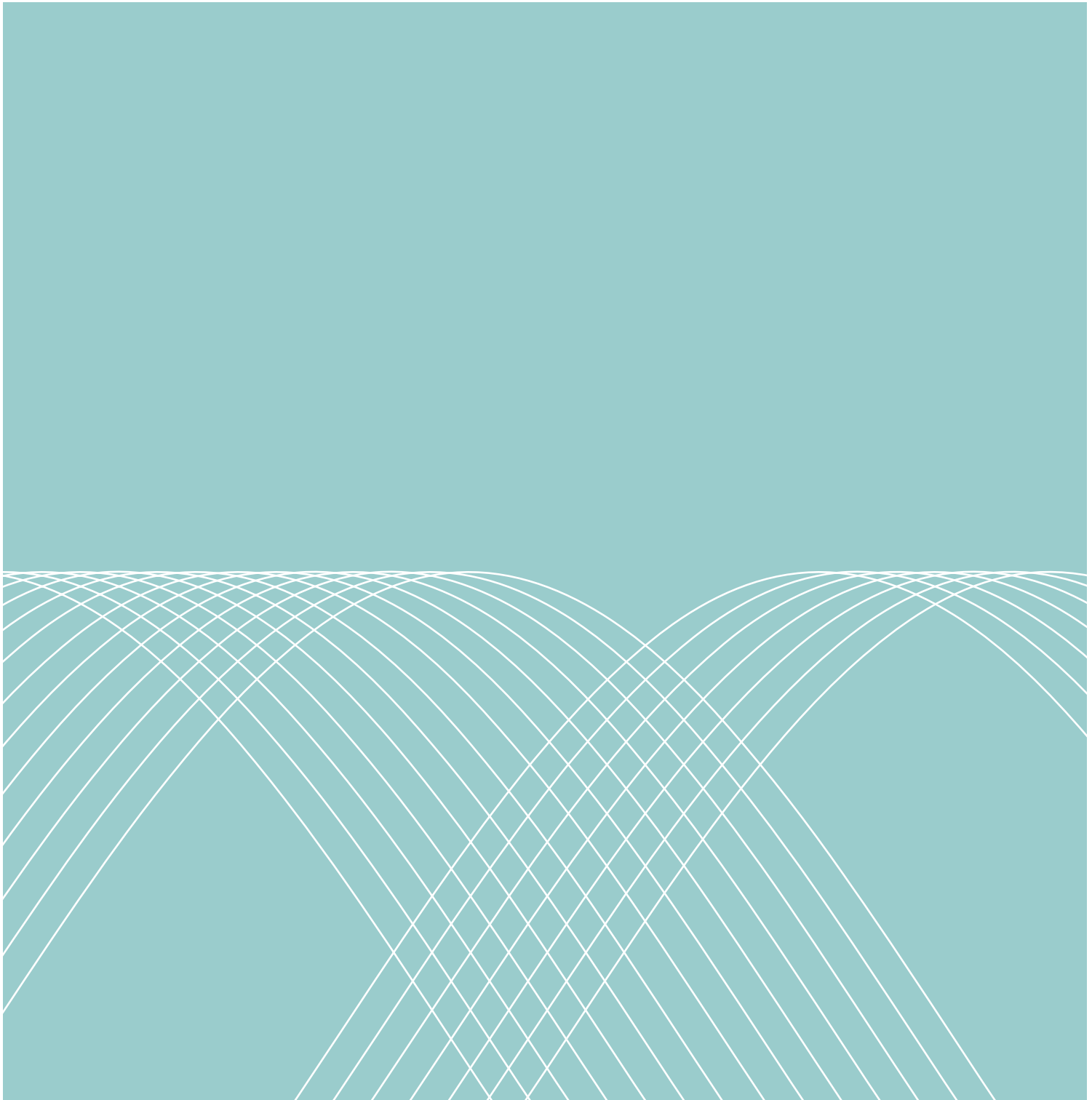




The Government's Response to the Public Consultation on the Draft Civil Contingencies Bill



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Introduction

The Government published a draft Civil Contingencies Bill on 19 June 2003, together with a detailed consultation document and a Regulatory Impact Assessment. The twelve-week public consultation exercise included seminars in all of the English Regions, in North and South Wales and in Northern Ireland, explaining the content of the draft Bill and the policy behind it. All key stakeholders were invited and productive question and answer sessions helped examine the range of views held. The consultation was in addition to the ongoing dialogue the Government has been engaged in with key stakeholders in what has been an open and inclusive policy development process.

Both the Scottish Executive and the Office of the First and Deputy First Minister in Northern Ireland ran their own supplementary consultation exercises simultaneously, the former accompanied by a range of seminars across Scotland.

The Government received 379 replies to the Consultation Document, which invited comments on 23 questions. Many submissions began with a statement that they welcomed the draft Bill and supported the Government's initiative in this area.

The consultation covered a wide range of respondents. The largest number (187) was from local authorities, but there were useful contributions from all of the proposed responder bodies in Categories 1 and 2, together with private companies, professional and lobby groups, voluntary bodies and civil liberties groups, and other interested organisations and individuals.

There was a large number of useful comments and suggestions which have helped in finalising policy for the Bill. What follows is a summary and selection of these contributions, together with a response by the Government to the points raised.

Question 1

Is the definition of emergency the right one?

If not, in what ways should it be tightened or expanded to exclude certain classes of event or situation?

Overview

There were 287 responses on this question, of which 34% agreed; though 65% had suggestions for improvements.

Comments and Suggestions

Many respondents expressed themselves broadly in agreement with the definition, but added specific reservations:

- Local Health Boards of South East Wales: “It is very comprehensive and seems to catch all potential categorisations of an emergency and its effects”
- Local Government Association (LGA): “While this is a much wider definition of emergency than has previously existed in UK legislation, it is broadly acceptable.”
- Association of Chief Police Officers (ACPO): “The suggested definition appears adequate...”
- Chief and Assistant Chief Fire Officers Association CACFOA: “[The] definition provided... is comprehensive and clear...”
- Emergency Planning Society (EPS) “The Society is in broad agreement with the definition, with 3 exceptions...”

Reservations about the definition of emergency in regard to Part 1 of the Bill were mainly with the word “serious”. Many asked, ‘how do we know when there is an emergency which is serious enough to be called an emergency: what is the scale of this event or situation?’ Many respondents noted that the definition of emergency in “Dealing with Disaster” - an event which cannot be dealt with as part of normal day-to-day activities - is in general use and works well. They recommended that it be used.

- LGA: “...there needs to be a ‘de minimis’ 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).”
- ACPO: “... a routine task of the police and other emergency services is to respond to events which meet the [draft Bill] definitions... therefore... reference should be made to ‘major emergency’ as defined in ‘Dealing with Disaster’...”
- EPS: “...the definition should include reference to a trigger point at which an event may be considered to be a ‘serious threat’, and we suggest that the Government should adapt its own phrase from ‘Dealing with Disaster’...”
- CACFOA: “...the term ‘serious threat’... can be open to differing interpretations and is difficult to quantify... compared with the definition... in

‘Dealing with Disaster’ which focuses on capacity and resilience to respond... and is familiar with planners and responders alike.”

Other respondents were also concerned about the question of scale. Some of the utility companies, for example, were concerned that incidents which they deal with effectively under licence conditions or directives or other requirements might become the subject of unnecessary planning activity by other responder bodies under the Bill. They want regulations to distinguish between threats that are serious “but unexceptional” and those that are “both serious and exceptional” (United Utilities plc).

The other main area of reservation concerned the breadth of the definition and uncertainty about the purpose of its repetition in each part of the Bill. The Association of British Insurers, for example, was in favour of the definition, providing it was not interpreted as referring solely to events “threatening or causing environmental, social, economic or political disruption at a national level.” Some thought that the two parts of the Bill – emergency planning by local responders and the use of emergency powers by central Government – demanded two different definitions, or more.

- Law Society: “We propose that the legislation should be re-drafted to provide separately for two distinct levels of disruption. One termed ‘emergency’ which would be confined to disruptions and events that ‘threaten the life of the nation’. The other level would carry another term (i.e. disaster) and could include more localised events that do not threaten the entire nation and would therefore not require national measures”.
- UK Advisory Committee for Natural Disaster Reduction: “... define different levels of emergencies [of increasing severity] in relation to the different tiers of Government and their capabilities, i.e. municipal, regional and national...”

In particular, various respondents considered that the inclusion in the definition in both parts of the Bill, of a “serious threat... to political, administrative or economic stability” was too broad, or simply unnecessary.

- Chartered Institute of Environmental Health: “We have some concerns over what might be intended by the inclusion of ‘political, administrative or economic stability’. It is difficult to see how the proposals in the Bill can protect the population in such ‘emergencies’.”
- EPS: “We believe that there needs to be a caveat ... that political, administrative or economic stability should relate only to those instances where there is also a threat to human welfare.”
- East Riding of Yorkshire Council: “... political, economic or security issues... are an unnecessary duplication and are simply one of the many events 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.”
- International Bar Association: “...would a stock market crash or vote of no confidence in the prime minister amount to a ‘serious threat’ to the political, administrative or economic stability of the country?”

Further concerns were expressed widely on detailed matters - like the extension of the definition to sea-water and to oils other than fuel oils.

Further discussion about the definition of emergency in Part 2 of the Bill is contained in response to Q13 below.

Government's Comments

It was intended to clarify in regulations the kind of situation in relation to which the duties under Part 1 of the Bill would apply. However, the large number of requests that further clarification should be included on the face of the Bill has persuaded us that this is the right course.

The Government agrees with respondents that the question of the scale of a "serious threat" does need further expression. The Government agrees that what works on the ground at present can be utilised in legislation, that the formulation in Dealing with Disaster is sound:

"any event or circumstance... on such a scale that the effects cannot be dealt with...as part of... normal day-to-day activities".

