (if any) areas of potential resilience response which do not have NHS implications. These implications are often of an emergency nature and require rapid implementation supported by excellent communications. Inclusion in the core process of planning certainly facilitates this.</p> <p>In view of this, it is likely that the NHS will be a de facto category 1 organisation whatever the bill says, and it would seem sensible for the bill to reflect it.</p> <p>Some clarity about what is meant by 'NHS' would also be useful in the structuring of the bill. It does seem a little odd, when the consultation includes NHS Ambulance Trusts under category 1, then to be asked whether the NHS should be included as well.</p> <p>We need to ensure that the local NHS responds as a functional whole in a crisis, with clear lines of accountability that can be rapidly implemented. This is likely to be easier with greater pre-crisis involvement.</p>
<p>Northumberland and Tyne & Wear Strategic Health Authority</p>				
<p>South Yorkshire Strategic Health Authority</p>	<ul style="list-style-type: none"> ▪ All NHS 			
<p>West Yorkshire Strategic Health Authority</p>	<ul style="list-style-type: none"> ▪ Primary Care Trusts ▪ Ambulance Trusts ▪ Acute Trusts ▪ Mental health Trusts (may need to be Cat 1 due to classification of inpatients but would routinely be Cat 2) 	<p>Strategic Health Authorities</p>		<p>I would argue that primary care trusts and ambulance trusts should be included in Category 1, and SHAs in Category 2. Acute trusts could clearly have a responsibility under Category 1, and mental health trusts may need to be considered Category 1 due to classification of inpatients but routinely should be Category 2.</p> <p>Also, the Regional Director of Public Health role as the Chief Medical Officer to the Region is not considered in the draft bill, although this is an important role in the NHS response to major incidents.</p>

Surrey and Sussex Strategic Health Authority	<ul style="list-style-type: none"> ▪ Primary Care Trusts ▪ Receiving Hospitals ▪ Strategic Health Authorities 				
Dorset and Somerset Strategic Health Authority	NHS as a whole				
Leicestershire, Northamptonshire and Rutland Strategic Health Authority	<ul style="list-style-type: none"> ▪ NHS Trusts ▪ Primary Care Trusts ▪ Health Protection Agency 	Strategic Health Authority			<p>Only in exceptional circumstances, where deemed necessary and agreed locally, would the SHA lead the management of an emergency. I therefore feel the SHA should be a 'Category 2 Responder'.</p> <p>Due to the broad nature of the Bill, I do believe it is essential that the regulations specify the involvement of all NHS organisations and clearly define their roles and responsibilities.</p>
Norfolk, Suffolk, and Cambridgeshire Strategic Health Authority	NHS				
Hampshire and Isle of Wight Strategic Health Authority	NHS organisations				<p>We recognise that the multiplicity of NHS organisations would make it difficult for all to be represented as full members of Local Resilience Forums (LRFs). Our suggestion is that, in addition to representation by the local ambulance NHS Trust, the local NHS within a police force area should be represented on the LRF by either the Strategic Health Authority or one of the Lead Primary Care Trusts. These organisations should then have a responsibility to establish internal collaborative machinery to ensure that any action required by the local NHS is taken.</p>
Wales Local Health Boards					
Flintshire Local Health Board	<ul style="list-style-type: none"> ▪ Local Health Boards (Wales) ▪ Primary Care Trusts (England) ▪ Public Health Services (Wales) ▪ Health Protection Agency (England) ▪ Acute/Integrated NHS Trusts 	National Blood Transfusion Service			

Ceredigion Local Health Board	<ul style="list-style-type: none"> ▪ All levels of the NHS, Trusts, Local Health Boards, NPHS 			<p>We were most surprised to read that the NHS was not included as a “Category 1 Responder” and it is our view that this is essential.</p> <p>It is difficult to see how issues of availability, capacity etc. of the NHS facilities could be addressed by anyone else.</p> <p>It is the general consensus that, while the ambulance Service is included as a Category 1 Responder, it would be inappropriate for the remainder of the NHS to be excluded from the contingency planning process at a local level.</p> <p>However there are differing views as to which category of responder the different branches of the NHS should be classified.</p> <p>In terms of Local Health Boards some are of the view that they should be Category 1 while others consider that Category 2 to be the more appropriate.</p> <p>It is the considered view that NHS Trusts (in Wales) should be Category 1 responders while the National Public Health Service in Wales should be in Category 2.</p>
Health Boards of: Cardiff Rhondda Cynon Taff Vale of Glamorgan Blaenau Gwent Caerphilly Monmouthshire Torfaen	<ul style="list-style-type: none"> ▪ Welsh NHS Trusts 	Welsh National Public Health Service		
Powys Local Health Board	<ul style="list-style-type: none"> ▪ All NHS 			
Newport Local Health Board	<ul style="list-style-type: none"> ▪ Receiving hospitals ▪ Ambulance trusts 	<ul style="list-style-type: none"> ▪ Local Health Boards ▪ Statutory Health Authorities Primary Care Trusts 		
Neath Port Talbot LHB	<ul style="list-style-type: none"> ▪ All NHS 			<p>The NHS should be included as a Category 1 Responder and should participate in the contingency planning process at the local level.</p> <p>There are very often health service implications in emergency situations and it is essential that the NHS is included at the planning stage.</p>
Energy				
LP Gas Association			Neither	

<p>The Association of United Kingdom Oil Independents (AUKOI)</p>		<p>Neither</p>	<p>We are a Membership organisation representing independent companies involved in wholesale sales, distribution and retailing of petrol, diesel and other petroleum products in the UK. The Members of AUKOI are variously involved with retail supply, as both independent retailers and supermarkets and represent at least 25 % of the petrol/diesel retail market in the UK.</p> <p>This Association is of the opinion that none of its Member companies should be included as Category 2 Responders within the framework of the proposed draft Bill. We concur with UKpia's views that this would in essence duplicate the requirements of the Downstream Oil Emergency Response Plan leading to unnecessary duplication of arrangements and possible confusion.</p> <p>We are also concerned at the anti-competitive issues that might arise from the sharing of information and joint management of fuel supplies that might prove necessary under these provisions. AUKOI would not engage in any practices in breach of current UK or European competition law.</p>
<p>UK Petroleum Industry Association Limited</p>		<p>Neither</p>	<p>The construction of separate Emergency Response plans on a regional basis (let alone at the level of County Councils or Police Authority areas) to seek to deal with or manage fuel supplies in an emergency situation could give rise to significant logistical and operational problems. Any attempt to establish them could seriously undermine the effectiveness of the national plan that has been constructed.</p> <p>The logistical and commercial information that the companies might be called upon as Category 2 Responders, to supply to Category 1 Responders could be highly confidential information from a commercial and competitive viewpoint. There would not seem to be any provision in the Bill for keeping this information confidential. ... To impose the obligations of a Category 2 Responder upon the highly competitive independent commercial oil companies, comprising the UK Downstream Oil Industry, would therefore constitute a very undesirable intrusion on the commercial activities and independence</p>

				of these companies and could seriously undermine the proper and competitive working of the UK oil market.
Food and Drink Food and Drink Federation		Food and Drink industry		<p>After due consideration, the Food and Drink Federation (which represents the interests of the UK food and drink manufacturing industry) firmly believes that the food and drink industry should be listed as a “Category 2 Responder”.</p> <p>The industry plays a key, strategic and vital role in the UK Economy and “Category 1 Responders” need to be aware of the “Emergency” impacts on the industry. The “Three day Week” power supply disputes in the early 1970’s, the industrial disputes involving steel workers and lorry drivers in the early 1980’s, and the more recent Fuel blockades have clearly demonstrated this.</p>
Media Office of Telecommunications		Broadcasters (if included at all)		<p>... if [broadcasters] were to be included, it would be more appropriate to include them in the ‘Category 2 Responder’ list along with the utilities and telecommunications firms.</p> <p>However, under the Section 10 of the Broadcasting Act 1990, there are already provisions from the direction of broadcasters to broadcast specific announcements or to refrain from broadcasting specific matter... This existing obligation meets most of the requirements that the new Bill would require of broadcasters were they to become Category 2 responders.</p> <p>You may well know that senior BBC Executives have been working with Cabinet Officials for some time on UK Civil Contingency Matters.</p> <p>As a result of these meetings, it was decided that the BBC would not be included in the current legislation. Instead, we have set up a network of contacts between all BBC local radio stations and local emergency planners to exchange information in the event of an emergency. We will of course broadcast advice and instruction to local and national audiences as needed, should a serious incident occur.</p>
BBC			Neither	

Appendix 11: Summary of Amendments Suggested by Respondents to the Government's Consultation Exercise

Schedule of Amendments Suggested By Respondents to the Consultation Exercise

Clause	Original Text	Change/ Comment	Source
	PART 1 – LOCAL ARRANGEMENTS		
1	Meaning of Emergency	<p>The definition as it stands does not include an element of scale and could therefore apply to a relatively minor road traffic accident or small fire. Could include the phrase found in <i>Dealing with Disaster</i>, "... 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."</p> <p>At the core of an emergency is the disruption to the community of vital essentials. This should remain the touchstone of any modern definition.</p> <p>The definition is a cumbersome blend of the general and the specific, which runs the risk of leaving unintended loopholes only to be discovered in a future court case. The simple, single paragraph definition from <i>Dealing with Disaster</i> is perfectly adequate. We can think of no situation, listed in the Bill's definition, which it could not be deemed to cover.</p> <p>There needs to be a '<i>de minimis</i>' definition of an emergency – a trigger level or threshold below which local authorities, as Category 1 responders, would not be expected to respond (such as the declaration of a major incident. There is no indication of what scale of incident would trigger the involvement of the Regional Resilience Committees.</p> <p>The definition of an emergency is marginally different depending which part of the draft Bill one reads [clauses 1 and 17]. It is hoped that a common definition could be arrived at.</p> <p>The use of 'serious threat' in 1(1) and 'threat' in the following four clauses is confusing. The same terms should be used throughout. This is also the case in 17 (1) (2) (3) (4)</p> <p>The definition of emergency needs to state "either natural or manmade".</p> <p>Contingency for sea emergencies and the impact of sea defence breaches has been omitted.</p> <p>Include a reference to off-shore marine incidents, as they are currently excluded by the wording 'in England and Wales'.</p> <p>The terminology used within the Bill differs from that normally associated with the field of disaster</p>	<p>Royal Borough of Kensington and Chelsea, CC EV 31, question 1</p> <p>Liberty, JC EV 14, para 13</p> <p>National Council for Civil Protection, CCEV 76 , question 1</p> <p>LGA, JC EV 10, para 3.1.2 and 3.1.3</p> <p>Dr Rodney Day, University of Hertfordshire, CCEV 18, para 2</p> <p>Sedgemoor District Council, CC EV 66, question 1</p> <p>Dudley Metropolitan Borough Council, CC EV 47, question 1</p> <p>Rother District Council, CC EV 97, para 1</p> <p>Kent and Medway Town Fire Authority, CC EV 40, question 1</p> <p>UK Advisory Committee for</p>

		management. The Bill refers to emergencies and resilience, whereas the more normally accepted terminology in this field of study is concerned with disaster, vulnerability and risk. It is normally considered that a disaster is a result of the conjunction of a hazard with a vulnerable target. The concept of an emergency as distinct from a disaster omits the central role of vulnerability.	Natural Disaster Reduction, CC EV 156, para 1 and question 1
I (1)	“emergency” means an event or situation which presents a serious threat to -	It would be necessary to define different levels of emergencies in relation to the different tiers of government and their capabilities i.e. municipal, regional and national authorities have the abilities to deal with emergencies of increasing severity. Also include a specific threat to Parliament.	Philip Bostock, Exeter City Council, CC EV 13, question 1
		The subjective seriousness requirement is an insufficient safeguard against misuse. Although threats to the welfare of the population, the environment and political/ administrative/ economic stability are defined, seriousness is not.	Liberty, JC EV 14, para 16
I (1)(a)	human welfare in a place in England or Wales	Define what is meant by “in a place” and “of a place” throughout 1 (1) (a) to (d). There needs to be clarity as to what this means, particularly in relation to UK waters.	Essex Authorities, CC EV 14, part 2, question 1 Norfolk Local Authority, CC EV 96, question 1
I (1)(c)	the political, administrative or economic stability of a place in England or Wales	These should relate only to those instances where there is also a threat to human welfare.	Emergency Planning Society, JC EV 12, part 2, question 1
I (2)(b)	... an event or situation presents a threat to human welfare only if it involves, causes or may cause (b) human illness or injury	This should read ‘human incapacitation, illness and injury’. This should also be amended in Part 2, clause 17 (2)(b).	Dr G Pearson, CC EV 90, para 8
I (2)(c)	... an event or situation presents a threat to human welfare only if it involves, causes or	The term ‘displaced persons’ might be better to capture what is intended. The term ‘homelessness’ indicates a degree of permanency in a person’s situation (which may not be the case in an emergency when people are more likely to be moved from their homes as an interim measure).	Sedgemoor District Council, CC EV 66, question 1

