

CIVIL CONTINGENCIES POWERS

MAY 2005

References:

Civil Contingencies Act 2004

<http://www.legislation.hmso.gov.uk/acts/acts2004/20040036.htm>

The Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (23/05/05)

<http://www.opsi.gov.uk/acts/acts2004/20040036.htm>

Emergency Preparedness - Guidance on Part 1 of the Civil Contingencies Act 2004

<http://www.ukresilience.info/ccact/emergencypreparedness.pdf>

Responding to Emergencies - Draft Guidance on response to and recovery from emergencies:

<http://www.ukresilience.info/ccact/responding.pdf>

Introduction

The Civil Contingencies Act 2004 creates a long term foundation for civil contingencies capable of meeting the challenges we are likely to face at national, regional and local levels.

The Act, along with accompanying regulations and guidance, will:

- Ensure consistency of activity across and between tiers of Government, delivering improvements in performance and communication.
- Set out clear expectations and responsibilities for front line responders at the local level, to ensure that they can deal with the full range of emergencies from localised major incidents through to catastrophic emergencies.
- Provide a framework for robust performance management of civil protection activity at all levels (local, regional and central) to ensure operational effectiveness and financial efficiency.
- Support an enhanced regional civil protection tier, drawing together activity already organised on a regional basis and providing a strong bridge between the centre and local areas.
- Modernise the legislative tools available to Government to deal with the most serious emergencies, providing for greater flexibility, proportionality, deployability and robustness.

The Civil Contingencies Act 2004 is an important element of the Government's strategy to improve the UK's resilience to disruptive challenge and terrorism:

- It sends a strong signal about the importance that the Government attaches to this agenda.

- It provides the framework within which the capabilities programme (and thus increased investment) will be delivered.
- It ties work on resilience very closely into work on counter terrorism.
- It provides the framework for standards setting and improved performance management, in keeping with the Government's wider commitment to this.
- It modernises emergency powers, bringing them into line with the post 1997 devolution settlements.

What the Act and the Regulations require:

While the civil protection duties are detailed on the face of the Act, the detail of what those duties mean, and how they should be performed, is delivered through the Regulations. The Act and Regulations are supported too by a guidance document, which includes guidance to which the organisations covered by the Act must have regard. The guidance, *Emergency Preparedness*, together with the accompanying *Emergency Response and Recovery*, sets out the generic framework for civil protection. As such, it deals with pre-emergency elements of integrated emergency management – anticipation, assessment, prevention and preparation.

All the duties specified in Part 1 of the Act are contingent on the definition of “emergency”.

“Emergency” is defined in Part 1 of the Act as:

An event or situation which threatens serious damage to human welfare in a place in the UK, the environment of a place in the UK, or war or terrorism which threatens serious damage to the security of the UK.

The definition of “emergency” is concerned with consequences, rather than with cause or source. Therefore, an emergency inside or outside the UK is covered by the definition, provided it has consequences inside the UK.

A place in the UK may be anything from a small village to a town square to a large city. It may also include a part of a region or an entire region.

A Category 1 responder must perform its duties under the Act only in relation to two situations, either of which poses a considerable test for that organisation's ability to perform its functions. In this way, the Act narrows the range of events or situations to which the duties apply to those which test the Category 1 responder.

The two tests are:

- a) where the emergency would be likely to seriously obstruct its ability to perform its functions;
- b) where the Category 1 responder:
 - i) would consider it necessary or desirable to act to prevent, reduce, control, or mitigate the emergency's effects, or otherwise take action; and
 - ii) would be unable to act without changing the deployment of its resources or acquiring additional resources.

One of these two tests must be met for the main duties of the Act to apply.

The role of Category 1 and Category 2 responders:

Category 1 responders are listed in Schedule 1 to the Act. They are the main organisations involved in most emergencies at the local level: for example, the emergency services and Local Authorities.

Category 2 responders are also listed in Schedule 1. They are likely to be heavily involved in some emergencies: for example, utilities and transport companies. The Act brings both groups within its framework to ensure greater consistency and co-operation at the local level.

Links between the duties

The main civil protection duties fall on the Category 1 responders as follows:

- a) risk assessment;
- b) business continuity management (BCM);
- c) emergency planning; and
- d) maintaining public awareness and arrangements to warn, inform and advise the public.

A fifth duty applies to local authorities alone: provision of advice and assistance to the commercial sector and voluntary organisations.

Two further duties are prescribed in the Regulations:

- a) co-operation; and
- b) information sharing.

Risk assessment, supported by a collective process, provides the fundamental grounding for delivering the substantive elements of the Act.