The substance of the Dealing with Disaster definition will be included as a trigger in the Bill.

It will be supported by a requirement in regulations that Category 1 responders maintain a procedure for determining whether an emergency has occurred. These procedures should be included in their emergency plans.

The Government has also been persuaded by arguments from a number of respondents that the provision in the draft definition of emergency relating to "political, administrative and economic stability" can be delivered by other provisions in the definition – namely, those relating to a serious threat to "human welfare", "environment" and "security". Therefore, it is proposed to delete the "stability" provision.

Various other points – such as those mentioned above referring to "oils" - have also been accepted.

Question 2

Do you agree that the obligations imposed on both Category 1 and 2 responders by or under the new framework, will ensure operationally effective and financially efficient planning and response to emergencies at the local level?

If not, how should these obligations be increased or reduced?

Overview

There were 315 responses on this question, the highest number for any of the questions, of which 34% agreed, with 57% suggesting revisions to the proposals.

Comments and Suggestions

There was general agreement with the duties as outlined in the consultation document.

- Association of London Government: “The Association... welcomes the review of roles and responsibilities in relation to emergency planning and the intention that this becomes an explicit statutory function of a local authority.”
- CACFOA: “On balance, we agree with the obligations imposed upon Category 1 and 2 responders in the knowledge that similar arrangements and structures are already in place in many areas - albeit not operating at the same level of resilience [as] required in the draft Bill.”
- Ambulance Service Association: “Placing such duties as statutory responsibilities is fully endorsed and supported by this organisation...”

Many respondents said they would welcome an opportunity to comment on the regulations on Part 1 once they were available in draft. In particular, several commented further that they were unable to judge whether proposals would ensure operationally effective and financially efficient planning and response. Also it was suggested that there was a need for greater clarification of roles and responsibilities and the manner in which the two categories of responders will work together.

- Emergency Planning Society: “There can be no doubt that duties imposed on both Category 1 and Category 2 responders by or under the new framework have the potential to improve operational effectiveness... However, further definition of Category 1 responders, particularly in two-tier areas, would clarify the functions of each tier with respect to their involvement.”
- British Airports Authority: “Regulations requiring co-operation and co-ordination need to be clear and easily enforceable. The examples provided in Annex B to the Regulatory Impact Assessment (Local Responders) are a good example in this respect.”
- Association of Local Authority Risk Managers (ALARM): “...in clarifying a consistent set of obligations and expectations for the partners, consideration should also be given to a protocol allocating responsibilities so that this does not have to be defined locally in each case.”

It was suggested that Category 1 duties should be carried out collectively, not as individual organisations:

- Association of Chief Police Officers: “ACPO considers that notwithstanding clause 2(2), these duties should not be placed upon each Category 1 responder; rather there should be collective responsibility to ensure that such arrangements are in place in that locality.”

There was also a call for greater clarity as to how two-tier local authorities will fulfil their obligations:

- Chartered Institute of Environmental Health: “Whilst we welcome the proposal that all principal councils should be recognised as first tier

responders, we feel that greater clarity is required in defining the duties and responsibilities in two-tier areas... The Government should state in clear terms how local authorities in two-tier areas are supposed to work together.”

- SOLACE: “Given that the best county councils plan on the basis of the full range of local authority functions in their area by working with their district colleagues, the proposal that ‘county councils will take full responsibility for local authority civil protection in their area’ without further explanation, could be seen as retrograde and even divisive.”

Some respondents insisted that current local authority joint arrangements worked well. Local authorities, they argued, should be permitted to continue to delegate their functions in delivering their proposed duties under the Bill. It was further proposed that Fire and Civil Defence Authorities (FCDAs) should be permitted to continue with collaborative working where there was relevant local authority agreement.

- CACFOA: “If FCDAs and CFAs are not deemed currently to be local authorities, CACFOA believes that it is essential for this legal loophole to be closed to enable a local council, should it wish, to contract out some or all of its proposed duties under the new Bill.”

But concerns were also raised by other respondents that the Bill does not deal with what they see as the anomaly of FCDAs continuing to carry out COMAH planning, instead of COMAH and the other European derived statutory duties transferring to Metropolitan Districts.

There was wide-ranging support for basing emergency planning and civil protection on formal risk-source assessment:

- Ambulance Services Association: “Risk Assessment and planning and prevention should be core activity for any local responding agencies.”
- Association of British Insurers: “The changing nature of risks and the potential size of their impacts require regular re-evaluation of the measures being taken, and the re-appraisal in the draft Civil Contingencies Bill is welcome”

Nevertheless, some respondents suggested that risk assessment and risk prevention are not part of emergency planning and should be left to the appropriate professionals.

- Society of Industrial Emergency Services Officers (SIESO): “Whereas hazard identification may be within the capability of local authorities, most are not equipped to perform either quantitative risk assessment or the unstated corollary of accident prevention.”

It was also suggested that central Government should provide strategic national risk assessments on the extreme, or catastrophic, risk areas covered by the provisions of the Bill, and that legislation should require consultation and co-ordination between agencies in undertaking risk assessments.

Liability in undertaking risk assessment, crisis response and recovery operations was a further issue. Some respondents called for consideration of

whether the Bill should include provision for central government to underwrite the potential liability of Category 1 and 2 organisations.

Also, concerns were raised about the resources available to Category 1 organisations to deliver the requirement to warn and inform the public and what this duty would actually entail. It was suggested that warning and informing the public could best be achieved through a national communication strategy developed at the centre.

- Gwent Authorities Emergency Planning Service: “The broad context of the obligations would appear to be acceptable... These duties [however] potentially expose all local responders to considerable liabilities, when issues such as the prevention of emergencies and warning the public are taken into account. Such liabilities are acceptable only if the capability is available to meet them, which is largely dependent upon resource availability.”

Despite broad support for the extension of the Government’s resilience policy into the area of business continuity management (BCM), a number of respondents expressed concerns about its implications, in particular the ability of local authorities to carry out effective promotion of BCM. Others suggested that Category 2 organisations should also be required to carry out BCM planning, as they would be essential to the response phase.

- Nottinghamshire Emergency Service Liaison Group: “Not all agencies are satisfied that they could cope with the Bill’s Business Continuity issue! Some have Business Continuity Officers in post. Others would have to find additional finance to fulfil these requirements.”
- Emergency Planning Society: “The Society... welcomes that business continuity planning is recognised in the Bill as a valid and necessary part of the civil protection process... It is suggested that this requirement... should also be made of Category 2 responders.”

Some respondents argued that the Bill was too focused on the local response and that this could have implications for the delivery of an effective national response to a national emergency. This was of particular concern to regionally and nationally structured Category 2 organisations:

- Association of Train Operating Companies: “It certainly seems more appropriate for central Government to give directions to a utility that operates on a nation-wide basis, rather than local or regional officials... it must be clear which set of rules will prevail in the event of a conflict.”
- Scottish and Southern Energy plc: “...all interaction involving the electricity industry should be at a Central Government level (involving Lead Departments) and the associated Regional Resilience arrangements.”

It was asserted by a number of respondents, particularly those from the private sector, that the process of sharing information should include safeguards. It was important, they argued, to protect information regarding matters of national security, along with commercially sensitive material.

- CE Electric UK: “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.”

Government’s Comments

The broad welcome by respondents to the range of duties prescribed by the Bill and the proposal that the duties should fall differently on different categories of responder body is good news. The Government has designed the Bill to reflect and strengthen what exists and sees this as a foundation for whatever changes may be needed in the future.

Many respondents have commented that it is difficult to assess how effective and efficient the new statutory procedures will be until they see the detailed requirements contained in regulations and further advice in guidance. The Government appreciates these concerns. Draft regulations will be prepared to accompany the Bill on introduction into Parliament. After Royal Assent, they will be revised and published for a new round of consultation.

Generally, the Bill is not prescriptive and will permit local responder bodies to carry out their civil protection duties in accordance with the exercise of their underlying functions. However, the Government’s aim of achieving greater consistency in civil protection arrangements across the country has led to a few standard requirements, including:

- The main civil protection duties under the Bill
- Differentiation between how the duties fall on two categories of local responder
- The formation of Local Resilience Forums on a standard basis
- Standard requirements for attendance at these meetings.

The achievement of a standard framework for delivery of civil protection across the UK will give Government greater confidence that the duties are being carried out in a similar manner and to a similar level in all parts of the country, with a greater ability to make comparisons as necessary and a better understanding, in the context of regional and national emergencies, of what local capabilities are. It will facilitate groups organised on a regional or national level (such as the utilities) when they engage in civil protection work at the local level because they will find a much greater consistency of approach between areas.

Arrangements in shire areas will require further consideration in guidance. Because key local government functions, such as housing and environmental health, are located at the shire district level, and shire districts frequently are the local authority bodies first at the scene of an incident, it is right that the statutory duty should fall on them. Liaison arrangements with the shire County Councils and other local responder bodies will have to be handled carefully to avoid wasteful duplication.

In metropolitan areas, with the repeal of the Civil Defence Acts, Fire and Civil Defence Authorities will become Fire and Rescue Services and have no direct responsibilities in support of local authority emergency planning. However,

local authorities will be given powers of delegation in the Bill, so those that wish to delegate their functions to the Fire and Rescue Service or some other body will be permitted to do so.

The potentiality awkward overlap between the existing functions of local responder bodies, like the utilities and transport companies, which are tightly regulated under their own sectoral legislation, and the civil protection duties under the Bill, has been addressed by giving them Category 2 status. As a result the full burden of the civil protection duties does not fall on them.