	may cause – (c) homelessness	Whilst events which may cause homelessness or disruption of food supply, communication systems, transport facilities or educational services are serious matters, they do not necessarily constitute a threat to public welfare.	Liberty, JC EV 14, para 18
1 (2)(e)	... an event or situation presents a threat to human welfare only if it involves, causes or may cause – (e) disruption of a supply of food, water, energy, fuel or another essential commodity	The Bill extends the definition to include major disruptions of energy. The energy industries have for many years maintained their own contingency planning for emergencies, which are governed by the relevant legislation and regulatory licenses. There is a distinction to be drawn between emergencies where loss of electricity supply is a relevant part but not the primary problem and those that are primarily one of loss of supply.	CE Electric UK, CC EV 81, question 1
1(2)(h)	... disruption of medical, educational or other essential services	Educational services are not regarded as 'essential' in international labour law. The term 'other essential services', particularly as it follows this non-essential service, is difficult to interpret. The International Labour Organisations (ILO) defines essential services as those whose interruption would threaten the life, personal safety or health of the whole or part of the population. If some form of extending provision is required in clauses 1(2)(h) and 1(2)(e) this would be an appropriate definition to adopt.	Professor G Morris, JC EV 5, para 1
1 (3)	For the purposes of subsection (1)(b) an event or situation presents a threat to the environment, if...	This appears to allow an emergency to be declared if there is a threat to plant life. This may be seen as a reduction in civil liberties by those who feel that they have a legitimate right to take action against GM crops. This is hardly a threat to the national interest but a form of civil protest best dealt with under the criminal law.	Oxfordshire County Council, CC EV 4, para 5
		Giving the language of this clause its natural and ordinary meaning, emergency powers under the Bill could plausibly be triggered by a virulent strain by Dutch Elm Disease.	JUSTICE, JC EV15, para 12
		Include 'land subsidence' in environmental threat list.	Arun District Council, CC EV 110, question 1
1 (3) (a) (ii)	.. an event or situation presents a threat to the environment if, in particular, it involves, causes or may cause (a) contamination of	This definition of oil would appear to be unnecessarily restrictive as it would only apply to those refined products that are used as a fuel in large power plants. In reality, a threat to the environment may arise from a spill of any type of oil and from any source. A broader definition to cover all eventualities would be provided by replacing "fuel oils" with "oil" or with "oil and its derivatives". This definition is used in other legislation (S.153 Merchant Shipping Act 1995).	International Tanker Owners Pollution Federation Limited, CC EV 21, para 3.8

	land, water or air with (ii) fuel oils				National Council for Civil Protection, CC EV 76, question 1
		This is a potential loophole, which raises the question of the status of other oils, such as lubricating oils and edible oils. Although it is probably implicit that the Bill applies to the UK's territorial waters, there is no specific reference to seawater.			
		The whole subsection of 1(3)(a) should be reworded to read "... causes or may cause contamination of land, water or air with substances, materials or articles that are harmful to human, animal or plant life" The definition of the word 'water' needs clarification because of the implications relating to local authorities and shoreline clean up, for which there is no existing statutory responsibility but which could come out of this paragraph. 'Water' should include all water, including riverine, estuarial and seawater.			Gloucestershire County Council Fire and Rescue Service, CC EV 71, question 1
				Shire districts should also have a corresponding duty to plan for, train and conduct shoreline clean up. Ports and Harbours have a statutory duty under these circumstances and should be properly funded to carry out these functions effectively. After the word 'flooding' there should be some reference to 'drought'.	Bristol City Council, CC EV 69, question 1 Philip Bostock, Exeter City Council, CC EV 13, question 1
I (3)(b)	.. an event or situation presents a threat to the environment if, in particular, it involves, causes or may cause – (b) flooding				Gloucestershire County Council Fire and Rescue Service, CC EV 71, question 1
I (4)	An event or situation presents a threat to political, administration or economic stability if, in particular, it involves, causes or may cause – (c) the activities of banks or other financial institutions	There is no attempt to distinguish between essential and non-essential functions in relation to what may constitute threats to 'political, administrative or economic stability' as defined in clause 1(4). A serious threat of disruption to a non-essential Government activity or public function would be within the definition. No account is taken of the duration of the disruption, which may be an important factor when considering whether industrial action occasions an emergency.			Professor G Morris, JC EV 5, para 1
I (4)(c)		This seems to neglect the economic impact of an emergency upon manufacturing or service industries. In extreme cases this might have a short-term influence on GDP. This could be recognised by the inclusion of a sub-section "4(d) the widespread or prolonged disruption of key manufacturing or service industries". This also			United Utilities, CC EV 73, question 1

		applies to clause 17(4). Consideration should be given to a wider definition of economic stability, including the critical role of industry and commerce, especially given the importance later placed upon businesses' continuity management. The definition must include threats to productive industries other than banks and financial institutions. There must be references to the Business Continuity for all business enterprises, whether nationally or internationally owned and threats to the foreign direct investment sector. This clause should include reference to other critical economic activities such as manufacturing, logistics and energy production, including oil and gas. Local factors realistically mean that each local area has their own set of risks, which have their own emergency implications. How much local latitude is permitted? Risk assessment and risk prevention are not part of the emergency planning role. Emergency planners must take note of the potential hazards which may give rise to an emergency, but their whole <i>raison-d'etre</i> is to have plans in place to deal with emergencies which occur despite the best efforts at risk assessment and risk prevention of a whole range of other regulatory and enforcement bodies. It is not appropriate for emergency planners, with no technical expertise, to attempt to second guess these bodies. If what is meant is 'hazard identification', rather than risk assessment, then it is reasonable that this should be left in. If risk assessment is retained, it must be made clear that organisations are only responsible for assessing risks which fall within their degree of competence, so that they are not exposed to inappropriate claims of liability. To avoid confusion, the terminology should be changed, from 'risk assessment'/'risk management' to 'hazard analysis.'	Dr Rodney Day, University of Hertfordshire, CC EV 18, para 3 Mr A Hobbs, CC EV 94, para 9 Link Associates International, CC EV 129, question 1 West Devon Raynet, CC EV 54, chapter 4 National Council for Civil Protection, CC EV 76, question 2
2	Duty to assess, plan and advise		
2 (1)(a)	A person or body listed in Part 1 of Schedule 1 shall – (a) from time to time assess the risk of an emergency occurring		
2 (1)(c)	A person or body listed in Part 1 of Schedule 1 shall – (1)(c) maintain plans for the purpose of ensuring, so far as is reasonable practicable, that if an emergency occurs the person or body is able to continue to perform his or its functions		LGA, JC EV 10, para 3.2.2 Gloucestershire County Council Fire and Rescue Service, CC EV 71, question 2
		This duty should apply more widely to Category 2 responders. It is recognised that most large businesses	London Borough of Richmond

		employ their own Business Continuity experts. The term “business” should be defined.	upon Thames, CC EV 61, question 2
2 (1)(d)(i)	[Category 1 Responders shall] 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	<p>This paragraph should be removed. The ability to mitigate is already in the Bill and this is more achievable. During the review of Emergency Planning Consultation many responders felt that it was impossible for local authorities to prevent emergencies, particularly those starting outside their area.</p> <p>The duty to ‘prevent’ should be removed.</p>	<p>Oxfordshire County Council, CC EV 4, para 6</p> <p>National Council for Civil Protection, CC EV 76, question 2</p>
		<p>The use of the word ‘prevention’ in relation to civil protection suggests that emergencies are somehow ‘preventable’. A more useful word to use might be ‘mitigation’, which implies a process of hazard identification, risk assessment and planning.</p>	<p>Leeds City Council, CC EV 55, para 7 and Richard Davies, Leeds City Council, oral evidence session, 9th September 2003 (PM)</p>
		<p>Risk assessment and risk prevention are categories best left to professional organisations that are competent and instructed in their approach – for instance the HSE and Environment Agency. Generic emergency planners are not generally qualified for this role.</p>	<p>Brent Council, CC EV 68, question 2</p>
		<p>It is difficult to see how a unitary authority, usually acting in support to the emergency services, can routinely ‘prevent’ emergencies. The Bill should clarify that this responsibility to ‘prevent’ rests where there is currently a function (there is no function on Emergency Planning Services of local authorities, although other departments, such as Highways, may have such a role).</p>	<p>Bristol City Council, CC EV 69, question 2</p>
2 (1)(f)	[Category 1 Responders shall] arrange for the publication of all or part of assessments made and plans maintained	<p>This is contrary to recent Security Services advice against the publication of any plans that would be of use to a terrorist such as the Pipeline Safety Plans. This needs re-wording to take account of this security advice.</p>	<p>Oxfordshire County Council, CC EV 4, para 7</p>
		There is the potential for security to be compromised through the publication of information relating to specific	ACPO, CC EV 98, question 2

		<p>sites. It is suggested that clear guidance be given in the notes to ensure that due diligence is exercised by site owners and other responders who may have a planning responsibility, so that there is no potential for security to be breached by the publication of sensitive information.</p> <p>These duties should not be placed upon each Category 1 responders, but there should be a collective responsibility to ensure that such arrangements are in place in that locality. At fixed sites, the operator should be responsible for public warnings, for flooding it should be the Environment Agency, for severe weather warnings it should be the Met office, and for mobile emergencies (chemical leaks from road tankers) it should be the police.</p> <p>Should be amended to: “maintain <i>appropriate</i> arrangements to warn the public, and to provide appropriate advice to the public, if an emergency is likely to occur or has occurred.”</p> <p>Central Government should establish the policy and take the lead on this very important issue. A national programme to educate the public in these matters is long overdue.</p> <p>This will need to be supported by extra central funding which explanatory notes elsewhere make clear will not be available.</p> <p>Regulations, and the advice needed to support the different sections and powers contained in the draft Bill, should receive wide public consultation prior to being passed by Parliament. All organisations and partners should be asked to contribute properly and fully to the debate on these issues.</p> <p>Only examination of any regulations issued and their detail will determine whether the right balance has been struck. It is particularly important that a proper consultation mechanism is put in place that allows for full consideration of the draft regulations before their implementation.</p> <p>The Bill will only deliver if the regulations define standards and performance management systems.</p> <p>Regulations should define a coordinating, training and advice role for county councils so that there is no duplication of work in their area. The proposal to continue civil defence arrangements so that county councils take full responsibility for civil protection planning in their area should be dropped.</p>	<p>ACPO, CC EV 98, question 2</p> <p>BT, CC EV 102, para 1, d</p> <p>National Council for Civil Protection, CC EV 76, question 2</p> <p>Oxfordshire County Council, CC EV 4, para 8</p> <p>North Wales Strategic Emergency Planning Group, CC EV 26, para 8</p> <p>Cleveland Emergency Planning Unit, CC EV 59, question 4</p> <p>Ceredigion County Council, CC EV 85, question 1</p> <p>Ian Loughborough, CC EV 45, appendix A3</p> <p>Western Power Distribution, CC EV 60, para 16</p>
2 (1)(g)	<p>[Category 1 Responders shall] maintain arrangements to warn the public, and to provide appropriate advice to the public</p>		
2 (2)	<p>A Minister of the Crown may make regulations about -</p>		
2 (3)(e)	<p>[Regulations may] 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</p>		
		<p>It should be a norm that the interface between Category 1 and 2 responders is at county level, not at district level, and this should be reflected in the Bill as a mandatory arrangement, not as an option to be decided later under clause 2(3)(e).</p>	

2 (3)(g)	[Regulations may] permit or require a person or body listed in Part 1 or 2 of Schedule 1 to cooperate, 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)	The Council would urge the Government to recognise specifically the importance of establishing and maintaining multi-agency contingency planning at a local (borough or equivalent) level and to apply another term to arrangements operated at county (or similar) level.	Bolton Metro Commercial Services, CC EV 95, question 5
		Most telecom businesses have a national presence and it would be impractical for each to be represented at local or even regional resilience forums. It is suggested that proposals be developed jointly with their industry body, UKCTA, and their regulator Ofstel for appropriate representation.	United Utilities, CC EV 73, question 2
		Multi-agency arrangements exist virtually everywhere already. The rules regarding membership, chairmanship, frequency of meetings should, as now, remain flexible.	National Council for Civil Protection, CCEV 76, question 5
2 (3)(h)	[Regulations may] 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)	There is already difficulty over the provision of such data on vulnerable persons between the Health Economy and local authorities and this Act is unlikely to override the Data Protection Act. Partners would still be able to refuse to supply information on those vulnerable people protected by the Data Protection Act.	Oxfordshire County Council, CC EV 4, para 10
		Regulations under this clause may require Category 2 responders to provide information of a sensitive nature from a data-protection, commercial or security perspective. Although safeguards in the consultation document are noted, these have no legal standing. This needs to be addressed.	United Utilities, CC EV 73, question 4