Emergency planning is supported by Business Continuity Management, and is underpinned by the risk assessment. Its purpose is to ensure that Category 1 responders can perform their functions effectively in an emergency. It supports public awareness work and also shapes arrangements for warning and informing the public. Category 1 and 2 responders must co-operate and share information in fulfilling these duties.

Provision of advice and assistance to the local business community and voluntary organisations by the local authority is likely to be linked to emergency plans and to draw on risk assessments. It will also be supported by co-operation and information sharing with partners.

Integrated emergency management

The following six activities are fundamental to an integrated emergency management approach:

- a) anticipation;
- b) assessment;
- c) prevention;
- d) preparation;
- e) response; and
- f) recovery management.

The Act focuses on two of these – assessment and preparation – and they are covered extensively in the volume of guidance *Emergency Preparedness* on preparing for emergencies. The other volume, *Emergency Response and Recovery*, covers the final two – response and recovery management.

Anticipation is sometimes called horizon-scanning. Category 1 responders should aim to be aware of new hazards and threats which might affect their locality and be ready to revise their risk assessments and plans accordingly.

Prevention under the Act is limited to actions that help prevent an emergency which may be about to occur; for example, activating an emergency plan in advance of a major public event.

Response and recovery management are addressed in Emergency Response and Recovery because they are not covered directly in the Act. They are concerned with managing the consequences of an emergency, rather than preparing to deal with one.

Although the Act focuses on preparedness for response to emergencies, it should be seen in the wider context of safety, risk and threat management.

Also, although the discussion of preparedness under the Act concentrates on the maintenance of planning arrangements, effective management is the aim.

Planning is a process of preparing a Category 1 responder, its managers and personnel for the act of managing an emergency.

The wide concept of IEM within and across Category 1 responders is geared to the idea of building greater overall resilience in the face of a broad range of disruptive challenges. If the response is to be truly effective in meeting the needs of everyone affected by an emergency, then all leaders of the community, industry and commerce should be aware of the contributions of local responders and other organisations.

In an extended emergency, the amount of work may be overwhelming, while provision of everyday services will also need to continue. Category 1 responders should explore all options for maintaining critical services, not only during the response but also throughout the recovery and aftermath proceedings, which may be lengthy.

If, however, the framework does not bed down successfully – or if in some areas civil protection arrangements are felt not to address particular hazards or threats to the satisfaction of the Government – the Act permits the Minister to issue new regulations or to make an order or issue a direction.

Co-operation

- Category 1 and 2 responders are obliged to co-operate with other Category 1 and 2 responders and other organisations engaged in response in the same local resilience area. Each local resilience area (with the exception of London) is based on a police area.
- The principal mechanism for multi-agency co-operation between Category 1 responders is the Local Resilience Forum (LRF). The LRF is not a statutory body, but it is a statutory process.
- Category 1 responders can draw on the guidance on membership and effective operation of an LRF and existing examples of good practice to help them.
- The involvement of Category 2 responders in LRFs will be more limited than that of Category 1 responders. They will participate in the LRF process on a 'right to attend,

right to invite' basis. Category 1 responders need to understand the way Category 2 responders are involved .

- Subgroups will probably be formed within LRFs to allow effective use of time. The number and composition of these subgroups will be decided locally
- Organisations that do not have a duty to co-operate under the Act can – and should – still be as fully involved as possible. How LRFs choose to involve them will depend on local circumstances.
- Category 1 responders are also encouraged to co-operate outside the LRF framework. Available models for co-operation include bilateral co-operation; joint discharge of functions; identification of lead responders; and cross-border co-operation between LRFs.

Information sharing

- Under the Civil Contingencies Act, Category 1 and 2 responders have a duty to share information with other Category 1 and 2 responders. Information sharing is also encouraged as being good practice.
- Information sharing is a crucial element of civil protection work, underpinning all forms of co-operation. Category 1 and 2 responders should share information formally and as part of a culture of co-operation.
- The initial presumption is that all information should be shared, but the release of some information, and of information to some audiences, may need to be controlled. Category 1 and 2 responders need to understand what should be controlled.
- Category 1 responders need to know how to categorise types of information; how the different types of information can be used; how to obtain consent; and the limits on disclosure.
- Category 1 and 2 responders need to know about the impact of other legislation, such as the Freedom of Information and Data Protection Acts, on their information sharing.