The Government welcomes the wide support for the recognition of risk assessment in the Bill. By bringing the assessment of risk into the civil protection framework and making it the foundation for local responder emergency planning, the Government is following best practice and delivering on its resilience agenda which must include risk assessment and prevention. Guidance will make clear that the “risk assessment” envisaged is a broad-brush approach relevant to identifying priorities for the preparation of emergency plans. It will also clarify that the prevention work required of local responders is to plan to ensure that small-scale incidents do not develop into large-scale incidents. The Bill will not place a duty on local responders to take actions to prevent emergencies which are outside their functions or beyond their competence.

The Bill does not place an express duty on local responder bodies to respond to an emergency. But it does require them to maintain *plans* for response and to maintain *arrangements* to warn, inform and advise. This formulation of their responsibilities does not remove potential liabilities from local responder bodies if they carry out their functions negligently. It places the onus on them to ensure that their plans and arrangements are acted on according to the procedures that they themselves have devised. Particular provisions will be introduced in regulations, supported by guidance, to ensure that the duty to maintain arrangements to warn is divided appropriately between the Category 1 bodies.

The promotion of business continuity management by local authorities addresses the Government’s desire to build community resilience at a local level. It is not envisaged that local authorities will provide BCM advice directly to local businesses unless they have the capability and wish to do so. Promotion of BCM is an activity which can be carried out by the economic development unit of a local authority or by a proactive emergency planning unit. Government already supplies materials to assist with business continuity awareness.

Concern has been expressed, too, that the requirement on Category 2 bodies to share information, together with that on Category 1 bodies to publish aspects of their risk assessments and plans, may potentially damage confidentiality, safety or security for Category 2 bodies, and interfere with competition. These points are accepted and will be dealt with in Regulations.

Question 3

Do you agree that the membership of Categories 1 and 2 is right?

If not, which organisations should be added, moved or removed?

Overview

There were 312 responses on this question. Whilst the overwhelming majority agreed with the original list, many also had suggestions as to how it could be improved.

Comments and Suggestions

There was wide support for the concept of having Category 1 and 2 organisations and general agreement with the proposed membership of Category 1.

However, a range of suggestions was made for additions to Category 1. These suggestions divided into three broad areas:

- Those already named in Category 2, which respondents felt should be in Category 1
- Those already known to be included in Category 1 where it was felt that membership needed to be made more explicit
- Those that were not included in either category.

One of the latter was the British Red Cross. They argued that

- “the Red Cross should be included as a Category 1 responder..., given the legal functions established under our Royal Charter and the Geneva Conventions... Emergency response is the central purpose of the Red Cross. We deal with the human consequences of disaster.”

However, there were mixed views from respondents representing the voluntary sector as to what status voluntary organisations should be given under the Bill. While some argued for the voluntary sector’s role to be recognised in statute, others contended that the voluntary sector should not be included in either category. Nevertheless, there was overwhelming agreement from respondents representing all sectors that the role of the voluntary sector must be recognised by all Category 1 and 2 organisations, and that they should be consulted and involved during all stages of the planning process and supported financially where possible.

- St. John Ambulance: “We would particularly wish to emphasise our agreement that voluntary organisations such as St. John Ambulance should not be covered by the new Duty, with the statutory obligations conferred on Category 1 or 2 Responders...”
- National Voluntary Aid Society Emergency Committee: “The final legislation should place a statutory responsibility on Category 1

responders to involve relevant voluntary organisations fully in all aspects of civil protection.”

As with Category 1, there was broad agreement with the membership of Category 2, but with many more suggestions for inclusion. These fell into the same areas as Category 1 suggestions.

A large number of respondents advocated the inclusion of bus and coach companies. For example, “When considering evacuation procedures the full participation of bus and coach operators is essential but can be difficult to achieve.” (Mid Bedfordshire District Council)

A small number of respondents argued that Category 2 responders should not be specified. It was suggested that Category 1 responders should be able to decide on which should be a Category 2 organisation within their locality, in order that local priorities and circumstances are best served.

- National Council for Civil Protection: “It would probably be far better to copy the existing Community Safety legislation, which enables a local authority to require the co-operation of any organisation which it considers has a role to play.”

Some respondents commented that there needs to be only one category, with all organisations under the same obligations. They argued that it was likely that Category 2 organisations would be as heavily involved in certain incidents as those in Category 1. It was also suggested that additional categories should be created which would allow the voluntary sector to be included and possibly the media - and even extend to placing responsibilities on the public.

- Leicester City Council: “...there is scope for introducing a Category 3 responder, specifically aimed at voluntary agencies and organisations, under a locally administered accreditation scheme permitting local agreement for the provision of services on an availability basis. In this we do not see a legally enforced duty, purely accreditation.”
- British Energy: “...there is an opportunity for further categories to be established for the management of the media and the responsibilities of the public.”

Some respondents maintained that if, following the enactment of the legislation, future additions were made to either Categories 1 or 2, there should be full consultation amongst local responder organisations.

Government’s Comments

The Government’s aim in identifying specific organisations which should be included in the two categories is to consolidate civil protection activity at the local level and to develop greater consistency in arrangements across the UK. This will benefit everybody at all levels.

The proposed arrangements focus in Category 1 on those organisations which are most likely to be involved in most emergencies, that is, the “core”. In

addition, responder bodies are identified in Category 2, which are particularly important in certain types of emergency, and which can play a key role locally in a support role, and which may themselves sometimes be the source of a local emergency.

Some voluntary sector organisations have urged that they be specifically included in Category 1 or 2 or that a requirement on local responder bodies to acknowledge their role and contribution be made explicitly in the Bill. After long consideration, it has been decided that this is not appropriate, but the role and importance of the voluntary sector will of course be specified in Guidance.

The Bill is particularly focused on *local* arrangements for *responder* bodies which have an operational role in emergencies. It does not directly concern itself with national arrangements in regard to the critical national infrastructure, which are outside its local focus.

The current proposals for inclusion in the two Categories broadly reflect what exists at the moment and what works. This new statutory structure for local co-operation should be consolidated first. The new local framework must have time to bed in before it is over-loaded with additional Category 1 and 2 responders. Provisions exist in the Bill for additions and amendments to Categories 1 and 2 to be made by regulation in future years.

There is nothing in the Bill which will prevent Category 1 bodies in their local areas from inviting additional groups and organisations to join them in their civil protection work, that is, groups which they consider should be included because of the particular risk profile and circumstances of their area. But this co-operation should not be statutorily required.

The Government has examined the possibility of permitting leading members of the local forums to identify the partners they want and oblige them to attend, using statutory powers such as those outlined for the crime and disorder partnerships. We have considered the case carefully and believe that a statutory approach in this respect is not suitable because of the problem of the framework growing out of control, with inconsistencies developing between areas and too many bodies formally involved.

Question 4

Do you agree that the Bill gives the Government the right balance of regulation making powers to meet its aims of consistency and flexibility? If not, please explain how the powers should be expanded or constrained.

Overview

There were 248 responses on this question. Most were in agreement (73%), with 5% against and the remainder uncertain.

Comments and Suggestions

While there was broad agreement that the Bill offers a satisfactory balance of regulation making powers, many commented that they were unable to provide a full response to this question in the absence of the regulations themselves. Most respondents called for a further public consultation on the draft regulations when they were available, before they came into force.

- Emergency Planning Society: "There is a general acceptance of the balance. However, because of the pivotal role given to Regulations in the Bill, it is important that a proper consultation mechanism is put in place"
- Devon Fire and Rescue: "We agree that the balance is right."
- Local Government Association: "The LGA believes that the balance is about right. However, given the importance of the subject matter, we would urge that the process for considering the Regulations in Parliament should be by the affirmative resolution procedure".
- International Institute of Security: "The right level of balance and flexibility appears to have been achieved".

Respondents argued that there had to be comprehensive guidance to accompany the regulations to ensure consistency of implementation across England and Wales. Consistency would be particularly important for national organisations with a local role.

- Bournemouth & West Hampshire Water: "We agree that the Bill appears to provide a framework for a positive improvement in resilience with minimal central intervention. However, it will be important that where necessary clear guidance is given to ensure consistent and appropriate interpretation."
- Manchester Health Protection Unit: "I agree that the Bill gives the Government a balance of regulation making powers to meet its aims of consistency and flexibility but that these powers may need to be expanded and clarified. It is important that all regulations regarding emergency planning are clearly defined and accessible to various organisations to ensure that plans are properly implemented and regulated".

Government's Comments

The Bill is an enabling Bill which seeks to establish in legislation a framework of powers which can be delivered through regulations. The regulations may change in future years as circumstances change, and will be supported by guidance. A balance should be struck:

- between duties and powers on the face of the Bill, detailed requirements in Regulations and advice in Guidance
- between the statutory obligations on local responders and the freedom for local interpretation by them of what they are required to do.

In the light of the consultation, the Government is broadly satisfied that for Part 1 of the Bill the balance between central government prescription and local responder freedom to interpret how they should perform their duties, is about right.

One feature of the Bill is that the powers have been drawn quite widely to allow the maximum flexibility. But the aim is to narrow the scope and application of these powers in the regulations.

The Government did not publish draft regulations alongside the draft Bill because important questions of structure and content needed to be addressed first. It needed to establish whether the balance of regulation-making powers and its approach to the definition of emergency were right. It also needed to be sure that the construction of civil protection around an organisation's functions was sensible and if the range of activities proposed to make up the civil protection duty was sound. It was also important to establish whether there was support for local resilience forums and for the arrangements for civil protection in Wales and London and which local responder bodies should be included in Categories 1 and 2.

It is intended to have draft regulations ready for the Bill's introduction to Parliament. The Government expects to undertake a further public consultation on these regulations and guidance following Royal Assent but before commencement.

Question 5

Do you agree that consistent arrangements for multi-agency working should be established, through the creation of Local Resilience Forums? If not, how else should consistency be established?