		The Bill itself (rather than regulations made under the Bill) needs to provide for the designation of certain information as confidential and for a duty on those in receipt of that information to keep it confidential unless otherwise agreed by the provider.	CE Electric UK, CC EV 81, question 2
2 (3)(i)	[Regulations may] permit or require a person or body to perform 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	This does not seem to make any provision for non or poor performance from partners on whom another body relies for data/plans.	Oxfordshire County Council, CC EV 4, para 11
4	Advice and assistance to business	Potentially, this could be a resource intensive activity and as the Bill doesn't allow for any increase in overall funding, this may mean that emergency planning activity has to be diverted from other areas of greater importance. The ability to charge for advice and information seems to be on an ad hoc basis and this arrangement, in reality, would not allow the provision of a quality service. There is also a general lack of expertise in this area and there would be difficulty in filling the skills gap in this area.	Wigan Council, CC EV 72, para 3
		The 'promotion of business continuity' must be defined, in the Bill or regulations, either in terms of extent or degree of effort.	National Council for Civil Protection, CCEV 76, question 1
		This is worryingly open-ended. The mandatory requirement to provide BCM advice should be amended to a discretionary power.	LGA, JCEV 10, para 3.3.1
		Not all agencies are satisfied that they could cope with the Bill's Business Continuity issues. Some have Business Continuity Officers in post. Others would have to find additional finance to fulfil these requirements.	Nottinghamshire Emergency Services Liaison Group, CC EV 82, question 2
4 (3)(a)	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)	Recognition should be given to the fact that although local authorities may be able to charge for providing business continuity advice and support to local businesses, in reality it is unlikely that most of the small businesses will be able or willing to pay for this support. If this activity is to be successful then the shortfall in funding will need to be provided by Government through additional resources.	London Borough of Barking and Dagenham, CC EV 84, question 8
5	General measures	The measures in clause 5 are insufficiently robust to ensure that all local responders play a full part in the new arrangements. Local Resilience Forums should be given statutory powers and duties, which should appear on	LGA, JCEV 10, para 3.4.1

		the face of the Bill, to ensure improved liaison between districts and counties and other agencies.	
6	Disclosure of information	ACPO has concerns that this could include secret and/or confidential information. Care will have to be taken in drafting such regulations.	ACPO, CC EV 98, chapter 2
8	Monitoring by Government	The provision of information needs to be two way and Government departments should not shelter behind the over-classification of information and material. Specialist auditors may be necessary to monitor the implementation of the draft Bill. The existent audit systems have failed in the past, in relation to the fuel crisis and foot and mouth. There is serious concern about the process of monitoring. Who will set the standards and how will performance indicators be monitored? Will all agencies be inspected to the same degree and will standards be the same across all agencies? The need for an external audit of performance is questionable. Instead a form of self assessment should be established that can be completed by each authority and then be submitted to the Cabinet Office or Regional Government Office for accreditation. There is concern that existing audit processes may not address the qualitative issues that need to be addressed in emergency planning. An audit regime should measure capacity and competence that is not readily quantified. Multi-agency working must form part of the auditing process, requiring an integrated approach by the inspecting regimes.	Oxfordshire County Council, CC EV 4, para 13 Hereford and Worcester Combined Fire Authority, CC EV 23, chapter 3 North Wales Strategic Emergency Planning Group, CC EV 26, para 10 Iain Berry, Mid Beds, CC EV 63, question 9 Bristol City Council, CC EV 69, question 9
9	Enforcement	Given the very wide range of organisations listed at Category 1 or 2 responders, the scope for misuse of generalised requirements in the Bill, and the fact that this relates to Part 1, the powers under clause 9 should be limited to a Minister of the Crown only.	Western Power Distribution, CC EV 60, para 17
10	Provision of Information	The Data Protection Act may apply to this clause	Oxfordshire County Council, CC EV 4, para 14
12	National Assembly for Wales	There are serious constitutional and political problems concerning the role and responsibilities of the devolved administration – in particular the Welsh Assembly Government. These must be resolved or may result in potentially unworkable legislation.	North Wales Strategic Emergency Planning Group, CC EV 26, para 6
	PART 2 – EMERGENCY POWERS		
17	Meaning of “emergency”	Because of this definition, the draft Bill will apply to a bewildering range of industrial action which could easily be construed as constituting a ‘serious threat’ to what are not always emergency situations: for instance, a teacher’s strike would under this definition constitute a serious threat to the welfare of all or part of the population of the UK. The draft Bill gives the government temptingly wide powers capable of being unlocked on altogether too low a threshold. In the hands of the drafters of this Bill, the ordinary becomes the exceptional, the serious challenges of everyday life being seen not as (merely) serious challenges but as evidence of an emergency situation.	Professor K D Ewing, JC EV 2, para 6 Professor C A Gearty, JC EV 3, para 4

		requiring emergency powers. The Bill so expands the meaning of what is an “emergency” that it risks making a further major push in the direction of guiding us to the false understanding that we must all learn to live in a situation of permanent emergency, with the consequent erosion of our democratic and civil liberties culture. We would reject any notion of an ‘emergency’ based on a ‘threat to security’ that did not also pose a threat to public safety and physical well-being. The definition of emergency adopted in the Bill is unduly wide for the purposes of industrial disputes and permits powers to be taken which may be disproportionate where industrial action is of limited impact or duration. It would be preferable for industrial action in essential services to be the subject of separate legislation. Here the word ‘serious’ is used to qualify the threat to a service or activity, rather than a situation or event which might objectively be thought to be serious. An air of unreality and a complete lack of proportionality thus inform the definition of an emergency.	JUSTICE, JC EV 15, para 16 Professor G Morris, JC EV 5, para 1 Professor K D Ewing, JC EV 2, para 7
17 (1)	“emergency” means an event or situation which presents a serious threat to – (a) the welfare of all or part of the population of the United Kingdom or of a Part or region	The regions need to be included in the draft Bill, but consideration should also be given to including areas smaller than regional. This should not allow the Government to abdicate overall responsibility, however.	Dudley Metropolitan Borough Council, CC EV 47, question 14
17 (1)(a)		Consideration should be given to sub-regional areas where special legislative powers could alleviate or assist in solving a major incident of a local nature (e.g. flooding, CBRN). This is very wide indeed.	Brighton and Hove City Council, CC EV 88, question 11 David Bonner, JC EV 1, para 6
17 (1)(c)	the political, administrative or economic stability of the United Kingdom or of a Part or region	The inclusive definition of these threats is too wide and provides little guidance on how the powers would in fact be deployed in practice: Any disruption of Government activities, however trivial, necessarily amounts to a political/ administrative threat. The Government could, in principle, declare a state of emergency and suspend all primary legislation if faced with potential political instability. The “essentials of life” that should be protected by the ability to resort to emergency powers should be considered very carefully. Is ‘education’ of the same weight as life, food, fuel and medical services?	Liberty, JC EV 14, para 20 David Bonner, JC EV 1, para 6
17 (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 –		
17(2)(e)	disruption of a supply of food, water, energy, fuel or another essential commodity	An ‘essential commodity’ needs to be more clearly defined. What is it and who decides what it is?	Professor K D Ewing, JC EV 2, para 4
17(2)(h)	disruption of medical, educational or other essential service	The Bill needs to clarify what an ‘essential service’ is. It should also be explained why education is an essential service which requires the support of emergency powers.	Professor K D Ewing, JC EV 2, para 5
18	Royal Proclamation	The Scottish Parliament, Welsh Assembly Government and Northern Ireland Assembly should be allowed under this legislation to declare an emergency itself and take whatever special legislative measures it believes are necessary to deal with it – within its competence as a devolved administration. The UK Government should only be involved where the measures required are outside that devolved competence. The ability to invoke emergency powers should fall to the devolved administrations in Wales, Northern Ireland and Scotland and remain with Ministers in England. The fixed 30 day period for a proclamation or order is too inflexible to satisfy proportionality	North Wales Police, CC EV 28, questions 18, 19 and 20 Welsh Ambulance Services NHS Trust, CC EV 52, question 15 Liberty, JC EV 14, para 25
19	Declaration by Secretary of State	It is entirely inappropriate that such wide-ranging powers remain with the Secretary of State who may be motivated by purely political reasons. Significant changes to the principles of British Constitutional law should not be incorporated within this legislation. Surely in these days of advanced technology, the Queen is always available. A constitutional change is only acceptable if that were not the case. Unless a Royal Proclamation is impossible (death of the Queen with no immediate accession possible) the delay in obtaining a Royal Proclamation is only marginal. No further powers should be taken by the Secretary of State in this instance. Where it is necessary to invoke such a provision, the power should, in the first instance, be vested in the Prime Minister (in respect of England and Wales), be of shorter duration and be subject to immediate Parliamentary scrutiny. We would suggest that where possible the Secretary of State’s decision be confirmed by the Queen as Head of State as soon as is practically possible.	Oxfordshire County Council, CC EV 4, para 15 Uttlesford District Council, CC EV 8, question 16 East Sussex County Council, CC EV 56, question 17 Brighton and Hove City Council, CC EV 88, question 16
20(1)(b)	While a proclamation under section 18 is in force –	Delete these two clauses – there is unlikely to be such a severe incident that delay would not be acceptable. It will take time to mobilise any response from outside the local area and local responders will cope with the immediate emergency. Existing legislation and Royal procedures presumably already take into account any	Bolton Metro Commercial Services, CC EV 95, question 19 Barnet London Borough, CC EV 20, para 16 Oxfordshire County Council, CC EV 4, paras 17 and 67

)	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)	incapacity of the Monarch or lack of immediate access. There would therefore not be any significant delay in seeking a Royal Proclamation.	
20 (2)(b)	An order under this section must state – (b) the Parts of the United Kingdom or regions in relation to which the regulations may have effect.	Applying special legislative measures on a regional basis is unnecessary in such a small country. This model would appear to mirror much larger countries such as America where such legislative measures are supported by immediate finance based on the declaration of an emergency. Such regional legislative measures are also a danger to democracy, as a national declaration of emergency should involve the Monarch and Parliament and can act as a check on Ministers.	Oxfordshire County Council, CC EV 4, paras 59-60
		This should be included only if the ‘triple lock’ safeguards are included within the primary legislation.	Torbay Council, CC EV 48, question 16
21	Scope of regulations	Such measures as the destruction of property, plant and animal life; control of movement; prohibition of travel; prohibition of assemblies and hefty fines have no place in emergency planning legislation. These are public order issues and should be included in Public Order or Criminal Justice Acts. Some limits are set by clause 21(1) – setting an initial threshold of seriousness – and by clause 21(4). However, in view of the limitation of judicial review under the <i>Wednesbury</i> doctrine (which will be the standard to be applied in considering whether clause 21(1) is satisfied) and the broad range of clause 21(3), these safeguards are inadequate. It has been generally accepted in Scotland that planning in detail does not work and that generic plans (or better management arrangements) works in every situation.	Oxfordshire County Council, CC EV 4, paras 62 Professor I Leigh, JC EV 4, para 1
21(1) (2) and (3)		Should begin ‘subject to sections 21(4), 23, 25 and 26.	David Gurney, EPO, Dumfries & Galloway Council, CC EV 5, para 5 David Bonner, JC EV 1, para 15
21 (2)	In particular, regulations may make any provision which the person	Once clause 21(2) is invoked it provides a gateway into the range of powers under clause 21(3) with too little continuing regard to the initial ‘triggering’ factor.	Professor I Leigh, JC EV 4, para 1

	making them thinks necessary for the purpose of -			
21 (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	Not all clause 21(2) purposes are equally serious. However, all of these purposes trigger the full range of clause 21(3) powers, notwithstanding. A better approach would be to band the clause 21(2) purposes and the available powers under regulations according to seriousness. Since Parliament is sovereign and can, subject to the ECA 1972, make whatever provision it likes, that language detracts from the intent that clause 21(4) sets substantive limits, a detraction the more worrying in that clause 21(4)(j) enables the making of regulations to “disapply or modify an enactment or a provision made under or by virtue of any enactment”.	Professor I Leigh, JC EV 4, para 1 David Bonner, JC EV 1, para 15	
21 (3)(a)	Regulations may – (a) confer a function on a Minister of the Crown or other specified person	This is potentially open to serious abuse, if, say, unlimited powers are given to a minor unaccountable official, particularly as there will be offences of non-compliance/ obstruction. The Bill needs to circumscribe the power to issue directions.	BT, CC EV 102, para I, c	
21 (3)(b) and (c)	regulations may – (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)	This may need clarification – will this individual be an elected official, a Category 1 or 2 Responder or some other person? All reference to “without compensation” should be removed. Such draconian powers will only lead to unnecessary civil unrest and lack of co-operation, which will hamper the local recovery effort.	NHS London, JC EV 7, para Oxfordshire County Council, CC EV 4, para 18	
21 (3)(d)	regulations may – (d) prohibit, or enable	This may authorise detention without trial and the house arrest of specified individuals.	Professor K D Ewing, JC EV 2, para 13	

	the prohibition of, movement to or from a specified place		“other than Part 2 of this Act” should be added at the end of this clause. This would enable a ban on picketing outside a workplace. Peaceful picketing within the general law (which itself is highly restrictive) should be exempted from this provision.	David Bonner, JCEV 1, para 15 Professor G Morris, JC EV 5, para IV
21 (3)(f)	Regulations may – (f) prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times		There is no specific power of arrest and no specific authority to use force when dealing with offences proposed at clause 21 (3)(i).	ACPO, CC EV 98, chapter 1
21 (3)(i)	Regulations may – (i) create an offence of -		Current legislation and the draft Bill deal only with setting limits to ‘punishment’. Neither prohibit the making of a regulation which would allow interment or detention without trial, since preventative detention for the public good may well not be characterised by government as punishment but merely preventative action. The Bill should be amended to preclude the possibility of resort to interment without trial by this backdoor method. This power should be used to protect utility companies, acting under these regulations, from Human Rights Act challenges during the course of the emergency or subsequently.	David Bonner, JC EV 1, para 13 EDF Energy, CC EV 75, question 17
21 (3)(j)	regulations may – (j) disapply or modify an enactment or provision made under or by virtue of an enactment		This clause is of particular concern. ‘Enactments’ at risk could include the Human Rights Act 1998, Police and Criminal Evidence Act 1984, Public Order Act 1986, Regulation of Investigatory Powers Act 2000, the Terrorism Act 2000 and the Anti-Terrorism Crime and Security Act 2001. In all of these cases, Parliament has already balanced civil liberties and community interests. It should not be open to the Government to set these balanced schemes aside by regulations under clause 21. Either specific Acts dealing with emergencies should be exempted under clause 21 or clause 21(4) should be strengthened. In principle, this could even include a power to disapply any part of the Human Rights Act or the Section 24 HR a requirement for Parliamentary approval of the regulations in the Bill itself. In its present unrestricted ambit, clause 21(3)(j) is not Convention compatible. This would presumably include a power to confer criminal jurisdiction and sentencing on military tribunals. What is in mind here, and why should any such regulation not be subject to judicial scrutiny to ensure that it complies with the right to a fair trial in article 6 of ECHR?	Professor I Leigh, JCEV 4, para 1
21(3)(l)	regulations may – (l) confer jurisdiction on a court or tribunal (which may include a			Liberty, JC EV 14, para 37 Professor K D Ewing, JC EV 2, para 17