Local responder risk assessment duty

- Risk assessment is the first step in the emergency planning and business continuity planning processes. It ensures that Category 1 responders make plans that are sound and proportionate to risks.
- The Act places a duty on all Category 1 responders to carry out risk assessment. Multi-agency co-operation in maintaining a Community Risk Register is also a statutory duty .
- There is a six-step process for risk assessment that reflects widely accepted good practice. It involves a cycle of identifying potential hazards within the local context, assessing the risks, and considering how those risks should be managed. Responders can use these steps to assist their own planning.
- It should be possible for local risk assessments to inform regional and national assessments, and vice versa. Increasingly, Category 1 responders will be able to draw on generic risk assessments that are provided by central government, while local risk assessments will be shared with Regional Resilience Teams and used to inform regional and national risk assessments.
- Category 1 responders have a statutory duty to publish their risk assessments, to the extent necessary to reduce the impact of an emergency on the community.

Emergency planning

- Emergency planning is at the heart of the civil protection duty on Category 1 responders. The Act requires Category 1 responders to maintain plans for preventing emergencies; reducing, controlling or mitigating the effects of emergencies; and taking other action in the event of emergencies.
- The Regulations require plans to contain a procedure for determining whether an emergency has occurred; provision for training key staff; and provision for exercising the plan to ensure it is effective. Procedures should also be put in place to ensure that the plan is reviewed periodically and kept up to date.
- Category 1 responders must have regard to assessments of risk when deciding which plans are required and developing and reviewing the contents of them.
- Emergency plans may take the form of generic plans – which set out the core of a Category 1 responder’s response to any emergency – or specific plans dealing with particular hazards or sites. Category 1 responders will probably adopt a combination of the two.
- Multi-agency plans can consolidate partnership working. Multi-agency plans are permitted, and Category 1 responders are required to consider whether it would be appropriate to develop multi-agency plans.
- Category 1 responders should involve Category 2 responders – and organisations which are not subject to the Act’s requirements – as appropriate throughout the planning process. Category 1 responders are specifically required to have regard to the activities of relevant voluntary organisations when developing plans.
- A cycle for developing, exercising and reviewing plans should be followed.

Business continuity management

- The Act requires Category 1 responders to maintain plans to ensure that they can continue to exercise their functions in the event of an emergency so far as is reasonably practicable. The duty relates to all functions, not just their emergency response functions.
- Category 1 responders must have regard to assessments of both internal and external risks when developing and reviewing business continuity plans (BCPs).
- Business continuity plans may take the form of generic plans – which set out the core of a Category 1 responder’s response to any BCM event – or specific plans dealing with particular risks, sites or services.
- There must be a clear procedure for invoking the business continuity plan.
- BCPs must include arrangements for exercises for the purpose of ensuring the plan is effective, and arrangements for the provision of training to those involved in implementing the plan. Plans must be reviewed and kept up to date.
- Category 1 responders are required to publish aspects of their BCPs insofar as making this information available is necessary or desirable for the purposes of dealing with emergencies.
- The Business Continuity Institute’s five-stage business continuity management cycle provides a useful framework to help Category 1 responders to fulfil their duties. However, responders may adopt other models to deliver the legal requirements where there is a compelling case so to do.

Communicating with the public

- Category 1 responders' duties to communicate with the public under the Act are based on the belief that a well-informed public is better able to respond to an emergency and to minimise the impact of the emergency on the community.
- The Act includes public awareness and warning and informing as two distinct legal duties for Category 1 responders – advising the public of risks before an emergency and warning and keeping it informed in the event of an emergency.
- Arrangements for warning and informing the public must have regard to emergency planning arrangements.
- In the same way that Category 1 responders must ensure that their emergency plans are appropriate to the scale and type of risks involved, communications arrangements should be appropriate to the message and the kind of audience.
- Category 1 responders need both to plan their communications and to test that their communications arrangements are effective.

Advice and assistance to business and voluntary organisations

- The Act requires local authorities to provide advice and assistance to those undertaking commercial activities and to voluntary organisations in relation to business continuity management (BCM) in the event of emergencies (as defined by the Act).
- Local authorities must provide general advice and assistance to the business and voluntary sector communities at large; may provide specific advice and assistance to individual organisations; and may give advice and assistance to individual businesses in relation to the engagement of business continuity consultants.
- Local authorities may charge for advice and assistance provided on request, on a cost-recovery basis.
- Not all voluntary organisations would want – or benefit from – business continuity advice. A local authority may therefore define its own voluntary sector audience, targeting efforts where they will add most value.
- Local authorities should have regard to relevant Community Risk Registers (CRRs) when developing an advice and assistance programme.
- Local authorities may enter into collaborative arrangements with other Category 1 and 2 responders in fulfilling their duties.
- Local authorities within a Local Resilience Forum (LRF) area are required to co-operate with each other in performing their duties; other Category 1 and 2 responders within a Local Resilience Forum are required to co-operate with local authorities.
- Local authorities are required to have regard to the BCM advice and assistance provided by other Category 1 and 2 responders to business and voluntary organisations in their areas.
- Local authorities should consider how to use the arrangements for multi-agency co-operation established by the Act to ensure BCM advice and assistance programmes are co-ordinated and effective.
- Local authorities will need time to establish the skills, networks and materials to give advice and assistance to business and voluntary organisations. The duty will come fully into force six months after the other duties in the Act.