Overview

There were 273 responses on this question. The overwhelming majority were in agreement (92%), with 4% against.

Comments and Suggestions

There was wide recognition of the crucial importance of multi-agency working and strong support for the concept of a Local Resilience Forum. Many respondents pointed out that the proposed arrangements would reflect in many areas what already exists.

- Chief and Assistant Chief Fire Officers' Association: "The concept of Local Resilience Forums (LRFs) is sound, as it builds upon effective existing arrangements."
- Avon Ambulance Service NHS Trust: "The Trust believes that the formation of standardised Local Resilience Forums is a positive step forward towards achieving commonality in planning for major incidents across the country."
- Association of Chief Police Officers: "There is clearly a need for consistency in local arrangements... ACPO is supportive of the proposal that, to a very large extent, captures what is already in place."

Although the majority of respondents supported the concept of the LRF, there was a call for greater clarification of their role.

- Ambulance Services Association: “Clarity is needed around the role the forum would play. Is it just a co-ordinating centre or does it facilitate locally focused policy...?”

It was also proposed that - in order to meet the Bill’s objective of ensuring consistency of arrangements across England and Wales - leadership, membership and terms of reference of the LRFs should be set out clearly in regulations. Others went further and argued that the LRFs should be detailed in primary legislation.

- Local Government Association: “Local Resilience Forums should be given statutory powers and duties, which should appear on the face of the Bill, to ensure improved liaison between District and County Councils.”

However, others took the view that the arrangements and membership of the LRF should be determined at the local level. This would ensure local autonomy and better support local circumstances.

- Hertfordshire County Council: “The administration, chairmanship etc of the Local Resilience Forums should be left to local determination in preference to any ‘one size fits all’ set of arrangements imposed from above.”

There was also concern that the establishment of the LRFs should not disrupt or supplant the work of successful, existing multi-agency groups, particularly at the sub-county level.

- Bolton Metropolitan Borough Council: “The Council would wish to ensure that the Bill added strength to the continuance of such established local arrangements... [It would] urge the Government to recognise specifically the importance of establishing and maintaining multi-agency contingency planning at local (Borough or equivalent) level...”

Various responders suggested that permanent membership of the LRFs be restricted to Category 1 organisations only. They proposed that Category 2 organisations be invited to take part to deal with specific issues, as and when appropriate. Otherwise, it was argued, the LRF could become too unwieldy. It was also suggested that sub-groups of the LRFs, concentrating on specific issues, might provide a practical structure for engagement with Category 2 organisations.

- British Transport Police (BTP): “...there are logistical hurdles in trying to participate in forty three local groups in England and Wales... Regulations and Guidance [should] specify that BTP should be invited to attend, and participate where necessary, at both levels [local and regional] but also that it should not be mandatory to do so.”
- Gwent Local Authority: “LRFs are unlikely to be appropriate as the sole means of achieving co-ordination. It will be important to indicate in guidance the need for the LRF to be supported by a structure of relevant sub-groups....”

A small number of national organisations did raise concerns about being required to engage at a local level.

- Mobile Network Operators (MNOs): “Responders such as Mobile Network Operators operate nation-wide... Interaction between the MNOs and local and regional representatives of the public authorities... seems highly unlikely to add value and will probably waste the resources of all parties. It will therefore be more effective and provide better value for money for the public authorities and the MNOs if interaction between them to achieve the Bill’s aims takes place at a national level only.”

Some concern was expressed about basing LRFs on police area boundaries. Some organisations would not be co-terminous with this structure: for example, health bodies. It was suggested that these organisations could face a possible duplication of their work.

- Bath and North East Somerset NHS Primary Care Trust: “...there needs to be control against duplication and recognition of mismatch of NHS boundaries and police areas.”

Government’s comments

The proposal in the Bill for Local Resilience Forums takes the existing Strategic or Senior Co-ordinating Committees which exist on a county level in almost all parts of the UK and establishes them on a firmer basis. These groups have been successful because they recognise the primacy of the Police - and the importance of the emergency services generally - at the response phase and build a local policy forum around them to address emergency planning and other civil protection issues. Constituting them everywhere on police boundary areas gives the groups greater consistency and gives Government greater confidence in the co-ordination of local civil protection.

Leadership of the LRFs in many areas will rest with the Police. The local authorities, because of their wide range of functions giving them an extensive range of civil protection responsibilities, are also particularly important in bringing local responder bodies together. It should not be assumed that the police in every area are the right body to chair the LRF. The Government believes that local determination is the right policy in regard to leadership of the LRFs.

Government also accepts that other multi-agency groups should continue to exist on a permissive basis, where appropriate, at sub-county level. Regulations will allow this and their role be outlined in guidance. They will work within the overall umbrella of the LRF.

Sub-groups of the LRF will also be permitted and supported by guidance. These groups may be concerned with particular topics and Category 2 responders may be able to satisfy their obligation to attend the LRF by attending one of these sub-groups. In order to avoid excessive demands on national bodies to send staff to regular meetings taking place in 43 local areas, Category 2 groups will be permitted in regulations to nominate appropriate representatives to act on behalf of more than one company. The same

provisions will also allow bodies whose boundaries do not coincide with police areas to nominate a suitable representative to act on their behalf rather than be obliged to attend every meeting of two (or more) LRFs.

Question 6

Do you agree that the partial Regulatory Impact Assessment accurately reflects the costs and benefits of the Bill proposal? If not, how should it be changed?

Overview

There were 248 responses on this question. Most agreed with the original analysis, though many of those (77%) offered evidence to support adjustment of the RIA.

Comments and Suggestions

Many respondents expressed broad agreement with the RIA:

- Bournemouth & West Hampshire Water: “The Government appears to have adopted a pragmatic approach and we find nothing in the consultation in this respect which we disagree with.”
- British Airports Authority: “We broadly concur with the assessment, particularly as it relates to Category 2 responders.”

Others who were undecided commented that, until the draft regulations were available, it was difficult to assess with any accuracy the costs of implementing the Bill proposals.

Some respondents felt that the costs had been underestimated.

- Network Rail: “Network Rail agrees that much of what the CCB proposes is already addressed by the company within its public protection role... However, the concerns are more of scale... if each LRF emulates those areas of existing best practice then the totality of Network Rail’s involvement will be significantly increased.”
- UKCTA (Telecommunications Association): “UKCTA expect that telecommunication operators who have National Infrastructures will be invited to participate in several and in some cases all the Local Resilience Forums. Therefore, the costs should truly reflect the possible increased level of involvement in many LRFs.”

One of the main reasons given why respondents expressed dissatisfaction with the RIA and took the view that costs had been underestimated, was their observation that it concentrated almost entirely on the impact on the private sector and failed to take account of the suggested additional burdens for Category 1 responders.

- CACFOA: “The Regulatory Impact Assessment focuses almost exclusively upon business impact and we support the conclusions of that analysis.”

However, as regards the providers of civil contingency planning, there has been no robust impact assessment...”

- LGA: “No account is taken of the likely costs to Category 1 responders... It is suggested that the costs on all Category 1 and 2 responders should be assessed, taking into account the new and additional burdens placed on them by this legislation.”

The Association of British Insurers (ABI) suggested that the RIA should be extended to reflect the wider costs for those in the private and voluntary sectors who are not listed as Category 2 responders: “for resilience to be achieved, considerable ‘voluntary’ activity needs to be undertaken by the private and voluntary sectors”. However, ABI also commented, “...Offsetting this, the benefits to business and society as a whole will be considerable.”

Government’s Comments

The purpose of the RIA is primarily to ensure that no policy proposal which has an impact on business, charities or voluntary bodies is considered by Ministers without an assessment of its impact in terms of costs, benefits and risks. The RIA is not intended to be a detailed analysis of public sector costs.

The Partial RIA which accompanied the Draft Bill is now being revised and a Full RIA prepared, which will accompany the Bill on introduction to Parliament.

Even those Category 2 bodies which are most critical of the estimated additional costs in the Partial RIA, welcome the Bill. They do not draw the conclusion that they should be removed from Category 2. Further work on the role of Category 2 bodies has suggested that the potential burdens on them can be reduced by permitting them to nominate appropriate representatives to attend some LRF meetings on their behalf (see Government comments on Question 5 above).

The Full RIA contains a re-calculation of the potential costs of the Bill for businesses. It includes a case study of one of the bodies captured in Category 2.

Question 7

Do you agree that funding for Category 1 local authorities should be transferred from specific grant (Civil Defence Grant) to Revenue Support Grant? If not, why should specific grant be retained?

Overview

There were 236 responses on this question. Of those that expressed a preference, the majority (56%) agreed, with 44% sceptical or opposed.

Comments and Suggestions

Those respondents who agreed that funding should be transferred to Revenue Support Grant (RSG) felt that this would help consolidate the position of civil protection as part of the mainstream activity of local authorities.

- Hampshire County Council: “It is agreed that funding through Civil Defence Grant is not appropriate and that a new method of funding local authorities for this area of activity is required. It is felt that the Revenue Support Grant is the correct vehicle for this.”
- East Riding of Yorkshire Council: “The Councils within the Humber agree in principle with the transfer of funding from specific grant to Revenue Support Grant.”
- Birmingham City Council: “In principle, Government support should transfer to RSG. Local Government has consistently argued for a reduced level of specific grants generally to increase flexibility and aid local decision making.”

Some respondents commented that there was a need for a transitional period between one system of funding and the next to ensure continuity of services. It was also argued that, within RSG, funding for civil protection must be transparent so as to ensure sufficient spending in this area.

- LGA: “The LGA believes that there should be transitional arrangements for Emergency Planning funding to be ring-fenced, or identified as a line in the EPCS grant...”
- Society of Local Authority Chief Executives (SOLACE): “The proposed move from specific grant to RSG seems reasonable... It is important that Government demonstrates its commitment to emergency planning and clearly identifies the funds it allocates to this function.”