	tribunal established by the regulations)		
21 (4)	Without prejudice to the generality of subsection (1)(a), regulations may not	It is inappropriate wording, not found in the current EPA 1920, to have a sub clause setting out to limit a very broad rule-making power set out in 21(1) and amplified in 21(2) and (3).	David Bonner, JC EV 1, para 15
21 (4)(a)	Regulations may not – (a) require a person, or enable a person to be required, to provide military or industrial service	The inability to require industrial service may render ineffective the power to requisition specialist equipment as provided by 21 (3)(b). It should be deleted.	ACPO, CC EV 98, chapter 1
21 (4)(b)	Regulations may not – (b) prohibit, or enable the prohibition of, a strike or other industrial action	This is narrower than the corresponding provisions of the 1920 Act s 2(1). This provides that no regulations are to make it an offence ‘to <i>take part</i> in a strike, or peacefully to persuade any person or persons to take part in a strike’. Under the new formula it will not be possible to prohibit a strike but may be possible to make it unlawful for specific groups of workers to take part in it. This would mean for the first time since 1875, a peacetime government in the UK will have taken the power to make participation in a strike or other industrial action a criminal offence, punishable by up to three months imprisonment. This does not prevent changes to individual employment rights, such as the unfair dismissal protection afforded to employees for taking ‘protected industrial action’ or the preservation of continuity of employment for those who take part in a strike. Provision should be made to ensure that these changes cannot be made under clause 21 (3)(i).	Professor K D Ewing, JC EV 2, para 8 Professor G Morris, JC EV 5, para IV
21(4) (d)	Regulations may not – (d) create an offence which is punishable – (i) with imprisonment for a period exceeding three months	There is no power of arrest either implicit in the penalty sections of clause 21 (4)(d) or provided separately in the draft Bill.	Kirklees Metropolitan Council, CC EV 24, para f
		The upper limits of punishment detailed in this clause are low when compared to the consequences of possible offences.	ACPO, CC EV 98, chapter 1
22	Regional and Emergency Coordinators		
		The role of the Regional Tier should be properly established as part of the statutory framework.	Sedgemoor District Council, CC EV 66, question 2

	Any emergency power ought to remain within the remit of democratically elected authorities. If there is to be any delegation to officers this should be done by central government, in consultation with leaders of local authorities.	Essex Authorities, CC EV 14, para 7
	The Regional Nominated Coordinator should be the 'leader' who can be advised by specialist experts. One person should be appointed with several deputies.	Ian Loughborough, CC EV 45, appendix A10
	The appointment of Regional Nominated Coordinators risks repeating the problems caused by the adoption of lead government departments. The Government should consider leaving leadership and coordination to organisations that provide them during their every day operations, rather than 'a functional leadership' approach, where, for instance the Director of Public Health would lead in a health crisis. Although these people will be competent in their professional field, they will have limited experience in coordinating many agencies in a fast changing scenario.	Surrey Police, CC EV 42, para 6d
	The role of the Regional Nominated Coordinator is unclear. What exactly will they do? How will they manage cross regional resources? What training, experience or practice will they have? How quickly will they need to respond? On what basis is the 'functional' model proposed in the draft Bill shown to be effective?	Wiltshire Fire Brigade, CC EV 32, chapter 2, para 20
	Such a procedure of incident dependent nomination of the RNC does not promote the important role of leadership, team building and decision making in times of crisis. A more effective approach would be to have a permanent Regional Nominated Coordinator who can work with the relevant emergency planners and experts in advance of an incident, perhaps through RCCCs, RRTs or RRFs in developing these relationships, plans and methods.	Dr Rodney Day, University of Hertfordshire, CC EV 18, para 8
	There is also a need to clarify the relationship between the local Strategic Coordinating Groups and the RNC, otherwise there could be duplication and confusion.	East Sussex County Council, CC EV 56, question 10
	There is concern at the absence of elected representation within the regional tier.	Devon Fire and Rescue Service, CC EV 58, para 2 and question 10
	It is essential that there is absolute clarity of purpose and an awareness of the difference of role between the RNC and the Gold Commander managing the response to the incident. There is also concern that the RNC may take responsibility for, "explaining the response to the emergency to the public through the media." This currently falls to Gold Command and there is a real danger that results in a conflicting message. Absolute clarity of role is essential.	
	The draft Bill needs clarification – Regional Nominated Coordinators are not appointed until special legislative measures have been decided appointed (at Level 3), but are expected to chair level 2 meetings. This appears to be inconsistent.	Dudley Metropolitan Borough Council, CC EV 47, question 10
	If the RNC is not nominated until the crisis is upon him/her, then he/she will not have had the benefit of having tested the regional organisation, its communications and constituent specialist services by proper exercises – and the time to make mistakes is in exercises not during a major terrorist incident.	Dr Robin Woolven, CC EV 123, para 1
	Regional Resilience Teams have now been established and the head of these teams should undertake the role of Regional Nominated Coordinator. Regional Nominated Coordinators appointed from a lead organisation might	Torbay Council, CC EV 48, question 10

	<p>not have the broad overview and leadership qualities required to fulfil their envisaged role. The role of Regional Resilience Teams should also be included within the framework of the Bill.</p> <p>A requirement should be written into the draft Bill that nominations for a Regional Nominated Coordinator should be made in consultation with agencies involved in emergencies and that the Secretary of State should keep under review the appointment of any RNC.</p> <p>The Council believes that the RNC should be drawn from a panel of pre-designated individuals known to, and able to engage with, local responders (as well as regional contributors) at the planning stage.</p> <p>To be effective the Regional Nominated Coordinator should have authority to direct the various components of the response operation. They should have similar powers to the Secretary of State's Representative for Marine Salvage and Intervention and sit above the marine Response Centre, Shoreline Response Centre and Environment Group in order to ensure strong overall direction, coordination and communication. The new position would therefore provide a genuine benefit to any response and not merely present an additional level of bureaucracy in the command structure.</p> <p>Where does the Welsh Assembly Government fit into the process? Could or would a Welsh Assembly Government Minister ever be appointed as a Regional Nominated Coordinator? An Emergency Coordinator (RNC) should be answerable directly to the Welsh Assembly Government via his/her Civil Contingencies Committee. There are serious constitutional issues about whether an Emergency Coordinator could have the authority and ability to deploy all and any multi-agency resources as some functions lie with the Welsh Assembly Government and some do not.</p> <p>Consideration must be given to the need for the Regional Nominated Coordinator to have close links with the Regional Resilience Forum. The need exists for an Emergency Coordinator to control the resources required to mitigate an emergency, but it is not clear how control will be achieved where constitutional differences exist.</p> <p>Further clarification is needed regarding funding of any requirements set by the RNC. If the RNC declares certain action should be taken that is beyond the local resource level, even given partnership working, there must be funding available, either through a new version of the Bellwin Scheme or from central government.</p> <p>If the emergency is affecting the region so severely that the Minister has decided it is necessary to apply emergency powers, then it should be a democratically elected Minister who chairs the strategic decision making group and is subsequently accountable for the actions taken, rather than an appointed official such as a Chief Constable.</p> <p>The whole concept of a regional tier is flawed, primarily because the Government Offices of the Region, do not, in fact, have direct day-to-day control of central Government resources to bring to the response. NCCP can only think of two examples of existing arrangements where there is already significant integration of central government and local resources – radiation release from a nuclear power station and a major terrorist/ hostage situation. In both cases there is no 'regional' role at all.</p>	<p>LFEPA, CC EV 17, para 12</p> <p>Bolton Metro Commercial Services, CC EV 95, question 5</p> <p>International Tanker Owners Pollution Federation Limited, CC EV 21, para 3.5</p> <p>North Wales Police, CC EV 28, question 10 and 21</p> <p>Welsh Ambulance services NHS Trust, CC EV 52, question 10 and 21</p> <p>Cleveland Emergency Planning Unit, CC EV 59, question 10</p> <p>National Council for Civil Protection, CC EV 76, questions 10 and 11</p>
23	Duration	United Utilities, CC EV 73,

		have been required under such powers to take actions that are contrary to normal regulations and good practice. This could result in operational commitments (for example, installation of utility assets) that it is physically impossible to de-commission rapidly should the emergency powers not be renewed. It is not clear what legal protection exists for Category 2 responders in such circumstances, against the resumption normal statutes, regulations and standards.	question 4
23 (4)	... the new 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).	The strong implication in this clause is that regulations will continue in force without the need to be approved by Parliament. Thus Parliament loses the formal power to scrutinise the government's claim that the regulations as issued continue to be needed, even though the nature of the emergency may have changed.	Professor K D Ewing, JC EV 2, paras 13 and 14
		The possibility of an indefinite renewal of a proclamation or regulations under clause 23(3)-(4), albeit subject to Parliamentary scrutiny, is disproportionate. If an extended period of emergency exists (ie. in excess of 30 days) there is necessarily time to debate and pass (temporary) primary regulations. This is more democratic than repeated monthly renewals.	Liberty, JC EV 14, para 25
24 (1) and (2)	If Her Majesty makes a proclamation under section 18 the Secretary of State shall as soon as is reasonably practicable notify –	This clause should require immediate notification – the Lord Chancellor and Speaker of the House of Commons are always available.	Liberty, JC EV 14, para 31
24 (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	This clause should require the Secretary of State to lay the regulations before Parliament <i>by the time it meets</i> – especially since oral directions under the regulations are permissible.	Liberty, JC EV 14, para 31

24 (7)	<p>before Parliament.</p> <p>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</p>	<p>Parliamentary power over the regulations laid is diminished to 'accept or reject' whereas under s.2(4) of the Emergency Powers Act 1920, the regulations can by resolution of both Houses of Parliament be added to, altered or revoked.</p> <p>It may be better to enable parliamentary amendment of the text of regulations. This would require affording a shorter debate than on Bills, but enable one longer that the usual maximum 90 minutes on regulations.</p>	David Bonner, JC EV 1, para 11r
25	<p>Human Rights Act</p>	<p>It does not seem correct to exclude human rights to enable legislation to be enacted, especially where provision already exists for human rights to be suspended in the event of a public emergency which threatens the life of the nation as a whole.</p> <p>Many of the rights protected by the Human Rights Act may be suspended when there is a public emergency that threatens the life of the nation. Therefore emergency regulations should be treated as secondary legislation and subject to injunction.</p> <p>This would remove an important protection.</p>	Adur District Council, CC EV 77, question 17
			Torbay Council, CC EV 48, question 17
			LFEPA, CCEV 17, question 17
			Ian Loughborough, CC EV 45, appendix A17
			David Bonner, JC EV 1, paras 18, 19 and 21.
			Liberty, JC EV 14, paras 32 and 35
			Professor K D Ewing, JC EV 2, para 16

		disproportionate concern. It is important to note that Convention rights are heavily qualified and would allow for some dilution of standards when there is a genuine emergency. Why does the Government feel that provision of this kind fails to provide the flexibility that it might need in an emergency? What steps does the Government have in mind to take in regulations that would fall foul of the Human Rights Act?		David Bonner, JC EV 1, para 17
26(4)(b)	But – (b) a failure to satisfy a requirement to consult shall not affect the validity of regulations	As drafted this clause precludes invalidation for <i>any</i> failure to consult. The policy intent was for such preclusion only to have effect where consultation as dispensed with no grounds of urgency (i.e. where the power in clause 26(4)(a) was exercised). The paragraph should be amended to give effect to that narrower intent, to read: “(b) where that power is exercised, that particular failure to consult shall not affect the validity of regulations.”		
27	Procedure Regulations made under section 21 shall be made by statutory instrument (whether or not made by Order in Council).	Is it appropriate for regulations to be made by statutory instrument in the light of the constraints this places on their amendment? Technically, regulations made under the 1920 Act are not statutory instruments because the 1920 Act excluded the application of the Rules Publication Act 1893 (see Statutory Instruments Act 1946, s.1(2)), although in practice they have been numbered and printed as such.		Professor G Morris, JC EV 5, para II
Schedule 1	Category 1 Responders [leadership]	It is not clear who has the primary responsibility for leading and coordinating those organisations grouped as Category 1 responders. This would be best carried out at local authority level given their role in community leadership. Clear responsibility should be placed on one of the Category 1 responders for joint working and multi-agency planning.		Dr Rodney Day, University of Hertfordshire, CC EV 18, paras 4-5
		The police should be given responsibility for coordinating civil protection and resilience planning, as they are already responsible for coordinating the multi-agency response in the vast majority of emergencies and the Local Resilience Forums are to be established in Police Force areas.		Ian Loughborough, CC EV 45, para 5
		Lead organisations within Category 1 should be identified to be responsible for a) coordination of emergency preparedness – local authorities would be well placed to provide the focus for this where their boundaries coincide with the police. This would be problematic where a police boundary includes a number of Category 1 local authorities. b) coordination of emergency response – in most emergencies the police provide this coordination and leadership through the Strategic Coordination Group. Partner organisations should be required to respond to an emergency as directed by this Strategic Coordinating Group. c) coordination of the recovery following an emergency – this normally falls to local authorities.		Surrey Police, CC EV 42, paras 3a and b, 4
	[Local authorities]	Include the third tier of local government – the town and parish councils. Every town and parish council has a parish hall and sometimes other buildings at their disposal. Most have washing and toilet facilities. If there were to be a mass evacuation from central London, the town and parish councils could therefore assist in helping to		Frank Parker, Metropolitan Police, CC EV 12, para 3-4