- There are considerations local authorities should take into account when developing a programme of advice and assistance (eg key messages, established support networks)

Arrangements specific to Wales

- The arrangements set out in Part 1 of the Act apply in Wales. However, there are some differences in the requirements which the Regulations place on Category 1 and 2 responders in Wales because of the unique administrative arrangements in Wales.
- While functions under Part 1 of the Act have not been transferred to the National Assembly for Wales, the Assembly has significant interest in this area and is primarily responsible for a number of Category 1 and 2 responders. These interests are generally exercisable by its executive arm, the Welsh Assembly Government.
- Category 1 and 2 responders and other organisations are engaged in response work together with the Welsh Assembly Government to address large-scale civil protection issues in Wales. The Wales Resilience Forum provides multi-agency strategic advice on civil protection at an all-Wales level. The forum aims to take forward resilience work in Wales through the Wales Resilience Programme co-ordinated by a Wales Resilience Partnership Team

Monitoring and enforcement

- The Act introduces a power for Ministers of the Crown to monitor performance of the civil protection duties.
- The Government is not establishing a new inspectorate to monitor and enforce the duties under the Act. This will be done through Category 1 and 2 responders mainstream performance monitoring or regulatory regimes.
- However, the Government does not intend to use these monitoring powers on a regular basis to assess responders' performance. Further details of how the power may be used are provided in Chapters 13 & 16 of the guidance.

The role of the voluntary sector

- The voluntary sector has an important role to play in supporting the statutory services in response to some emergencies.
- Category 1 responders who include the voluntary sector in their local planning arrangements will make the overall response more effective throughout the community. This is not just good practice: the Regulations require Category 1 responders to work with the voluntary sector. This includes building the voluntary sector into planning, training and exercising to respond to emergencies as appropriate.
- There are four models suggested for Category 1 responders to follow when engaging the voluntary sector effectively in order to discharge their duties at the local level.
- Responders should be aware of the kinds of services the voluntary sector can offer before making plans to involve them.
- It is essential that volunteers from the voluntary sector are trained and volunteers supported by the professionals they are helping.

- The way Category 1 and 2 responders work with the voluntary sector at the local level is supported by consistent regional and national arrangements.

Sectors not covered by the Act

- A principal aim of the Act is to bring into a single statutory framework those organisations which are most likely to be involved in most emergencies. However, not every organisation that may need to be involved in emergencies is covered by the Act.
- The fact that civil protection has a statutory basis should not be a reason to exclude organisations which do not have a duty under the Act.
- Category 1 responders should encourage organisations which are not covered by Part 1 of the Act to co-operate in planning arrangements.

The role of the Minister

- A Minister of the Crown has certain functions available to him/her by virtue of the Act, which may be exercised subject in certain cases to Parliament's approval.
- These are not likely to be used frequently, but may include:
 - amending the Regulations which deal with the main duties;
 - requiring a Category 1 or 2 responder to perform a particular function in an emergency;
 - amending the list of Category 1 and Category 2 responders;
 - issuing urgent directions to require action to be taken in relation to an emergency where there is insufficient time to make legislation; and
 - requesting information in relation to performance.
- The Act requires these Ministerial powers to be exercised in a way that is consistent with the various devolution settlements.
- These powers would usually be exercised by the Minister with lead responsibility for civil protection at the local level. But he/she would work closely with the relevant lead government department and seek the agreement of other departments with an interest.

References::

Civil Contingencies Act 2004

<http://www.legislation.hmso.gov.uk/acts/acts2004/20040036.htm>

The Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (May 2005)

<http://www.opsi.gov.uk/acts/acts2004/20040036.htm>

Emergency Preparedness - Guidance on Part 1 of the Civil Contingencies Act 2004

<http://www.ukresilience.info/ccact/emergencypreparedness.pdf>

Responding to Emergencies - Draft Guidance on response to and recovery from emergencies:

<http://ukresilience.info/responding.pdf>

Appendix 1:

Civil Contingencies Act 2004

An official 'Explanatory Note' is given at the end of the Act

Part 1 – Local arrangements for civil protection.