Other respondents took a different or more cautious view. They were concerned that if funding was re-routed through the general Revenue Support Grant, it could be absorbed by more high profile local authority services, with the smaller civil protection service finding it difficult to compete.

- Leicestershire County Council: “Without a mechanism to identify and protect funding intended for civil protection, there is an obvious danger that the money will be used to fund other priorities.”
- Local Government Association: “If the Grant is transferred to the new Formula Spending Scheme, resource demand pressures from other services could potentially overwhelm the emergency planning service.”
- National Council for Civil Protection: “However local authorities are funded, there must be sufficient emphasis on the importance of the function to ensure that the funds are directed to it, rather than diverted to another use.”

Those respondents who felt that specific grant should be retained wanted assurance that resources will always reach their intended target in their entirety. It was commented that transferring the specific grant into the RSG would lead to inconsistencies, as the level of spending allocated to civil protection could vary from local authority to local authority. Specific grant, it was suggested, meant that funding could be protected from internal and external pressures. Many

respondents thought that specific grant helped to ensure a minimum level of service.

- Rotherham Metropolitan Borough Council: “The retention of specific grant is the best way of ensuring that funds provided for Emergency Planning purposes are actually spent in the way intended.”
- Plymouth City Council: “The danger will be that the removal of some form of ring-fencing for EP grant may well encourage a number of local authorities to use allocated monies in loosely connected ways, thus creating too much flexibility and not enough consistency.”

Some respondents pointed out that Shire District Councils do not currently receive specific grant directly. It was suggested that if shire districts are to carry out civil protection activity they should be eligible for funding from the RSG. In this regard, SOLACE stated that, without such financial support, “it is unrealistic to expect shire districts to make any additional contribution to improving resilience.”

Government’s Comments

The policy of the Government and of the Local Government Association is that pressure for specific grant generally should be resisted. They both support transfer to RSG in this particular case. Local authorities should be free to make their own assessment of priorities in light of their statutory functions.

The main guarantee for the performance of the civil protection responsibilities once funding is shifted into RSG, will be the new duty itself. This will be supported by regulations and guidance, as well as audit, to ensure that the duty is carried out. The main benefit of the shift into RSG is that civil protection will no longer be an island half-outside the mainstream of local authority activity. It will have to justify the importance of the local resilience argument amidst all the other pressures on local authority budgets.

Government is considering whether a transition period is needed to ensure that transfer from the current to the new system is managed smoothly.

Question 8

Do you agree that the level of funding to support the Bill is sufficient? If not, please explain why you believe it to be too high or too low

Overview

There were 293 responses on this question. The overwhelming majority disagreed (90%), with 2% in agreement.

Comments and Suggestions

Respondents generally were agreed that the level of funding to support the Bill was inadequate. Most of these thought that the current level of funding for

existing civil protection activity was insufficient and that this situation would worsen with the new, and what they considered to be enhanced, duties emanating from the Bill.

- Local Government Association: “Based on the LGA’s surveys, what *can* be stated with some certainty is that local authorities in England and Wales spend at present £36m annually, whilst receiving only £19m from central government in Civil Contingencies Grant.”
- National Council for Civil Protection: “NCCP seeks a substantial increase in funding, together with a severe audit regime to ensure that expenditure is appropriate.”

Some respondents suggested that additional funding should be provided for all Category 1 and 2 responders.

- Kent Ambulance NHS Trust: “Increasing the resilience of emergency preparedness arrangements in line with the principles outlined in the draft Bill, will inevitably have some cost implications for Category One Responders.”
- Association of Chief Police Officers: “...the police service, inter alia, will incur additional costs – particularly in ensuring auditable records are maintained, in arrangements for public warnings and in exercising and training.”
- Chief and Assistant Chief Fire Officers Association: “From a fire and rescue service perspective, additional funds will be necessary to complete intensive risk assessment in extended areas to secure the appropriate risk control and mitigation measures necessary to bolster existing resilience.”
- Swansea, Neath Port Talbot and Bridgend Local Health Boards: “Consideration should be given to allocating specific budgets to enable the health service to fulfil their roles and responsibilities, in particular around specialist training and exercising plans”.

It was widely felt that the broader definition of emergency and the increase in the level of threats, including climate changes and terrorism - together with raised public expectations - meant that those charged under the Bill with working in the area of civil protection will have to undertake a greater range of activity. A number asserted that a full funding review should be conducted to determine the costs accurately.

- Emergency Planning Society: “We believe that resource requirements should be assessed following a thoroughly investigated funding review which takes account of the fact that the definition of emergency takes civil protection far beyond what is currently expected to be in place.”
- Chartered Institute of Environmental Health: “The Bill will also raise public expectations and the overall aspirations for improved resilience, yet does not properly recognise the additional costs involved.”

Some of the respondents commented that until regulations were available it was difficult to assess with any accuracy the cost of implementing the Bill proposals.

- Bracknell Forest Borough Council: “[It is not possible to] reflect fully the costs and benefits arising from the Bill proposals without knowing the standards and regulations that have not yet been drafted.”

The LGA, with other respondents, identified the following areas of work as additional or enhanced responsibilities that the Bill will place on Category 1 organisations: risk assessment; prevention and public education about civil protection; additional training and exercising; internal continuity planning; public warning and information; regional liaison work; increasing inter-agency liaison and (for local authorities only) commercial business continuity advice and assistance. Each of these, according to the LGA, would require further funding.

Some respondents called for the establishment of a National Contingencies Fund for compensation payments - or a Government undertaking to compensate - in emergency situations. Another suggestion was for a further review of the Bellwin Scheme.

- Lincolnshire Police:” The Government should also consider the level of funding and thresholds of Category 1 responders for incident responses under the Bellwin Scheme.”

It was also suggested (mmO2 plc) that private sector organisations listed as Category 2 responders should be “entitled to reimbursement for the cost of work that they carry out, if that work goes beyond the course of normal business”.

Government’s Comments

The Government believes that all responsibilities of local government should be properly funded. Funding arrangements in the area of civil protection are kept under constant review. We have substantially increased the level of funding available for local civil protection over the last few years: 35 per cent increase for local authorities; investment in fire capabilities; additional funding for the police.

There must be a clear and robust case for any additional commitment of resources. Resources must be carefully targeted where need is greatest. Any pressure for additional resources will be considered as part of the established public expenditure processes, which will be addressed in the 2004 Spending Review. This is an approach supported by the Local Government Association.

Question 9

Do you agree that performance should be audited through existing mechanisms? If not, what mechanism would you like to see established?

Overview

There were 267 responses on this question. Most were in agreement (78%), with 14% against.

Comments and Suggestions

There was a general acceptance that performance should be audited through existing mechanisms, as this would be more cost effective and not divert resources away from the Civil Protection function.

- CACFOA: "...robust performance audit of civil contingency planning arrangements can, and should, be fulfilled through existing mechanisms."
- Knowsley Metropolitan Borough Council: "There is no justification for the creation of yet another audit or inspection body as auditing mechanisms already exist."
- Hertfordshire County Council: "In keeping with making civil protection a mainstream activity, it would be sensible to pass the task to the Audit Commission, which inspects and monitors other services successfully."
- Transco: "We would wish to see existing audit mechanisms used wherever possible to enable cost be kept to a minimum."

It was asserted that audit should be carried out qualitatively, not quantitatively, and that there needed to be a process in place which will measure "capacity and competence that is not readily quantified" (EPS). It was further suggested that this should be done by appropriately experienced and trained emergency planning professionals and that the audit system should facilitate the spread of best practice.

- Milton Keynes Emergency Planning Strategic Co-ordination Group: "The assessment also requires some input from professionals who understand the field (just as with the police and fire service, for example)".
- NCCP: "It would be sensible to pass the task to the Audit Commission, which checks other services successfully. The Audit Commission will, however, need to devote time and resource to developing the necessary understanding of the function".

Several respondents commented that, in order to get a true estimate of local resilience, not only should individual organisations be audited, but so too should the work of the Local Resilience Forum. But some suggested that existing audit regimes would not be able to capture inter-agency working.

- NCCP: "It also must be remembered that a possible downside of continuing with the existing range of audit mechanisms is that the very important aspect of the integration of individual agency's efforts into a co-ordinated response may not be judged".
- Eastern Leicester Primary Care Trust: "We would recommend that all inspection bodies develop a common approach to auditing emergency planning arrangements across partners. There may be merit in mandating one of the auditing bodies to do this on behalf of the others in a multi-agency way".

Some respondents supported a single audit regime as they were concerned that using existing separate audit systems would lead to a disjointed and inconsistent approach.

- ACPO: "...there is merit in further investigating the creation of a small separate body to ensure that all responders fulfil their responsibilities, both separately and jointly".

A number of respondents also called for nationally agreed standards and performance indicators - though some cautioned that there must be a degree of local autonomy in order to reflect local circumstances.

- LGA: "The LGA believes that performance against agreed indicators should be carried out by self-assessment and peer review".

Government's Comments

The Government welcomes the broad support for this change.

A dedicated inspectorate is not considered necessary because audit can be carried out by the existing inspectorate bodies for each of the responder organisations. Regular meetings can be arranged across the inspectorates at national and regional levels to ensure that there is a consistency in their approach.

The proposals from a number of respondents that a new inspectorate body be set up has been examined, but the Government concluded that there was little merit in it. The Audit Commission also shared this opinion. For a dedicated inspectorate to be effective, the costs of setting it up and maintaining it are likely to be disproportionate to the benefits. Resources in the area of civil protection are limited. Respondents and stakeholders generally have indicated that if a choice were to be made between more funding for the basic duty and the establishment of an inspectorate, they would prefer the former.