	provide valuable resources and shelter in the form of a short term refuge for displaced persons.		
	Include the term 'Unitary District Council' in the list of Category 1 responders in order to more clearly define the responsibilities of the various tiers of government that exist within the County.		Essex Authorities, CC EV 14, part 2, question 2, para 3
	The District Council seeks better definition for the responsibilities within each category. It cannot support the view that no additional resources are required to meet the wider scope and potentially higher standards envisaged by the Bill. The draft Bill, as drawn, and with the prospect of regulations that deny Category 1 response, effectively makes districts Category 2 responders, notwithstanding their inclusion in Category 1.		Rochford District Council, CC EV 22, part 1 para 2 and part 2 para 2
	The draft Bill provides for regulations to be made which will allow county councils to plan on the basis of the full range of local authority functions for their area, including those of the districts. This effectively demotes districts to Category 2 responder.		Uttlesford District Council, CC EV8, question 2
	The proposal that county councils should take full responsibility for local authority civil protection planning in their area is unworkable. County Councils should have a responsibility to coordinate local authority civil protection and the BCM work with the community in their area. They should also provide advice, training and exercising that is often more efficiently delivered across their area from a single emergency planning team.		Ian Loughborough, CC EV 45, para 7
	Under the proposals, counties and districts will each have the same basic responsibilities, which could result in conflicting arrangements.		Nottingham City Council, CC EV 49, question 2
	Shire districts should be in Category 1. However, regulations will need to define what is meant by the 'local authority civil protection planning' role that county councils will undertake on behalf of the district councils in their area. This should surround the areas of representing, coordinating, training and advising so that there is no duplication of work in their area. Because the support of chief officers and service managers is vital districts should still be required to plan, but in cooperation with, and under the guidance of the county council.		East Sussex County Council, CC EV 56, question 3
	There may be a case for reclassifying district councils as Category 2 responders, with a clear requirement to ensure that their emergency planning procedures are aligned with those of county councils.		EDF Energy, CC EV 75, question 3
	The Bill places a duty upon the district council but does not provide any funding; it therefore fails to address the aspect of operationally effective or financially efficient. Category 1 should not include districts or boroughs.		Adur District Council, CC EV 77, questions 2 and 3
[Additional bodies]	Hospital Trusts should be included as either Category 1 or 2 responders. Consideration should also be given to including other transport groups, eg. bus and tram operators, Transport for London etc and also petrol and diesel distributors as Category 2 responders, given their ability to cause widespread disruption, including threats to health and safety of the population, in the event of prolonged disruption.		Barnet London Borough, CC EV 20, para 2
	Health service providers should be included as Category 1 responders.		Kirklees Metropolitan Council, CC EV 24, para a
	To ensure involvement in joint planning, Primary Care and Acute Hospital Trusts, and the Health Protection Agency should be added to Category 1.		Devon County Council, CC EV 50, question 3
	Due to the introduction of the environmental dimension to the definition of an emergency, English Nature should also be added.		

	Wales' Ambulance Service, Trusts, Local Health Boards and the National Public Health Service should be considered as Category 1 responders, as the duties required in the draft Bill are those currently being delivered.	North Wales Health Emergency Planning Group, CC EV 51, para 3
	Selected voluntary organisations should be included in a third category of responders or within the Category 1 membership.	Civil Defence Association, CC EV 67, question 3
	Parish and Town councils should be included in the consultation process and involved in both the preparation of and execution of emergency plans.	
	'Police Forces' should also include the British Transport Police, the UKAEA Constabulary and the Ministry of Defence Police. The most glaring omission is that of central Government, who should be integrated with the local response and planning organisation but not necessarily superior to it.	Brent Council, CC EV 68, question 3
	Port Police should be included as Category 1 responders.	Bristol City Council, CC EV 69, question 3
	The Red Cross should be included as a Category 1 responder in the Bill, given the legal functions established under its Royal Charter and the Geneva Conventions.	British Red Cross, CC EV 91, paras 2 and 3
	The final legislation should place a statutory duty on Category 1 responders to fully involve relevant voluntary organisations in all aspects of civil protection. The resources of the voluntary sector are substantial and will be needed in the event of a national emergency. A requirement to engage with them is an essential part of the primary legislation.	
	The nation's financial controllers (such as the Bank of England, Stock Exchange and Financial Services Authority) should be included in the categories, as any incident that reduced the UK's ability to actively participate in the world's financial markets would have a serious impact.	City of London Police, CC EV 53, question 3
[Central and regional government]	Lead Government departments should be identified within parts 1 and 2 of Schedule 1.	Kirklees Metropolitan Council, CC EV 24, question 3
	Membership of Category 1 should include Central Government, Scottish Assembly, Welsh Assembly, Northern Ireland Assembly, regions of England, including London, PCTs, HPAs and Health Acute Trusts. Their inclusion is imperative in order that the lead body in any disaster is aware of its legal responsibility and the Bill should not allow for the opt-out of responsibility for any tier of Government who may be taking the lead.	Dudley Metropolitan Borough Council, CC EV 47, question 3
	The role and responsibility of national government should be included. This will help clarify the relationship between all responders. History has shown that the lead government department concept has rarely worked in practice and that civil protection is too important an area of public life for statutory responsibilities not to be imposed on any of the agencies which have key roles in creating a robust culture of resilience.	Brent Council, CC EV 68, question 2
	It seems strange that Government Departments are not included in either category particularly in light of the perceived role of the Regional Resilience teams and the problems in the recent past e.g. foot and mouth.	Calderdale Council, CC EV 57, question 3
	It is surprising that Government departments have "responsibilities to plan, prepare, train and exercise", yet are not to be included in the draft Bill. Similarly, other than the power to appoint Regional and Emergency	Kirklees Metropolitan Council, CC EV 24, question 3

	Coordinators, there is no statutory duty on the new regional administrative tier to undertake any of the functions applied to Category 1 and 2 responders		South East Regional Resilience Forum, []
	Whilst Government Departments have formerly enjoyed Crown Immunity, the withdrawal of that status now raises the question of whether it would be appropriate for national legislation to impose duties on them too, as an integral part of a seamless organisation.		Ceredigion County Council, CC EV 85, question 3
	Central and regional government are conspicuous by their absence and should appear in Category 1 to strengthen the lead department concept. The absence of Government departments contradicts the ethos of response through the Lead Government department principle.		South East Regional Resilience Forum []
	Whilst Government Departments have formerly enjoyed Crown Immunity, the withdrawal of that status now raises the question of whether it would be appropriate for national legislation to impose duties on them too, as an integral part of a seamless organisation.		North Wales Strategic Emergency Planning Group, CC EV 26, para 9
[Military]	The military should be considered for inclusion as a Category 1 responder, as they are already involved in planning a response at local and regional levels in Wales, particularly the Civil Contingencies Rapid Reaction Force which is specifically set up to respond quickly and effectively to such incidents.		London Borough of Richmond upon Thames, CC EV 61, question 3
	The military should be included as a Category 1 or 2 responder, as they have a dual role in the civil contingencies arena - through traditional MAC procedures, the newly formed CCRF, and as possible operators as airports or ports.		
	Organisers of large venues, such as sports stadia should also be considered, particularly given the recent problems at Knebworth and Silverstone		
	COMAH site operators should be included, especially in London where COMAH sites are dealt with through LFEPA, potentially leading to a lack of liaison at the level.		
[Devolved administrations'	The media should also be considered for inclusion, given their pivotal role during an emergency.		North Wales Police, CC EV 28, question 3
[Flexibility]	Where does the devolved Welsh Assembly Government fit into the Category 1 and 2 listings? Should the Welsh Assembly Government be listed as a Category 1 responder, as it has responsibility for key funding on health, ambulances and other services.		Surrey Police, CC EV 42, paras 3a and b, 4
[Additional duties]	Within the subsequent regulations, Category 1 responders should be able to nominate their own Category 2 responders to meet local needs.		ACPO, CC EV 98, question 2
Category 2 Responders	Two further obligations should be imposed on Category 1 responders, namely the requirement to exercise plans and the requirement to train staff to enable those plans to be viable.		National Council for Civil Protection, CC EV 76, question 2
	There should be just one category (Category 1). Practical experience shows that a number of organisations contributing to multi-agency plans, do vastly more in terms of emergency planning than might be considered to be required under Category 2. It would be unfortunate if organisations, which hitherto co-operated fully, were able to point to the legislation as a licence to reduce their input.		

									Wiltshire Fire Brigade, CC EV 32, chapter 2, para 8
	[Additional duties]	All Category 2 responders should be involved at the initial planning stage – they could then contribute to planning scenarios by explaining how scenarios impact on their ability to support emergency and civil protection services. This is currently the case in New Zealand.	Category 2 responders should be involved at the initial planning stage – they could then contribute to planning scenarios by explaining how scenarios impact on their ability to support emergency and civil protection services. This is currently the case in New Zealand.						Dudley Metropolitan Borough Council, CC EV 47, question 2 and 3
	[Emergency responders]	Category 2 agencies have a duty to share information and for business continuity, but no obligation regarding partnership working, attendance at exercises and meetings or to assist Category 1 agencies during an emergency.	Category 2 agencies have a duty to share information and for business continuity, but no obligation regarding partnership working, attendance at exercises and meetings or to assist Category 1 agencies during an emergency.						Nigel Furlong, EPO, UK Atomic Energy Authority, CC EV 2, para 4
		NAIR, RADSAFE and CHEMSAFE emergency responders should be involved within the local planning process and have a statutory requirement for membership of local resilience forums. They should be added to the list of Category 2 responders.	NAIR, RADSAFE and CHEMSAFE emergency responders should be involved within the local planning process and have a statutory requirement for membership of local resilience forums. They should be added to the list of Category 2 responders.						Oxfordshire County Council, CC EV 4, para 49
	[Local authorities]	Town and Parish Councils should be added to Category 2 responders, as they have a role to play in local planning and response. They should have a requirement to assist the district council (in terms of developing a plan and assisting with local knowledge).	Town and Parish Councils should be added to Category 2 responders, as they have a role to play in local planning and response. They should have a requirement to assist the district council (in terms of developing a plan and assisting with local knowledge).						Utilesford District Council, CC EV 8, question 3
	[NHS]	The National Blood transfusion service should be added to Category 2 responders.	The National Blood transfusion service should be added to Category 2 responders.						Derek Scougal, Fife Constabulary, CC EV 9, question 3
		Category 2 responders should include the Health Protection Agency and Primary Care Trusts.	Category 2 responders should include the Health Protection Agency and Primary Care Trusts.						Reading Borough Council, CC EV 38, question 3
		Hospital Trusts and the BBC should be included as a Category 2 responder.	Hospital Trusts and the BBC should be included as a Category 2 responder.						Wandsworth Borough Council, CC EV 41, question 3
	[Voluntary]	Consideration should be given to including some voluntary organisations.	Consideration should be given to including some voluntary organisations.						Philip Bostock, Exeter City Council, CC EV 13, question 3
		The draft Bill could impose a duty to involve, consult and train ‘Category 3’ responders – the voluntary sector. Voluntary bodies should not have an imposed duty, but they are a vitally important part of civil contingency planning.	The draft Bill could impose a duty to involve, consult and train ‘Category 3’ responders – the voluntary sector. Voluntary bodies should not have an imposed duty, but they are a vitally important part of civil contingency planning.						Wiltshire Fire Brigade, CC EV 32, chapter 2, para 8
	[Transport]	Include the Highways Agency as a Category 2 responder.	Include the Highways Agency as a Category 2 responder.						Hereford and Worcester Combined Fire Authority, CC EV 23, chapter 3
		Bus operating companies and/ or transport authorities with bus operating responsibilities should be included as Category 2 responders. Aircraft operating companies should also be considered.	Bus operating companies and/ or transport authorities with bus operating responsibilities should be included as Category 2 responders. Aircraft operating companies should also be considered.						Kirklees Metropolitan Council, CC EV 24, para b and question 3
		Ferry operators ought to be included (unless they already are under ‘harbour authorities’)	Ferry operators ought to be included (unless they already are under ‘harbour authorities’)						Bristol City Council, CC EV 69, question 3
		Bus and coach operators should be included in Category 2. Agencies that are not listed in either Category 1 or 2 should, with consent of the Local Resilience Forum, be adopted (locally) on a temporary or permanent basis if appropriate.	Bus and coach operators should be included in Category 2. Agencies that are not listed in either Category 1 or 2 should, with consent of the Local Resilience Forum, be adopted (locally) on a temporary or permanent basis if appropriate.						Iain Berry, Mid Beds, CC EV 63, question 3