- s.1** Meaning of emergency (for Part 1).
- Events such as a terrorist attack, disruption of fuel supplies, contamination of land with a chemical matter and an epidemic could satisfy the definition.
- s.2** Duty to assess the risk of an emergency occurring, maintain plans to respond to an emergency, to publish the assessments and plans, and to maintain arrangements to warn, inform and advise members of the public in the event of an emergency.
- s.4** Duty to give advice and assistance to the public for the continuance of commercial activities, and for activities of voluntary organisations. (Regulations may be made about the extent of the duty, and provision as to charging for advice and assistance).
- s.6** Disclosure of information
- s.10** Enforcement is by way of proceedings in the High Court or Court of Session.
- s.12** More detail relating to the provision of information.

Part 2 – Emergency Powers

- s.19** Meaning of emergency (for part 2) - similar to that given for Part 1
(Part 1 definition = “threaten a place in the UK”
Part 2 definition = “threaten the UK as a part or region”)
- s.20** Power to make emergency regulations.
- generally by Her Majesty by order in council, but exceptionally by senior Minister of the Crown .
- s.21** Conditions for making emergency regulations.
- s.22** Scope of emergency regulations
e.g. – when event or situation may cause a serious human illness in UK; protecting or restoring activity of bank or financial institution; protecting or restoring parliament or performance of public functions.
Can, e.g. confer functions; requisition or confiscated property; create criminal offence; disapply or modify an enactment, etc.
- s.23** Limitations of emergency regulations.
- in due proportion; specify where have effect; may not amend Part 2 of Human Rights Act 1998.
- s.26** Emergency regulations lapse after 30 days.
- s.27** Each House of Parliament must approve the emergency regulations, or they lapse 7 days thereafter.

Appendix 2:

The Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005

PART 1 *Introductory*

1. Citation and commencement
2. Northern Ireland
3. Interpretation

PART 2 *General*

4. Co-operation and local resilience forums – England and Wales
5. Co-operation and strategic co-ordination groups – Scotland
6. Co-operation – Northern Ireland
7. Protocols
8. Joint discharge of functions etc.
9. Identification of Category 1 responder with lead responsibility
10. Role of Category 1 responder with lead responsibility
11. Role of Category 1 responders which do not have lead responsibility
12. Existing emergency planning duties

PART 3 *Duty to assess risk of emergency occurring*

13. Kinds of emergency in relation to which risk should be assessed
14. Guidance and assessments issued by Minister *etc.* as to likelihood and impact
15. Community risk register – England and Wales
16. Sharing of community risk register – England and Wales
17. Community risk register – Scotland
18. Provision of information relating to assessment of risk to other responders

PART 4 *Duty to maintain plans*

19. Risk assessment
20. Arrangements to warn, inform and advise the public
21. Generic and specific plans
22. Multi-agency emergency plans
23. Voluntary organisations
24. Procedure for determining whether an emergency has occurred
25. Training and exercises
26. Plan revision

PART 5 *Publication of plans and assessments*

27. Alarming the public unnecessarily

PART 6 *Arrangements for warning and provision of information and advice to the public*

28. Duty to have regard to emergency plans
29. Generic and specific arrangements to warn etc.
30. Alarming the public unnecessarily
31. Training and exercises

32. Identification of Category 1 responder with lead responsibility for warning, informing and advising
33. Arrangements to be maintained by general Category 1 responder with lead responsibility
34. Arrangements to be maintained by other general Category 1 responders
35. Advice etc. provided by other responders and other bodies

PART 7 *Advice and assistance to business and voluntary organisations*

36. Interpretation of Part 7
37. Transitional provision
38. Risk assessment
39. Extent of the duty under section 4(1) in relation to business
40. Extent of the duty under section 4(1) in relation to voluntary organisations
41. Co-operation, relevant responder with lead responsibility etc.
42. Co-operation with Scottish Category 1 responders
43. Activities of other responders
44. Charging

PART 8 *Information*

45. Sensitive information
46. Sensitive information – certificates in relation to national security
47. Information sharing – making a request for information
48. Information sharing – procedure for making a request
49. Information sharing – obligation to provide information
50. Information sharing – response to request
51. Disclosure or publication of sensitive information
52. Use of sensitive information
53. Security of sensitive information
54. Health and Safety at Work etc Act 1974 considerations

PART 9 *London*

PART 10 *Northern Ireland*