Question 10

Do you agree with the role of Regional Nominated Co-ordinator?

If not, who should take responsibility at the regional level, and with what responsibilities?

Overview

There were 275 responses on this question. Most were in agreement (77%), with 9% against.

Comments and Suggestions

There was general acceptance of the proposed role of Regional Nominated Co-ordinator (RNC).

- Chartered Institute of Environmental Health: "For clarity, it is essential that there is one person filling this role, able to co-ordinate for the whole region."

- Association of Chief Police Officers: “ACPO recognises the benefits of the role of a Regional Nominated Co-ordinator.”
- Emergency Planning Society: “Yes. In principle, ...the appointment of a RNC during a regional crisis... will, firstly, ensure that the communication link between central government and local multi-agency commands is greatly improved and, secondly, provide the embracing leadership necessary for regional emergencies.”

However, there was some concern over the process of pre-nomination and what would be the criteria for the appointment of a RNC. Some respondents felt that leadership skills, along with strategic and crisis management experience, would be more important than specialist knowledge, while others felt that a specialist background was crucial. It was also asserted that for the role of the RNC to work they must have real authority in order to be seen to be credible.

- Emergency Planning Society: “... any individual appointed [must have] real authority, and [be] a respected, respectable and credible lead individual.”
- North Somerset Emergency Management Co-ordination Group: “[It] should be from a selection of individuals with proven crisis management experience, rather than specialist knowledge. Specialists have a role, but purely as advisers.”

A number of respondents commented that the role should be clearly defined, including the relationship between the RNC, the LRFs and other local multi-agency groups.

- LGA: “The LGA is not opposed to the proposed role of the Regional Nominated Co-ordinator but would wish to see more detailed information (in the supporting Regulations and Guidance) before commenting further.”
- Ambulance Services Association: “The proposal is supported, but it is stressed that the individual(s) must have established and tested links with the relevant Local Resilience Forum and, moreover, must have a specialist background appropriate to the task/incident.”

It was also asserted that the appointment of a RNC must not be allowed to conflict with predetermined appointments for other Government emergencies, e.g. the Secretary of State’s Representative (SOSREP) for coastal pollution incidents.

Suggestions of who should undertake the role of the RNC, included the following:

- A pool of pre-nominated RNCs, with appropriate training. For example, a Chief Constable could lead the response to a terrorist incident, while a Director of Public Health could lead during a health emergency.
- One permanent RNC and deputy for each region, with relevant leadership skills and training. This could be a senior police officer (supported by a team of technical advisors).
- A full-time appointment to direct emergency preparation and planning as well as response. For example, the head of the Regional Resilience Team.
- A Nationally Nominated Co-ordinator to go to the appropriate region when required, who would be better prepared and better practised, and who

would be better able to direct a response across regional boundaries. For example, a Government Minister or a Secretary of State's representative.

But a small number of respondents were opposed to the role of the RNC, arguing that adding an additional regional tier to the response phase will lead to confusion and protracted decision making, thus slowing down the response. It was suggested that when an emergency is deemed serious enough to implement emergency powers, then the focus of any response should be retained at the centre, with an appropriate Secretary of State taking the lead.

- SIESO: "SIESO cannot support the regional concept. As boundaries are artificial and incidents are no respecters of lines drawn on maps, the insertion of another layer of strategic control is unlikely to contribute to the overall effectiveness of any dynamic response."

Government's response

The Government welcomes the broad agreement of consultees to the proposed role of Regional Nominated Co-ordinator (RNC).

The RNC is intended to be a flexible post, allowing the most effective individual to fulfil it in the given circumstances. The emphasis will be on that individual being a highly trained crisis-management expert with considerable personal authority. They will also need a degree of specialist knowledge regarding the area(s) affected and the various organisations involved, their procedures and capabilities. The RNC's relationship with existing organisations and multi-agency groups will be one of strategic overview and co-ordination. Their role and powers will be set out in regulations tailored to the emergency at hand and will be designed to add value and to build upon existing local and regional arrangements and capabilities. They will report to a senior Government Minister who will retain overall responsibility and accountability for response efforts, which will be directed from the centre with appropriate room for the use of discretion at the regional level to fit circumstances.

RNCs will be pre-nominated, creating a pool of candidates covering the range of possible emergencies from which the most appropriate candidate for the role in any given emergency will be selected.

Within Scotland, Wales and Northern Ireland the proposed Emergency Co-ordinator will fulfil a similar role to that of the RNCs in England. The planned concordat between Her Majesty's Government and the devolved administrations will set out the Government's and the devolved administrations' shared understanding of the role.

Question 11

Do you agree with the principle of applying special legislative measures on a regional basis? Please explain your answer.

Overview

There were 261 responses on this question. Most were in agreement (94%), with 5% against.

Comments and Suggestions

There was overwhelming support for the principle of applying special legislative measures on a regional basis.

- Emergency Planning Society: "We... welcome the Government's thinking on this issue as it reflects the situation in other developed countries."
- ASA: "The principle enshrined in the draft Bill is welcomed as localised declaration provides scope for a specifically targeted response appropriate to the needs of the region [and] locality involved."
- JUSTICE: "...given that the measures in question are emergency measures and as such already represent a departure from normal principles of legality, we consider that special legislative measures on a regional basis would be a proportionate response sufficient to justify the exception from the general rule."
- International Institute of Security: "Yes. The likelihood of regional... emergencies is far greater than that of a national emergency. The necessity for regional familiarity will be an important factor in determining necessary protective or other measures".
- Chartered Institute for Environmental Health: "It may be that some emergencies affect only particular regions, so it is better to have a system that allows a tailored response for that region only, and does not cover unaffected areas with a 'one size fits all' response that may be inappropriate elsewhere."
- BT: "It will allow for a more flexible, targeted and proportional approach".

Respondents commented that proposals should recognise that it is likely that some emergencies would cross regional boundaries, and that it was vital that regions work closely with each other on a routine basis and did not wait until the onset of an emergency. It was further argued that it may be difficult to enforce special legislative measures on a regional basis without impacting on other areas.

- CACFOA: "...in applying special measures it needs to be recognised that emergencies tend to ignore administrative boundaries and that the planning arrangements need to address incidents of pan region and sub region dimensions."

Several respondents suggested that it would be both useful and appropriate to apply special legislative measures on a sub-regional basis.

- Bracknell Forest Borough Council: "...the minimum geographical area of a Region may be too large and consideration should be given to the ability to apply special legislative measures to a Police area."

Some respondents commented that while utilities are usually regionally based, if response/assistance were needed from adjoining utilities, then national special legislative measures would be more appropriate.

- Scottish and Southern Energy plc: "... given the open market in which electricity (and gas) is traded within the UK, it may be necessary to invoke national powers (via the DTI) even if the situation that it primarily addresses is confined to one region."

Concerns were raised over the perceived lack of democratic accountability at the regional level. It was further suggested that an independent audit and report should be automatically commissioned on every introduction of emergency legislation, to assess the effectiveness and timeliness of its implementation.

Government's Comments

The Government welcomes the strong support for the principle of applying special legislative measures on a regional basis. To do so will allow such measures to be used in a proportionate and targeted manner, affecting only the area in which they are needed.

As many of the powers will be discretionary, they can be targeted to specific areas within the region, leaving untouched areas that are not affected. The Regional Nominated Co-ordinator will act as a focal point for communication and co-ordination within and between regions, building on the strong relationships being developed at the regional level.

Overall responsibility for the use of special legislative measures will remain with a senior Government Minister, accountable to Parliament, who will maintain a strategic overview to ensure efforts are co-ordinated and used in complementary fashion.

Question 12

Do you agree that the current emergency powers framework is outdated and needs to be replaced?

If you do not think it should be replaced, please explain why.

Overview

There were 260 responses on this question. Most were in agreement (98%), with 1% against.

Comments and Suggestions

There was near total agreement that the current emergency powers framework is outdated and needs to be replaced.

- Ambulance Service Association: "... in light of recent events, domestic and international terrorist activity, fuel crisis etc. the need to update Emergency Powers legislation is clear. The draft Bill accommodates that need and as such is supported fully by this organisation."
- Association of Chief Police Officers: "... the current emergency powers framework is outdated and needs to be replaced. Existing legislation is neither sufficiently flexible nor sophisticated to support resilience work in a complex technical society."
- Business Continuity Institute: "We need to have legislation in this area that reflects the requirements and expectations of the modern world and much has changed since the Emergency Powers Act came into force."
- BT: "The legislation under which the Government can respond to extreme emergency situations needs updating to turn it into a usable tool fit for the 21st century".
- UK Communications and Telecommunications Association (UKCTA): "Yes... the emergency powers framework requires updating given the advent of devolution, the end of the cold war, and the increased number and nature of threats that we are now being faced with".
- Ofcom: "...the current emergency powers framework has little relevance to the challenges posed in recent times and should be replaced."

Government's Comments

Greater dependency on supply and distribution networks, on technology and upon increasingly complex interdependencies have greatly increased the potential for, and effects of, disruption to essential services and networks over the eighty years since the existing legislation was enacted.

The Government welcomes the almost unanimous endorsement by consultees of its decision to modernise the legislation. The aim is to create a flexible new framework which will ensure that challenges not imaginable in the 1920s, but now very real, can be responded to effectively if needed.

Question 13

Do you agree that the circumstances in which special legislative measure may be taken should be widened from limited threats to public welfare to include threats to the environment, the political, administrative and economic stability of the UK and to threats to its security resulting from violence or terrorism?

If not, how would you like to see the circumstances narrowed or extended?

Overview

There were 260 responses on this question. Most were in agreement (87%), with 13% against.

Comments and Suggestions

There was strong agreement for the widening of the circumstances in which special legislative measures may be taken.