		Add Eurostar to the list of train operators under the draft Bill.	Terry Shea, CC EV 43
[Media]		The BBC should be a Category 2 responder given their vital role in issuing public information during a crisis.	Wandsworth Council, CC EV 25, question 3
		Some representation of the broadcasting and media organisations should be included in Category 2.	Nottingham City Council, CC EV 49, question 3
		Broadcasters provide an essential service in warning and informing the public and should be considered as potential Category 2 responders.	Oftel, CC EV 116, para 3
[Military]		As Civil Contingency Reaction Forces are being established, the Armed Forces should be included as Category 2 responders.	Torbay Council, CC EV 48, question 3
		Whilst MOD Regular Forces could not be listed, the new reserve forces' Civil Contingencies Reaction Forces have been created specifically and solely to deal with such tasks and could be included in Category 2. Whilst Government Departments have formerly enjoyed Crown Immunity, the withdrawal of that status now raises the question of whether it would be appropriate for national legislation to impose duties on them too, as an integral part of a seamless organisation.	South East Regional Resilience Forum, []
		The military should be included.	Devon County Council, CC EV 50, question 3
[Utilities]		It could be argued that the utility companies and major transport undertakers should also be included in Category 1, bearing in mind their importance to the national infrastructure, particularly in an emergency situation.	Calderdale Council, CC EV 57, question 3
		Electricity generators should be specifically included.	Wigan Council, CC EV 72, question 3
		Other gas utility organisations should be included. The only gas utility identified is Transco, which may be intended to reflect Transco's role in providing a national gas emergency service. However, other organisations, including United Utilities, hold IGT licences for the operation of gas distribution networks.	United Utilities, CC EV 73, question 2
		It should be borne in mind that the revenues of most utility companies are price capped by their regulators and, in this context, we are therefore concerned that the Bill makes no provision for cost-recovery by those companies in relation to obligations that may be placed on them by or under the new framework.	EDF Energy, CC EV 75, question 2
		Major chemical and/ or pipeline companies who activities have the capacity to create an emergency or compound the effects of a pre-existing situation should become Category 2 responders. Category 2 should also include the Road Haulage Association and/or Highways Agency and organisations that have an emergency response through national schemes (National Arrangements for Incidents Involving Radioactivity (NAIR), RADSAFE and CHEMSAFE).	Cleveland Emergency Planning Unit, CC EV 59, question 3
		Consideration should be given to all nuclear licensed sites being Category 2 Responders. This could facilitate the integration of existing nuclear emergency arrangements with the proposed regional structure.	British Nuclear Fuels plc, CC EV 146, para 4
[Private organisations]		Private hospitals and road transport should be included in Category 2. Railways should include privately owned railways. There is no mention of Norwich International Airport.	Norfolk County Council, CC EV 96, question 3

	<p>There are also particular organisations whose cooperation may be vital to comprehensive planning, such as the operators of major shopping, leisure and sporting complexes. Equally, the cooperation of the organisers of major public events is vital. The Open Golf, London Marathon, Commonwealth Games and Olympics are relevant. It would probably be better to copy the existing Community Safety legislation, which enables a local authority to require the cooperation of any organisation which it considers has a role to play.</p> <p>Category 2 should also include a commerce/ business representative.</p>	National Council for Civil Protection, CC EV 76, question 2
	<p>Organisations that support the NHS, including pharmaceutical companies, medical gas organisations and health supply organisation should be included in Category 2, as they would be heavily called upon in response to large disruptive challenges.</p> <p>The repeal of the Civil Defence (Grant) Act 2002 seems to pre-empt the questions about RSG versus specific grant in the Consultation paper Category 1 local authorities should continue to be funded through specific grant, as the service needs to be protected and ring-fenced. With all the other demands on local authorities civil contingencies funding will be absorbed into other services or functions unless protected. Funding through RSG will not be transparent.</p> <p>There is a great danger that LAs, particularly in the current climate, will divert funding to other areas.</p>	Dudley Metropolitan Borough Council, CC EV 47, question 2 and 3 North Wales Health Emergency Planning Group, CC EV 51, para 3 Oxfordshire County Council, CC EV 4, para 22 and 53
Repeals extending only to England and Wales	<p>The RIA does not take proper account of the wider scope of risk assessment, business continuity and scale covered by the new definition of emergency in the Bill. Resource requirement must take into account standards and geographical proximity to identified risk.</p> <p>The recent LGA survey of top tier Emergency Planning authorities shows that the total expenditure of these authorities is over £32m for England and Wales; thus top tier authorities contribute in excess of £13m over and above the Grant they receive for their current activities.</p>	Graham Chaplin, EPO, Borough of Poole, CC EV 3, para 7 Uttlesford District Council, CC EV 8, question 6 LGA, JCEV 10, para 4.1.2
Regulatory Impact Assessment	<p>Initial evaluation of a survey of Shire District Councils, shows that although they do not receive Civil Defence Grant, virtually all District Councils undertake emergency planning functions and contribute a total of just under £4m to fund this work.</p> <p>The current proposal for £19 million nationally is totally unrealistic and needs to be urgently reviewed. Additional funds can and must be made available where it is most needed, locally, as this is where the majority of the burden will fall.</p> <p>The costs in the partial RIA take no account of:</p> <ul style="list-style-type: none"> - the cost implications for utility companies arising from their duty to cooperate with the Category 1 responders for the purposes of planning and preparing for emergencies or, - the potentially huge costs which those companies could incur in dealing with the consequences of an emergency incident 	West Devon Raynet, CC EV 54, chapter 4 EDF Energy, CC EV 75, question 6

		<p>The RIA should address these issues, and the Bill itself should provide for the guaranteed recovery of costs incurred by utility companies as a direct consequence of a serious emergency or of actions taken by them before, during and after the incident to deal with its effects.</p> <p>It is clear that, for utility companies whose area of operation encompasses a number of local authority areas, the cost identified in the RIA has been grossly underestimated. In broad terms, the cost identified per company needs to be multiplied by the number of Category 1 responders the company needs to provide information to and liaise with.</p> <p>The Bill itself states 'It is not possible to be specific at this stage about the potential regulatory impact if they are used'. Under these circumstances the Authority is unable to answer what appears to be a hypothetical question.</p> <p>However, our initial view based on current workload is that staffing levels would need to be increased by about two posts (£40,000) and office support provided for those staff. It is important that an allocation is not solely based on population density, physical size of the borough or distance between areas of population, as these would not fully reflect the risks and likely costs of service provision. It is for this reason that the authority would prefer to see a specific grant rather than a general addition to the FSS.</p> <p>There are great expectations placed at our door, but no finance to address the significant issues of responding to displaced people. There are no stockpiles of equipment to assist the task as Central Government Stockpiles for Civil Defence have all been dispersed.</p>	CE Electric UK, CC EV 81, question 6
		<p>The following represent some of the funding inadequacies:</p> <ul style="list-style-type: none"> - no more for purchasing emergency equipment required for the care of displaced/evacuated people - no investments in CBRN for local authorities (training and personal protective clothing) - annual contracts for a temporary mortuary service provider - military aid to the civil community comes at a cost unless we can prove it to be life saving. This should be regarded as a central resource that will be deployed to assist the community in times of need - local authorities are expected to be a front line responder in the event of Coastal Oil Pollution. <p>Clarity is sought sooner rather than later regarding funding distribution arrangements via the Welsh Assembly Government</p>	London Borough of Barking and Dagenham, CC EV 84, questions 6 and 8
		<p>The Council believes that the current level of Government funding for contingency planning within local authorities is grossly inadequate at £19 million.</p> <p>Increased demands on LA emergency planning and other staff to attend more regional liaison meetings must be taken into account when considering overall financial provision for the service.</p> <p>The RIA is a partial one only – no account is taken of the costs of dealing with the emergency once it has happened or of the detailed regulations which might come later.</p>	Ceredigion County Council, CC EV 85, question 6
			Bolton Metro Commercial Systems, CC EV 95, question 8
			Norfolk County Council, CC EV 96, question 10
			BT, CC EV 102, para 4

	Miscellaneous [Triple Lock]	The triple lock mechanism should be written into the Bill.	Dudley Metropolitan Borough Council, CC EV 47, question 16 Liberty, JC EV14, para 10
	[Leadership]	<p>Given the ECHR requirement for an article 15 derogation that there be “an exception situation of crisis or emergency which affects the whole population constitutes a threat to the organised life of the community of which the State is composed” it is difficult to see how the Government could avoid declaring a state of emergency under the new definition of the Bill if the Anti-Terrorism Crime and Security Act 2001 is to survive.</p> <p>The draft Bill aims to establish a unified approach to civil emergencies across the UK but no central body is appointed to lead, direct and monitor the implementation. There is an urgent need for an overall coordinating body (at ministerial level), with the power to enable interdepartmental support and cooperation and equally seek and support input from national and international organisations and the business community. They would need powers to carry out an audit of the effectiveness of the bills implementation at all levels and direct as necessary, implementation and training. A new Civil Contingencies Secretariat should logically fall within the remit of the Home Office.</p> <p>This must be a key lesson from the recent past (foot and mouth and BSE outbreak) where decisions were greatly delayed.</p> <p>The Government also seems intent on retaining the lead department principle when recent experience during the fuel crisis and the outbreak of foot and mouth disease has shown that it does not work. We need to be assured that any Government contribution to the emergency response will be well coordinated and that there will be a common purpose.</p> <p>History has shown that the lead government department concept has not worked in practice and that civil protection is too important an area of public life for statutory responsibilities not be imposed on any agencies which have key roles in contribution to creating a robust culture of resilience in the UK. The same standards of monitoring and audit should be similarly applied.</p> <p>The Bill or regulations need to be more precise about who has the lead role in drawing together the multi-agency work. Replies to the Emergency planning Review indicated that this should be the local authority.</p> <p>The role of local authorities as ‘community leaders’ for emergency planning purposes has been left out of this draft of the Bill, although this element was included in the consultation up to this point. We believe there should be a clear responsibility placed on one of the Category 1 organisations to take on this role.</p> <p>Define the role of the Regional Resilience Teams (now established in the Government Offices) in the draft Bill, to make their function clear.</p> <p>There is a need to keep to well understood areas and boundaries which need to be publicised. Once established the new Regional Resilience arrangements should keep to these boundaries.</p> <p>The regional approach should recognise the inconsistencies arising between regional boundaries and those of the Category 1 and 2 responders.</p>	West Devon Raynet, CC EV 54, chapter 2, 5 and 7
			Surrey Police, CC EV 42, para 6b
			Royal Berkshire Fire Rescue Service, CC EV 114, question 3
			Brighton and Hove City Council, CC EV 88, question 5
			Wigan Council, CC EV 72, para 5
	[Regional Tier]		Surrey Police, CC EV 42, para 6c
			Gloucestershire County Council Fire and Rescue Service, CC EV 71, question 11
			United Utilities, CC EV 73, question 11

		These provisions pre-empt any public referendum on more formal regionalisation in England and should not be part of the Bill. The bolt-on regional tiers appear to add nothing to the delivery of emergency response but are merely a ministerial means of enforcing compliance.	Oxfordshire County Council, CC EV 4, paras 19 and 59
		It is hard to see how the objectives set out for the regional tier in the consultation paper can be achieved on a non-statutory basis and could lead to a confusion of roles and responsibilities. The role of the regional tier should be detailed in statute and should appear on the face of the Bill. The regional tier should be subject to the same range of performance criteria as local responders.	LGA, JCEV 10, par 2.2
		The roles and procedures of the new regional structures (the Regional Resilience Unit, the Regional Resilience Forum, the Regional Civil Contingencies Committee and the Regional Nominated Coordinator) will need to be clearly articulated in a national doctrine statement so that everyone involved can identify their place in the order of events and the limits of their duties. All tiers of the response process should see their responsibility and accountability clearly set out in appropriate legislation.	South East Regional Resilience Forum, []
	[Jurisdiction]	Whilst the direct impact of the legislation will rightly be confined to the UK, you may wish to establish whether there is sufficient provision for minister to allow the deployment of assets to an area outside of the UK but within the UK defence area.	Graham Power, Chief Office of Police for Jersey, CC EV 6, para 2
		It is not clear how events or situations that occur abroad which impact upon the health, environment and wealth of the UK will be legislated for, or whether the emergency powers discussed within the draft Bill will have a role to play in events that occur abroad.	Welsh Ambulance Services NHS Trust, CC EV 52, question 1
	[Military]	It would be useful to see more detail about the role of the military in an emergency situation included in the draft Bill.	Patrick Cunningham, Durham County Council, oral evidence session, 9 th September 2003 (PM)
	[Regulations]	LB RuT is concerned at the lack of guidance and regulations, and trusts that an adequate consultation period will be allowed once these have been produced.	London Borough of Richmond upon Thames, CCEV 61, para 2
		In the absence of the sight of the proposed secondary legislation it is difficult to make informed comment on what is a very broad framework with a great deal of flexibility at the local level.	CE Electric UK, CC EV 81, para 4
		As the Bill is an enabling legislation, it is difficult to make comments on some clauses until such time as draft regulations are produced. ACPO believes that wide consultation on those draft regulations would be beneficial.	ACPO, CC EV 98, para 2
		The absence of any indication of the scope and notice of the regulations that will follow makes the consultation process somewhat superficial.	Emergency Planning Society, JC EV 12, part 1
	[Indemnity]	It is not clear whether indemnity for organisations acting under the direction of regulation is properly addressed. Clarification is required as to whether the NHS could be held legally and financially accountable for actions undertaken under the terms of the draft Bill.	NHS London, JC EV 7, para 3
	[Access to confidential information]	The Bill does not adequately address the issue of access to confidential information. Emergency planning officers should have access to all relevant information to enable them to write emergency plans.	Emergency Planning Society, JC EV 12, part 1
	[Local Resilience]	It is difficult to see how a Local Resilience Forum would work at borough level, considering that some	London Borough of Richmond

