

Chapter 16

The role of the Minister

Summary

- 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 (paragraph 16.1).
- These are not likely to be used frequently, but may include:
 - amending the Regulations which deal with the main duties (paragraph 16.3);
 - requiring a Category 1 or 2 responder to perform a particular function in an emergency (paragraph 16.4);
 - amending the list of Category 1 and Category 2 responders (paragraph 16.5);
 - issuing urgent directions to require action to be taken in relation to an emergency where there is insufficient time to make legislation (paragraphs 16.7–16.10); and
 - requesting information in relation to performance (paragraphs 16.11–16.12).
- The Act requires these Ministerial powers to be exercised in a way that is consistent with the various devolution settlements (paragraphs 16.13–16.14).
- 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 (paragraph 16.15).

What the Act permits

16.1 Ministers have a range of powers under Part 1 of the Act. Most of these powers relate to the issuing of guidance and Regulations to support the delivery of the main duties under the Act, and are dealt with elsewhere in this guidance. However, a number of the powers are not in use as a matter of course, but could be used should the need arise, on the discretion of the Minister and with the approval of Parliament. These fall into three categories – legislative powers, urgent direction powers and monitoring powers.

16.2 This chapter does not deal with the emergency powers framework under Part 2 of the Act. The extent and exercise of emergency powers is addressed in *Emergency Response and Recovery*.

Legislative powers

16.3 A Minister may amend the Regulations or guidance issued under Part 1 of the Act. The powers to amend the Regulations are broad; the Minister may make any provision about the extent of the duties under sections 2 and 4 and the manner in which they are to be performed. (Section 2(5) lists a range of provisions which can be included in regulations – but this is not exhaustive.)

16.4 A Minister may also require a person to perform a function in relation to an emergency.¹ For example, the Minister could require responders to purchase a particular range of interoperable equipment (subject to appropriate funding being in place). This power is only exercisable if both Houses of Parliament have approved the order.

16.5 Finally, a Minister may legislate so as to amend the list of Category 1 and/or 2 responders.² This power is only exercisable if both Houses of Parliament have approved the order. The Minister may remove a

responder from the list, upgrade the status of a Category 2 responder into a Category 1 responder (and vice versa) and add new responders.

16.6 The Government has maintained a close dialogue with practitioners and other responders when developing the Act framework. It intends to continue this consultative approach if it becomes apparent that further use of these legislative powers may be necessary.

Urgent powers of direction

16.7 There are circumstances during emergencies, or when they appear imminent, when consistent, decisive action is necessary. The response required might fall outside existing planning frameworks; Category 1 and 2 responders might lack the information or advice to deal with it effectively; or it may not be apparent to these responders how best to deal with the situation.

16.8 Section 7 is designed to enable action to be taken by a Minister of the Crown in cases of urgency where there is insufficient time to make legislation. It is an exceptional power designed to ensure that in cases of real urgency the Government can arrange for coherent, effective action to be taken at the local level.

16.9 The Act enables³ a Minister to issue a direction containing any provision that could be made by secondary legislation under sections 5 and 6 of the Act, to responders or a class of responders.

16.10 An urgent direction must be in writing, though it could of course arrive by fax or e-mail. The Minister must revoke his direction as soon as is reasonably practicable (which will be, at the latest, as soon as it is possible to legislate). Even if not revoked, a direction will lapse 21 days after it has been made.

Box 16.1: Further advice and information

Also included in this chapter is further advice about the role of the Minister and useful information that is not supported directly by the Act. There is therefore no direct obligation under the Act for responders to have regard to it. These sections of text are distinguished by inclusion in a text box like this one.

¹s. 5

²s. 13

³s. 7

Box 16.2: Urgent directions in practice

Emergencies are by their nature often unpredictable. But the breadth of the existing obligations under the Act is such that effective generic planning should be in place to deal with most emergencies.

If a threat or risk did arise which appeared to fall outside existing planning work, it might nevertheless be necessary to take rapid remedial action to fill a gap in capability.

For example, a very large-scale emergency in another part of the world might generate large flows of refugees, some of whom might end up in the UK. The arrivals would not be immediate – perhaps weeks away – but Category 1 responders might need to be instructed rapidly to acquire new equipment or take action to meet specific requirements. The direction power would allow the Government to ensure coherence of action and ensure a rapid step change in capability.

In practice, the Government would be unlikely to exercise urgent direction powers in a unilateral way. The Government maintains close links with those organisations which represent local responders, and that close working would strengthen if a new and difficult situation arose. The Government would be likely to develop the directions rapidly, working with representative bodies to produce workable proposals. It would not be in the Government's interest to adopt a non-consultative approach, not least because of the need to ensure directions made a rapid, practical difference to preparedness.

Monitoring powers

16.11 A Minister has a range of powers to assist him/her in monitoring and overseeing the new civil protection regime. He/she may ask any Category 1 or 2 responder to provide him/her with information about the action taken under the Act.⁴ The Minister may require a Category 1 or 2 responder to explain why it has not taken action under the Act. If the Minister considers that a Category 1 or 2 responder

has failed to comply with its obligations under the Act, he/she may take proceedings against that responder in the High Court.⁵

16.12 These powers are not intended to be used to establish direct monitoring by the Government as a standard procedure. They will be used in exceptional circumstances. For details of the mechanisms for monitoring compliance with the provisions of the Act, see Chapter 13.

Box 16.3: How monitoring powers might be used

The Government would be most likely to use its monitoring powers to probe perceived systemic failures in the operation of the Act. For example, if a particular class of Category 2 responder was not sharing information about its local sectoral arrangements, Category 1 responders would be likely to bring this to the attention of their representative bodies. Those representative bodies would then pass this concern on to the Government.

The Government might then use these powers to request from all Category 1 and 2 responders in that particular sector details of the nature and volume of the information requests they had received under the Act, and how they had responded. The material provided would allow the Government to judge whether the sector was avoiding its obligations, or whether it was being put under unreasonable pressure, or whether there was some form of blockage in the system that could be removed. The Government could then take action, from adjusting the guidance so as to change expectations through to taking action in the courts.

⁴s. 9

⁵s. 10

Liaison with the Devolved Administrations

16.13 The Act requires a Minister of the Crown to consult the National Assembly for Wales before making any legislation, issuing any guidance, issuing any direction or bringing any proceedings in relation to a Category 1 or 2 responder in Wales.⁶ The Act also requires a Minister of the Crown to obtain the consent of the National Assembly for Wales before doing any of those things in relation to a Category 1 or 2 responder in relation to which the National Assembly for Wales have functions.⁷

16.14 The Act requires a Minister of the Crown to consult the Scottish Ministers when making legislation in relation to Category 1 or 2 responders in Scotland.⁸

Ministerial responsibility

16.15 The Act confers functions on “a Minister of the Crown”.⁹ In practice, the powers will usually be exercised by the Minister with lead responsibility for civil protection at the local level. However, all proposals to exercise these powers would be developed in close collaboration with relevant lead government departments and agreed between departments with an interest.

⁶s. 16(1)

⁷s. 16(2)–(4)

⁸s. 14(1)

⁹For example, see s. 2(3) or s. 3(1)