- CACFOA: “It is necessary for emergency powers legislation to provide for a wide range of disruptive challenges, natural or deliberate, which we face today.”
- Joint Utilities, working with the London Resilience Team: “If... special legislative measures... are to be both usable and relevant, it is essential that they adequately reflect the magnitude and nature of the potential risks and threats that society now faces”.
- Oftel: “Oftel agrees with the wider powers proposed, provided they are consistently and transparently applied”.
- Wrexham County Borough Council: “...this seems consistent with the rest of the Bill and will bring within its scope the range of emergency situations that the UK has faced over the last few years.”

Some respondents had concerns about exactly what constituted a threat to “political, administrative or economic stability” and that this was not an appropriate criterion for the use of special legislative measures. Others suggested any threat to political, administrative or economic stability should only warrant the use of special legislative measures where it also represents a threat to human welfare:

- Liberty: “There is no compelling justification for widening the definition of emergency to include threats to political, administrative or economic stability...”
- JUSTICE: “...the notion of ‘emergency’ triggering the use of emergency powers should be limited to those events that pose a serious threat to public safety.”
- Leicestershire County Council: “... ‘political, administrative, or economic stability’ should relate only to those instances where there is also a threat to human welfare.”

Government’s Comments

The Government welcomes the strong agreement by consultees that the circumstances in which special legislative measures may be taken should be widened from those set out in the Emergency Powers Acts of 1920 and 1926. Nevertheless it recognises the need to ensure the definition of circumstances is tight enough to prevent possible misuse of emergency powers.

Having reviewed the definition of circumstances set out in the draft Bill, it has decided that reference to “political, economic and administrative stability” be removed from the definition.

The Government believes that while there may be circumstances in which special legislative measures may be required to normalise or safeguard such important parts of the life of the UK, the trigger for their use should be the implications of such challenges upon human welfare, the environment or

security as already set out in the definition. No separate reference is therefore required. The Government has however amended the definition of “threat to human welfare” to include a disruption of the supply of money. The Government considers that the supply of money is an essential commodity, disruption to which could well constitute serious damage to human welfare.

Question 14

Do you agree that the use of special legislative measures should be possible on a sub-UK basis. If not, please explain.

The wording and intent of this question is similar to that of Q11 above. For that reason, responses to Q14 and Q11 have been subsumed into a single discussion at Q11 above.

Question 15

Do you agree that authority to declare that special legislative measures are necessary should remain with the Queen as Head of State, acting on the advice of Ministers?

If not, who should it sit with?

Overview

There were 237 responses on this question. Most were in agreement (99%).

Government’s Comments

The Government welcomes the overwhelming endorsement by consultees that the authority for declaring that special measures are necessary should remain with the Queen, acting on the advice of Ministers.

Question 16

Do you agree that, in the event the process of making a Royal Proclamation would cause a delay which might result in significant damage or harm, a Secretary of State should be able to make the declaration in the place of the Queen as Head of State, acting on the advice of Ministers?

If not, is delay acceptable or is there another alternative?

Overview

There were 233 responses on this question. Most were in agreement (66%), with 32% against.

Comments and Suggestions

Most respondents agreed with the fallback option, should the Queen be unavailable. However, some respondents were careful to point out that the Secretary of State should make a declaration only if it was clear that a delay would result in significant damage.

- ACPO: "...it is [not] acceptable for any delay to occur in responding to emergencies and... therefore, in such circumstances it would be appropriate for a Secretary of State to so act."
- Vale Royal Borough Council: "This... would ensure a more dynamic response to potentially catastrophic events ... However, a return to normal procedures must be made without delay as soon as circumstances permit."
- Oftel: "...time will be of the essence when necessary action is required to protect the National Infrastructure."
- National Blood Service: "Yes. Delay which would cause avoidable harm is not acceptable."
- Law Society: "We support the fallback option".

Some thought that, in the absence of a politically impartial figure, the Queen or Parliament itself should ratify the declaration as soon as possible.

- Business Continuity Institute: "We would insist that whoever makes such a declaration should be made fully accountable to the public at large, through parliament, immediately the emergency situation is brought under control or earlier."

Those in disagreement with the proposal mostly thought that only the Queen should be able to make such a declaration, or that it should be made by the Prime Minister, or one of the First Ministers in the Devolved Administrations. The Emergency Planning Society argued that the proposal would "give rise to a major constitutional change which we do not believe is necessary for this Bill to work."

Government's Comments

The Government welcomes the agreement of most consultees that, in the event of the process of making an Order in Council causing a delay which might result in significant damage or harm, a senior Minister should be able to act in the place of the Queen.

Wherever possible it would be the Queen who performs this function, in keeping with her role outside politics as Head of State. It would only be in very rare circumstances that a Minister would be able to act in her place. Examples may include situations in which, perhaps because of the emergency at hand, the whereabouts of the Queen are uncertain or communication is not possible.

Some consultees suggested this proposal could be seen as a significant constitutional change. This is not the case. The Queen only ever acts on the

advice of her Ministers. Allowing Ministers to act on the Queen's behalf in certain cases would retain the existing decision-making arrangements.

Question 17

Do you agree that emergency regulations should be treated as primary legislation for the purposes of the Human Rights Act?

If not, please explain why.

Overview

There were 232 responses on this question. Most were in agreement (80%), with 16% against.

Comments and Suggestions

There was strong support for emergency regulations to be treated as primary legislation for the purposes of the Human Rights Act.

- Network Rail: “As an organisation that has to respond to emergencies, we agree with... the undesirability of any emergency regulations being held up by injunctions”.
- Association of Chief Police Officers: “... the regulations should be treated as primary legislation so that necessary urgent action, which might include powers to restrict the free movement of citizens, could not be delayed by an injunction. This would not preclude challenge by due process but would ensure that urgent, necessary action would not be delayed.”
- Ambulance Service Association: “The draft Bill strives to maintain a balance between the immediate needs of managing the event and the rights of those affected directly or indirectly by the incident. As primary legislation the draft Bill still allows the freedom to challenge its powers but not at the expense of the task... As such, this position is supported.”

Several private sector organisations called on the Government to make a statement assuring them of protection in the event of legal action and claims for compensation, following steps taken by them in good faith during an emergency that might conflict with Human Rights legislation.

- Transco: “Any company acting under emergency regulations should be afforded protection by Government from any Human Rights Act action subsequently brought by an individual or organisation, by way of payment of compensation and/or other remedy.”
- BT: “ We believe that companies need protection from Human Rights Act challenge when acting under these regulations”.

But those who disagreed thought that the proposal would represent a significant change in the operation of the Human Rights Act, and was not needed in order for the Bill to work. Others argued that existing or alternative procedures are adequate.

- JUSTICE: “We see no basis for the Government’s apparent scepticism that the courts are ill equipped to decide on the *vires* or the proportionality of emergency regulations”

Government’s Comments

The Consultation Document outlined the Government’s reasons for including a provision in the draft Bill for treating emergency regulations as primary legislation for the purposes of the Human Rights Act. The Government considers that in an emergency it is necessary to balance individual rights against the need to respond to an emergency. It was keen to hear what consultees had to say on how best to strike this balance.

However, the Government made clear in the Consultation Document that the case for including this provision in the final Bill was by no means certain. Following extensive discussions with a wide range of stakeholders and with the benefit of comments on this matter from the Joint Committee and a number of other Parliamentary Committees, it has decided not to include this provision in the Bill.

It should be stressed that this provision would not have enabled the maker of emergency regulations lawfully to make regulations that contravened the European Convention rights. Nor was this the Government’s intention when it suggested the inclusion of this clause in the draft Bill. The effect of the provision would have been much more limited; it served only to limit the remedies available on a successful challenge to emergency regulations on human rights grounds. In particular, the regulations could not be struck down by a court on human rights grounds. Instead, the court could have issued a declaration that the regulations were incompatible with the Convention rights.

The Government considers that emergency powers should always be operated within the confines of the Human Rights Act.

It should be noted that many of the Convention rights are qualified rights. Such rights can be interfered with where this is in accordance with the law, necessary in a democratic society and the interference is proportionate to the end to be achieved. Thus the Convention rights will not necessarily impede the taking of appropriate action to respond to an emergency.

It is also possible to derogate from the Convention under Article 15 in certain cases. Once derogation has been designated for the purposes of the Human Rights Act, emergency regulations could be made in reliance on that derogation without contravening the Human Rights Act.

The Government has considered whether provision should be included in the Bill to give emergency regulations procedural protection from successful challenge in the courts.

The courts have a number of tools available to them already to ensure that their determinations do not impede inappropriately action taken in an emergency. An interim injunction, for example, is a discretionary remedy. In determining whether to grant an injunction under the “balance of convenience” test, the

courts will consider the wider public interest in not granting an interim injunction. Should a challenge to emergency regulations be successful, the court will have discretion to strike the regulations down. And should the court consider that it is appropriate to do so, it may “sever” the offending provision and allow the rest of the regulations to continue. In other words, the courts are unlikely ever to strike down emergency regulations in their entirety.

The Government has also considered the courts’ attitude to the exercise of emergency powers. In light of the range of tools available to the court to ensure that the response to an emergency is not impeded inappropriately by successful legal challenges, and the likely approach that the courts would take to emergency powers, the Government has concluded that no further provision is needed to protect procedurally emergency regulations from challenge in the courts.

Question 18

Do you agree that the arrangements proposed for Scotland strike the right balance between reflecting the devolution settlement and ensuring consistency across the UK?

If not, what changes are necessary?

Overview

There were 68 responses on this question. Most were in agreement (75%), with 13% against.

The draft Bill contains only one reference to Scotland in Part 1, which at that time was concerned only with local arrangements for civil protection in England and Wales. That reference relates to “apportionment of territorial sea”. Part 2 of the Bill on Emergency Powers, applies to the whole of the UK, and includes a section on consultation with devolved administrations.