	Forums]	upon Thames, CC EV 61, question 5
	organisations will cover more than one borough and will find problems in attending all such liaison meetings. There is little clarity as to who would be expected to lead Local Resilience Forums and thus provide the staffing (taking of minutes) and funding (meeting rooms).	Iain Berry, Mid Beds, CC EV 63, question 5
	Local Resilience Forums should include Category 1 responders only, with Category 2 members co-opted as required for specific issues.	Sedgemoor District Council, CC EV 66, question 3 and 5
	The military should be part of the Local Resilience Forum and this should be included in the regulations. Surprisingly, given its importance, there is no mention of the Local Resilience Forum in the draft Bill. It needs to be recognised that the groups will need to be serviced by an effective secretariat – central Government should determine how it should be funded.	Luton Borough Council, CC EV 70, question 5
	The LRF should consist of Category 1 responders, with the option to include Category 2 responders when the scenario dictates. Inclusion of all Category 2 responders would create an unwieldy and ineffective group, the benefit of which would be lost.	London Borough of Barking and Dagenham, CC EV 84, question 5
	Whilst there appears to be guidance as to the area covered by a Local Resilience Forum outside of London there is confusion over this within London. Clarification needs to be given as to whether the Police Authority Area is the Metropolitan Police (in which case the LRF would cover the whole of London and its 32 borough emergency planning officers and other agencies), or if the Police Area is the local borough, in which case it is a real local forum.	Ceredigion County Council, CC EV 85, question 5
	The most likely wide scale solution would be to base Local Resilience Forums on existing Multi Agency Strategic Groups established on Police Force areas.	Norfolk County Council, CC EV 96, question 5
	The use of the term ‘Local Resilience Forums’ may cause confusion, especially where local arrangements operating under a different name have been in place for several years. If a national consistent approach to the name is to be applied, this must be clearly stated in regulations.	Barnet London Borough, CC EV 20, para 5
	The development of local resilience forums may cause problems with certain pan London organisations if they are to be constituted on a borough by borough basis. Public utilities in particular may find it difficult to attend 33 separate forums. An alternative arrangement could be to use the existing five borough mutual aid groupings as a basis for these forums.	

Appendix 12: Note by Christopher Barclay, House of Commons Library – Legal Challenges to Emergency Powers

Legal Challenges to Emergency Powers

This note summarises briefly judicial control over the use of emergency powers, relevant to the draft Bill. It does not cover Northern Ireland, nor broader challenges to permanent legislation.

Overview

There do not appear to have been legal challenges to the states of emergency in the period 1966 to 1974. However, there have been challenges to other types of emergency powers, both before and after. A rough summary might be that judges would be willing to prevent use by the executive of what they considered excessive powers deriving from an emergency. However, judges are willing to take account of the reasons that led to the executive's decisions. In a serious emergency, judges are willing to accept policies that would be considered infringement of liberty in normal circumstances.

The Problem of Judicial Control of Emergency Powers

A constitutional law textbook notes that the nature of emergency powers in British law has changed during the 20th century. Initially, special powers were taken to deal with the consequences of war (*Defence of the Realm Act 1914*) and then large scale industrial unrest (*Emergency Powers Act 1920*). These measures tended to authorise the making of secondary legislation for a limited period, and for a specific end. In recent years the threat of terrorism has seen the development of standing legislation, so that we now live in a state of “permanent emergency”.

The draft Civil Contingencies Bill would mark a return to the earlier strategy, without abandoning the standing legislation. The textbook notes the difficulties of parliamentary control of emergency powers, continuing:

It is thus up to the courts to ensure that these wide powers are not misused. But concern about the unenviable role in which they have been cast is hardly eased by Lord Hoffman's postscript in the *Rehman* case where he said that the events of 11 September 2001 in Washington and New York were

a reminder that in matters of national security, the cost of failure can be high. This seems to me to underline the need for the judicial arm of government to respect the decisions of ministers of the crown on the question of whether support for terrorist activities in a foreign country constitutes a threat to national security. It is not only that the executive has access to special information and expertise in these matters. It is also that such decisions, with serious potential results for the community, require a legitimacy which can be conferred only by entrusting them to persons responsible to the community through the democratic process. If the people are to accept the consequences of such decisions, they must be made by persons whom the people have elected and whom they can remove.³⁹⁸

A Challenge to Wartime Powers

Wartime emergency regulations were challenged in the case of *Anderson v Liversidge*. A man called Robert Liversidge had been sent to prison as a threat to public safety. The home secretary, Sir John Anderson, gave

no reasons. The House of Lords supported that action in 1942, although Lord Atkin made a famous dissenting judgement. The headnote to the House of Lords judgement opened as follows:

When the Secretary of State, acting in good faith under reg. 18B of the Defence (General) Regulations 1939, makes an order in which he recites that he has reasonable cause to believe a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him and directs that that person be detained, a court of law cannot inquire whether in fact the Secretary of State had reasonable grounds for his belief. The matter is one for the executive direction of the Secretary of State...³⁹⁹

Lord Atkin dissented, arguing that some objective evidence for that belief was required. His argument would have allowed the courts to retain control over the process of imprisonment under wartime regulations. The majority judgement meant that they lost that control. Lord Atkin's dissenting judgement has often found favour with later judges. Another textbook on constitutional law notes later disagreement with the original judgement:

In *Nakkuda Ali v Jayaratne* a strong Privy Council held that *Liversidge v Anderson* must not be taken to lay down any general rule on the construction of the expression "has reasonable cause to believe." Subsequently *Liversidge v Anderson* was described by Lord Reid in *Ridge v Baldwin* as a "very peculiar decision." Lord Diplock in *I.R.C. v Rossminster Ltd* thought that "the time has come to acknowledge openly that the majority of this House in *Liversidge v Anderson* were expediently and, at that time, perhaps, excusably, wrong and the dissenting speech of Lord Atkin was right."...It should not, however, be forgotten that the House of Lords, as evidenced by *McEldowney v Forde* in construing powers for dealing with emergencies may still give greater scope to ministerial discretion than subsequent judicial criticisms of *Liversidge v Anderson* might suggest.⁴⁰⁰

A textbook on judicial review gave an overview of changes in the attitude of judges towards the exercise of emergency powers:

The exercise of statutory powers directly affecting individual interests in nearly always potentially reviewable, albeit that it may be on narrow grounds, at the instance of a person having appropriate *locus standi*, and the courts at different times have shown a variable degree of enthusiasm about intervening.

Wartime and immediate post-war decisions ought now to be treated with caution. The emergency legislation of the Second World War gave the Executive vast powers over persons and property. The wording of the grants of power was sufficient, on a literal interpretation, to support the validity of almost any act purporting to be done under their authority, yet not only did the courts give a strictly literal interpretation to subjectively worded formulae; in their anxiety not to impede the war effort they declined to give a literal interpretation to a formula which prima facie enabled them to review the reasonableness of the grounds for exercising a discretionary power authorising summary deprivation of personal liberty. Such a measure of judicial self-restraint it is to be hoped will not be repeated except possibly in conditions of grave emergency. But a literal construction of the subjective type of formula was to reappear in a number of immediate post-war cases having only a remote connection with national emergency. Happily, a shift in approach to judicial interpretation has taken place since these cases were decided.⁴⁰¹

399 *Liversidge v Anderson*, [1942] A.C. 206.

400 O.Hood Phillips and Jackson, *Constitutional and Administrative Law*, 8th Edition, p406.

401 de Smith, Woolf & Jowell, *Judicial Review of Administrative Action*, 5th edition, pp118-9.

Formal Minutes

Extract from Lords Minute of 12 June 2003

Civil Contingencies—It was moved by the Lord Privy Seal (Lord Williams of Mostyn) that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on any draft Civil Contingencies Bill presented to both Houses by a Minister of the Crown, and that the Committee should report on the draft Bill by the end of October 2003; the motion was agreed to and a message was ordered to be sent to the Commons to acquaint them therewith.

Extract from Votes and Proceedings of the House of Commons 10 July 2003

Draft Civil Contingencies Bill (Joint Committee),-Ordered, That the Lords Message of 13th June relating to a Joint Committee of both Houses to consider and report on any draft Civil Contingencies Bill presented to both Houses by a Minister of the Crown be now considered.

That this House concurs with the Lords that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on any draft Civil Contingencies Bill presented to both Houses by a Minister of the Crown, and proposes that the Committee should report on the draft Bill by the end of November 2003.

That a Select Committee of eleven honourable Members be appointed to join with the Committee appointed by the Lords to consider any draft Civil Contingencies Bill.

That the Committee shall have power-

1. to send for persons, papers and records;
2. to sit notwithstanding any adjournment of the House;
3. to report from time to time;
4. to appoint specialist advisers;
5. to adjourn from place to place within the United Kingdom; and

That Mr Richard Allan, Mr Adrian Bailey, David Cairns, Mr James Clappison, Mr Kevan Jones, Mr Elfyn Llwyd, Patrick Mercer, Chris Mole, Dr Lewis Moonie, Kali Mountford and David Wright be members of the Committee-(Charlotte Atkins.)

Message to the Lords to acquaint them therewith.

Extract from House of Lords Minute of 11 July 2003

Civil Contingencies—It was moved by the Chairman of Committees that the Commons message of yesterday be now considered, and that a Committee of eleven Lords be appointed to join with the Committee appointed by the Commons, to consider and report on any draft Civil Contingencies Bill presented to both Houses by a Minister of the Crown;

That, as proposed by the Committee of Selection, the Lords following be named of the Committee:

L. Archer of Sandwell	L. Lucas
L. Bradshaw	L. Maginnis of Drumglass
L. Brooke of Alverthorpe	L. Marlesford
L. Condon	B. Ramsay of Cartvale
L. Jordan	L. Roper;
L. King of Bridgwater	

That the Committee have power to agree with the Commons in the appointment of a Chairman;

That the Committee have leave to report from time to time;

That the Committee have power to appoint specialist advisers;

That the Committee have power to adjourn from place to place within the United Kingdom;

That the reports of the Committee from time to time shall be printed, notwithstanding any adjournment of the House;

That the Committee do report on the draft Bill by the end of November 2003;

And that the Committee do meet with the Committee appointed by the Commons on Tuesday 15th July at half-past three o'clock in Committee Room G;

the motion was agreed to; and a message was ordered to be sent to the Commons to acquaint them therewith.

Lords Minute 8 September 2003

13. Civil Contingencies—It was moved by the Chairman of Committees that the Earl of Shrewsbury be appointed a member of the Joint Committee on the draft Civil Contingencies Bill in the place of the Lord Marlesford; the motion was agreed to.

Proceedings of the Joint Committee

Tuesday 15 July 2003

Members present:

Mr Richard Allan	Rt Hon the Lord Archer of Sandwell, QC
Mr Adrian Bailey	The Lord Brooke of Alverthorpe
David Cairns	The Lord Lucas of Crudwell and Dingwall
Mr Elfyn Llwyd	The Lord Maginnis of Drumglass
Patrick Mercer	The Baroness Ramsay of Cartvale
Chris Mole	The Lord Roper
Dr Lewis Moonie	
David Wright	

Members declared interests relating to the draft Bill, pursuant to the resolutions of the House of Commons 13th July 1992 and the House of Lords 2nd July 2001:

Lord Brooke of Alverthorpe as a Partnership Director, National Air Traffic Control Services Ltd

Baroness Ramsay of Cartvale as a consultant to Control Risks

Lord Lucas of Crudwell and Dingwall as a consultant to Green Issues Communications (which had a role in disaster management)

Dr Lewis Moonie was called to the chair by acclamation.

The Committee deliberated.

Ordered, Dr James Broderick, Professor Clive Walker and Mr Garth Whitty be appointed Specialist Advisers to assist the Committee in its inquiry into the draft Civil Contingencies Bill..

Ordered, That the public be admitted during the examination of witnesses unless the Committee otherwise orders.—(*The Chairman.*)

Ordered, That the uncorrected transcripts of oral evidence given, unless the Committee otherwise orders, be published on the Internet.—(*The Chairman.*)

The Committee further deliberated.

[Adjourned till Tuesday 9 September at half-past Nine o'clock.

Tuesday 9 September 2003 (am)

Members present:

Dr Lewis Moonie, in the Chair

Mr Adrian Bailey	Rt Hon the Lord Archer of Sandwell, QC
David Cairns	The Lord Brooke of Alverthorpe
Mr James Clappison	Lord Condon
Mr Kevan Jones	The Lord Lucas of Crudwell and Dingwall
Chris Mole	The Lord Maginnis of Drumglass
Kali Mountford	The Baroness Ramsay of Cartvale
David Wright	The Lord Roper
	Earl of Shrewsbury

The Committee deliberated.

Lord Condon declared his interests as a former Commissioner of the Metropolitan Police, President of the British Security Industry Association and a life member of the Association of Chief Police Officers.

Draft Civil Contingencies Bill: Councillor Peter Chalke and Mr Tom Griffin, Local Government Association, and Mr Brian Ward, UK Emergency Planning Association, were examined.

Mr Alan Goldsmith, Association of Chief Police Officers, Mr Philip Selwood, Ambulance Services Association, and Mr Roy Bishop, Chief and Assistant Chief Fire Officers Association, were examined.

[Adjourned till this afternoon at half-past Four o'clock.

Tuesday 9 September 2003 (pm)

Members present:

Dr Lewis Moonie, in the Chair

Mr Richard Allan	Rt Hon the Lord Archer of Sandwell, QC
David Cairns	Professor the Lord Bradshaw
Mr James Clappison	The Lord Brooke of Alverthorpe
Mr Kevan Jones	The Lord Condon
Mr Elfyn Llwyd	The Lord Lucas of Crudwell and Dingwall
Chris Mole	The Lord Maginnis of Drumglass
Kali Mountford	The Baroness Ramsay of Cartvale
David Wright	The Lord Roper
	Earl of Shrewsbury

Lord Bradshaw declared his interests as a member of Oxfordshire County Council and of the Thames Valley Police Authority.

Draft Civil Contingencies Bill: Alison Lowton, Camden Council, Mr Patrick Cunningham, Durham Council, and Mr Richard Davies, Leeds City Council, were examined.

[Adjourned till Tuesday 16 September at half-past Nine o'clock.

Tuesday 16 September 2003 (am)

Members present:

Dr Lewis Moonie, in the Chair

Mr Richard Allan	Rt Hon the Lord Archer of Sandwell, QC
David Cairns	Professor the Lord Bradshaw
Mr James Clappison	The Lord Lucas of Crudwell and
Mr Elfyn Llwyd	Dingwall
Patrick Mercer	The Lord Maginnis of Drumglass
David Wright	The Baroness Ramsay of Cartvale
	The Lord Roper

Draft Civil Contingencies Bill: Mr Hugh Henry MSP, Deputy Justice Minister, Scottish Executive and Mr Rhodri Morgan AM, First Minister, National Assembly for Wales, were examined.

[Adjourned till half-past Four o'clock on this day.

Tuesday 16 September 2003 (pm)

Members present

Dr Lewis Moonie, in the Chair

Mr Richard Allan	Rt Hon the Lord Archer of Sandwell, QC
Mr James Clappison	Professor the Lord Bradshaw
Mr Elfyn Llwyd	The Lord Lucas of Crudwell and Dingwall
Patrick Mercer	The Baroness Ramsay of Cartvale
David Wright	The Lord Roper

Draft Civil Contingencies Bill: Ms Shami Chakrabarki, Director, Liberty and Dr Eric Metcalfe, Director of Human Rights Policy, Justice were examined.

[Adjourned till Tuesday 14 October at half-past three o'clock.

Tuesday 14 October 2003

Members present:

Dr Lewis Moonie, in the Chair

Mr Richard Allan	Rt Hon the Lord Archer of Sandwell, QC
Mr Adrian Bailey	Professor the Lord Bradshaw
Mr James Clappison	The Lord Brooke of Alverthorpe
Mr Kevan Jones	The Lord Condon
Mr Elfyn Llwyd	The Lord Lucas of Crudwell and Dingwall
Chris Mole	The Baroness Ramsay of Cartvale
Kali Mountford	
David Wright	

The Committee deliberated.

[Adjourned till Thursday 16 October at four o'clock.

Thursday 16 October 2003

Members present

Dr Lewis Moonie, in the Chair

Mr Adrian Bailey	Rt Hon the Lord Archer of Sandwell, QC
Mr James Clappison	The Lord Brooke of Alverthorpe
Mr Kevan Jones	The Lord Condon
Mr Elfyn Llwyd	The Lord Jordan
Patrick Mercer	The Lord Lucas of Crudwell and Dingwall
Kali Mountford	The Baroness Ramsay of Cartvale

Draft Civil Contingencies Bill: Mr Douglas Alexander MP, Minister of State, Cabinet Office, Mr Roger Hargreaves, Bill team leader and Ms Rebecca Lane, legal adviser, Civil Contingencies Secretariat, were examined.

[Adjourned till Tuesday 21 October at four o'clock.

Tuesday 21 October 2003

Members present:

Dr Lewis Moonie, in the Chair

Mr Richard Allan	Rt Hon the Lord Archer of Sandwell, QC
Mr Adrian Bailey	Professor the Lord Bradshaw
David Cairns	The Lord Brooke of Alverthorpe
Mr Kevan Jones	The Lord Condon
Mr Elfyn Llwyd	The Lord Lucas of Crudwell and
Patrick Mercer	Dingwall
Kali Mountford	The Baroness Ramsay of Cartvale
David Wright	The Lord Roper

Draft Civil Contingencies Bill: Mr John Pullin, South West London SHA, Mr Keith Williams, North Wales Health Emergency Planning Group and Mr Anthony Kealy, Emergency Planning Lead, West Yorkshire SHA were examined; Mr Doug Turner, Head of Network Continuity and Emergency Planning, British Telecom, Mr Philip West, Policy Manager, Western Power Distribution and Mr Geoffrey Miller, Head of Risk Management, United Utilities, were examined; and Virginia Beardshaw, Director of UK Service Development, Red Cross, Peter Brown, Chief Commander, St John Ambulance, Moya Wood-Heath, Assistant General Secretary, National Voluntary Aid Society Emergency Committee, Major Bill Cochran, Secretary for Communications, Salvation Army and Mark Lever, Chief Executive, Women's Royal Voluntary Service were examined.

[Adjourned till Thursday 23 October at four o'clock.

Thursday 23 October 2003

Members present:

Dr Lewis Moonie, in the Chair

Mr Adrian Bailey	Rt Hon the Lord Archer of Sandwell, QC
James Clappison	The Lord Brooke of Alverthorpe
David Wright	The Lord Condon
	The Lord Lucas of Crudwell and Dingwall
	The Baroness Ramsay of Cartvale
	The Lord Roper

The Committee deliberated.

[Adjourned till Thursday 30 October at a quarter to four o'clock.

Thursday 30 October 2003

Members present:

Dr Lewis Moonie, in the Chair

Mr Richard Allan
Mr Adrian Bailey
Mr Elfyn Llwyd
Kali Mountford

Rt Hon the Lord Archer of Sandwell, QC
The Lord Bradshaw
The Lord Brooke of Alverthorpe
The Lord Condon
The Lord Jordan
The Lord Lucas of Crudwell and
Dingwall
The Baroness Ramsay of Cartvale
The Lord Roper

[Adjourned till Tuesday 4 November at four o'clock.

Tuesday 4 November 2003

Members present:

Dr Lewis Moonie, in the Chair

David Cairns
Mr James Clappison
Mr Elfyn Llwyd
Patrick Mercer
Chris Mole
Kali Mountford
David Wright

Rt Hon the Lord Archer of Sandwell, QC
The Lord Bradshaw
The Lord Brooke of Alverthorpe
The Lord Condon
The Lord Lucas of Crudwell and Dingwall

The Committee deliberated.

[Adjourned till Thursday 6 November at a quarter to four o'clock.

Tuesday 11 November 2003

Members present:

Dr Lewis Moonie, in the Chair

Mr Richard Allan
Mr Adrian Bailey
Mr Kevan Jones
Mr Elfyn Llwyd
Chris Mole
Kali Mountford

Rt Hon the Lord Archer of Sandwell, QC
The Lord Bradshaw
The Lord Brooke of Alverthorpe
The Lord Lucas of Crudwell and Dingwall

The Committee deliberated.

The Committee considered the draft report.

Paragraphs 1 to 320 were read and agreed to.

Resolved, That the draft Report be the Report of the Committee to both Houses.

Several Papers were ordered to be appended to the Report.

Ordered, That the memoranda received by the Joint Committee be appended to the Minutes of Evidence.

Ordered, That The Chairman make the Report to the House of Commons and Lord Lucas of Crudwell and Dingwall make the Report to the House of Lords.

Ordered, That where the Chairman considers it appropriate, embargoed copies of the Report may be given to specific individuals and other persons not more than forty-eight hours in advance of publication.

Ordered, That the Joint Committee be adjourned.

Witnesses

Tuesday 9 September 2003, 10.15am

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Representing the Local Government Association:

Councillor Peter Chalke, Deputy Chair and Mr Tom Griffin, Principal Adviser on Emergency Planning.

Representing the Emergency Planning Society:

Mr Brian Ward, Chair.

Ev 14

Representing ACPO:

Mr Alan Goldsmith, Deputy Chief Constable, Lincolnshire Police.

Representing CACFOA:

Mr Ron Dobson, Assistant Commissioner, London Fire Brigade.

Representing ASA:

Mr Philip Selwood, Chairman, Ambulance Service Association Civil Emergencies Committee.

Ev 36

Tuesday 9 September 2003, 4.35pm

Representing Camden Borough Council:

Ms Alison Lowton, Head of Legal Services.

Representing Durham County Council:

Mr Patrick Cunningham, Chief Emergency Planning Officer.

Representing Leeds City Council:

Mr Richard Davies, Principal Emergency Planning Officer.

Ev 58

Tuesday 16 September 2003, 9.35am

Representing the Scottish Executive:

Mr Hugh Henry, Deputy Minister for Justice, Mr Jim Gallagher, Head of Justice Department and Mr Max Maxwell, Head of Contingencies and Resilience Unit.

Representing the National Assembly for Wales:

Mr Rhodri Morgan, First Minister and Mr Nick Patel, Head of Emergencies and Security Division.

Ev 72

Tuesday 16 September 2003, 4.35pm

Representing Liberty:

Ms Shami Chakrabarti, Director

Representing JUSTICE:

Dr Eric Metcalfe, Director of Human Rights Policy.

Ev 97

Thursday 16 October 2003, 3.35pm

Representing the Cabinet Office:

Mr Douglas Alexander MP, Minister for the Cabinet Office, Roger Hargreaves, Head of Bill Team, Policy Division and Ms Rebecca Lane, Legal Advisor.

Ev 109

Tuesday 21 October 2003, 4.05pm

Representing the NHS:

Office of Strategic Health Authorities:

Mr John Pullin, South West London Strategic Health Authority;

North Wales Health Emergency Planning Group:

Mr Keith Williams, Emergency Planning co-ordinator for North Wales; and

West Yorkshire Strategic Health Authority:

Mr Anthony Kealy, Emergency Planning Lead.

Ev 130

Representing Utility Providers:

BT:

Mr Doug Turner, Head of Network Continuity and Emergency Planning;

Western Power Distribution:

Mr Philip West, Policy Manager; and

United Utilities:

Mr Geoffrey Miller, Head of Risk Management.

Ev 153

Representing the Voluntary Sector:

The National Voluntary Aid Society Emergency Committee:

Ms Moya Wood-Heath, Assistant General Secretary;

The British Red Cross:

Ms Virginia Beardshaw, Director of UK Service Development;

The Salvation Army:

Major Bill Cochrane, Secretary for Communications;

The Women's Royal Voluntary Service:

Mr Mark Lever, Chief Executive; and

St John Ambulance:

Mr Peter Brown, Chief Commander.

Ev 171

List of written evidence

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15	West Yorkshire Strategic Health Authority	Ev 130
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26	David Bonner, Senior Lecturer in Law, University of Leicester	Ev 178
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32	Ceredigion Local Health Board	Ev 201
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34	Devon County Council	Ev 203
35	Dudley Metropolitan Borough Council	Ev 205
36	East Riding of Yorkshire Council	Ev 209
37	K D Ewing, Professor of Public Law, King's College London	Ev 213
38	Exeter City Council	Ev 216
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40	Food Standards Agency Wales	Ev 219
41	Professor C A Gearty, LSE and Matrix Chambers	Ev 220
42	Gloucestershire County Council Fire and Rescue Service	Ev 221

43	International Tanker Owners Pollution Federation Limited (ITOPF)	Ev 226
44	Kent and Medway Towns Fire Authority	Ev 227
45	Mervyn King, The Governor, Bank of England	Ev 230
46	Kirklees Metropolitan Council	Ev 230
47	Ian Leigh, Professor of Public Law, University of Durham	Ev 231
48	London Borough of Richmond upon Thames	Ev 233
49	Mid Bedfordshire District Council	Ev 236
50	Professor Gillian Morris, Brunel University and Matrix Chambers	Ev 241
51	National Council for Civil Protection (NCCP)	Ev 243
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53	Northumberland, Tyne and Wear Strategic Health Authority	Ev 248
54	North Wales Police	Ev 248
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58	South East Regional Resilience Forum	Ev 266
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60	Tees Valley Chief Executives Group (Darlington, Hartlepool, Middlesbrough, Stockton-on-Tees and Redcar and Cleveland Borough Councils)	Ev 272
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