Comments and Suggestions

The Scottish Executive has carried out a simultaneous consultation exercise and is compiling its own report. The present discussion includes only those organisations which made a direct submission to the Cabinet Office’s UK-wide consultation.

Most respondents agreed with the proposals for Scotland.

- Emergency Planning Society: “The Emergency Planning Society agrees that the arrangements proposed for Scotland are appropriate”.
- Comhairle Nan Eilean Siar: “We are supportive of the proposal to give Scotland its own legal status in this matter and agree that a framework for Scotland is essential to allow us to manage matters within the framework of the devolution settlement. The existing Scottish regional arrangements would be most relevant way to discharge this”.

- ACPO Scotland: “Members agreed that the arrangements proposed for Scotland are appropriate... Government should continue to work in close co-operation with other agencies to ensure consistency in response, particularly in cross-border emergencies”.

Some argued that in order to ensure consistency of contingency planning and response throughout the UK, Part 1 of the Bill should be extended to Scotland.

- Marsh UK Ltd: “We would expect, to ensure consistency across the UK, that the local responders part of the draft Bill should also apply to Scotland”.

In regards to Part 2 of the Bill and Emergency Powers, there was a call for clarification of the arrangements. Concerns were raised about the perceived ambiguities of who would have the ultimate power, the devolved Administration or Westminster. It was felt by some respondents that uncertainty on this point might destabilise the effectiveness of the response and impinge on the business of national private sector organisations.

- UKCTA: “There is no regulatory certainty, as the Scottish Parliament can make decisions and these can be used as the basis for business planning, but in the end the UK Minister can override those decisions.”

Government’s Comments

The Government welcomes the broad agreement of consultees that the arrangements proposed for Scotland in the draft Bill struck the right balance between reflecting the devolution settlement and ensuring consistency across the UK. However, having considered the issues further in discussion with the Scottish Executive, and following its own extensive consultation exercise, the Government has agreed that Part 1 of the Bill be extended to Scotland.

Under the new Part 1, Scottish Ministers would gain appropriate regulation-making powers to ensure arrangements there are adapted to Scottish conditions. Scottish and UK Ministers would collaborate to ensure such regulations and arrangements are consistent and dovetail with those at the UK level.

On Part 2, the Government will agree a concordat with the Scottish Executive covering the use of Emergency Powers, setting out roles and responsibilities and arrangements for co-ordination. The ability to use emergency powers will remain with Westminster (see response to Q22 below) but, once taken, such powers may grant additional functions and powers to Scottish Ministers, depending on the nature of the emergency. The Scottish Executive will play a key role in any serious emergency affecting Scotland and this role will be reflected in the concordat.

Question 19

Do you agree that the arrangements proposed for Wales strike the right balance reflecting the devolution settlement and ensuring consistency across the UK?

If not, what changes are necessary?

Overview

There were 74 responses on this question. Most were in agreement (72%), with 18% against.

Comments and Suggestions

The broad support for the Bill was reflected in the responses from Wales:

- Welsh Local Government Association: “The Bill is welcomed as a significant step forward in ensuring improvements to and greater consistency in emergency preparedness and response arrangements, which will provide a contribution to the wider resilience agenda.”
- North Wales Health Emergency Planning Group: “... the proposed measures as detailed within the Bill are a positive and welcomed move towards a greater integration and resilience to disruptive challenges.”

There was concern that separate arrangements for Wales might impact unfavourably on cross border organisations.

- Western Power Distribution: “Whilst recognising the role of the National Assembly, consultation in respect of the operation of the Bill should take place during the drafting of the Bill, not afterwards, when there would be scope for different interpretations and actions impinging on organisations which span both England & Wales, such as WPD”.

In relation to Part 2, some respondents asserted that any emergency powers proposals for Wales must take account of the complex devolution settlement and recognise the lead Government department concept.

- Merthyr Tydfil County Borough Council: “The power must be within the terms of the devolution settlement and subject to appropriate levels of reporting at a Welsh and UK level for scrutiny purposes.”
- WLGA: “The WLGA believes that since most scenarios would involve other Government Departments, usually in a lead role context, the logic of a Whitehall Minister seeking such a declaration remains more apparent and more immediately capable of implementation. There is no doubt that this matter will have to remain under review, as the scope of the Assembly’s remit is widened.”

However, some respondents believe that the proposed arrangement for Wales did not go far enough to ensure Welsh autonomy and local democratic accountability.

- North Wales Police: “The Welsh Assembly Government should be allowed under this legislation to declare an emergency itself and take whatever special legislative measure it believes are necessary to deal with it, within its competence as a devolved administration. The UK Government should only be involved where the special legislative measures required are

outside that devolved competence, at which time the UK measures would supersede those of the Welsh Assembly Government.”

- Chartered Institute of Environmental Health: “There should be a mechanism in place to allow the Welsh Assembly Government to make legislation where the emergency is contained within the Principality.”

Government’s Comments

The Government welcomes the broad agreement of consultees that the arrangements proposed for Wales strike the right balance between reflecting the devolution settlement and ensuring consistency across the UK.

On Part 2 the Government will agree a concordat with the Assembly covering the use of Emergency Powers, setting out roles and responsibilities and arrangements for co-ordination. The ability to use emergency powers will remain with Westminster (see response to Q22 below) but, once taken, the emergency powers may grant additional functions and powers to the National Assembly for Wales, depending on the nature of the emergency. The Assembly will play a key role in any serious emergency affecting Wales and this role will be reflected in the concordat.

Question 20

Do you agree that the arrangements proposed for Northern Ireland strike the right balance between reflecting the devolution settlement and ensuring consistency across the UK?

If not, what changes are necessary?

Overview

There were 60 responses on this question. Most were in agreement (70%), with 20% against.

The draft Bill contains only one reference to Northern Ireland in Part 1, which at that time was concerned only with local arrangements for civil protection in England and Wales. That reference relates to “apportionment of territorial sea”. Part 2 of the Bill on Emergency Powers, applies to the whole of the UK, and includes a section on consultation with devolved administrations.

Comments and Suggestions

The Northern Ireland Executive has carried out a simultaneous consultation exercise. The present discussion includes only those organisations which made a direct submission to the Cabinet Office’s UK-wide consultation.

It was suggested by some respondents that Part 1 of the Bill should be extended to Northern Ireland in order to ensure consistency of contingency planning and response arrangements throughout the UK.

- Northern Ireland Fire Brigade: “The Brigade would support the introduction of legislation to permit the extension of Part 1 of the draft Bill to cover arrangements in Northern Ireland”.
- Emergency Planning Society: “It is considered that the application of appropriate civil protection powers and duties to Northern Ireland needs to go further than those described in the consultative document.”
- Craigavon Borough Council: “While welcoming the draft Civil Contingencies Bill... [the] Council is nonetheless concerned that it is restricted in its geographic and legislative scope.”

Government’s Comments

In light of this consultation, and that carried out separately in Northern Ireland, the Government has decided that Part 1 of the Bill will be extended, in modified form, to Northern Ireland.

The delivery of public services is structured differently in Northern Ireland from that in Great Britain, with central departments rather than local authorities delivering many of the functions delivered locally in Great Britain. This, and different constitutional arrangements, prevent direct application of Part 1 to Northern Ireland. Part 1 of the Bill will therefore be extended to non-devolved organisations in Northern Ireland.

Arrangements covering devolved functions (carried out by central departments) will be delivered, not through the Bill, but through undertakings by Northern Ireland Ministers to commit their departments to practice the civil protection duties in line with Part 1.

Question 21

Do you agree that the role and accountability of Emergency Co-ordinator in a devolved territory should be flexible to reflect different types of emergency?

If not, what alternative role should the Emergency Co-ordinator have?

Overview

There were 84 responses on this question. Most were in agreement (81%), with 14% against.

Comments and Suggestions

There was firm support for the role of the Emergency Co-ordinator described in the consultation document.

- Craigavon Borough Council: “It is agreed that the role of the Emergency Co-ordinator should be flexible as in the case of the Regional Nominated Co-ordinator. It would be advantageous to have the Emergency Co-ordinators, in specific specialist disciplines, nominated in advance”.
- ACPO Scotland: “There are clear benefits in appointing an Emergency Co-ordinator, who should be pre-identified on the basis of their skills and experience.”

Some respondents called for clarification of the decision making process for declaring special legislative measures and questioned what authority or control the Emergency Co-ordinator will have over response arrangements.

- Welsh Ambulance Service: “[There is a] need for the Emergency Co-ordinator to control the resources required to mitigate the emergency, though what is not clear is how control will be achieved where constitutional differences exist”.

As with the responses to Q10 above, there were mixed views regarding criteria for selecting an emergency co-ordinator. The majority of respondents favoured a flexible approach, with appointees reflecting the nature of the emergency. Others argued that the role of the Emergency Co-ordinator should be carried out by a single pre-nominated appointee to ensure that they are adequately trained and resourced.

- Emergency Planning Society: “The Emergency Planning Society would suggest that the role and accountabilities of the Emergency Co-ordinator should be well established and consistent regardless of the type of emergency. The flexibility should lie in the nomination of the most appropriate officer to undertake the role”.
- Bridgend County Borough Council: “Perhaps a nominated Co-ordinator can be identified beforehand and then be supported by an appropriate officer depending on which type of emergency occurs”.

Some respondents asserted that the Emergency Co-ordinator must be directly accountable to their Devolved Administration to ensure democratic accountability.

- CACFOA: “ The Association believes that the emergency co-ordination in a devolved country should be accountable to the devolved administration via their Civil Contingencies Committee (or equivalent)”.

Those who disagreed with the Emergency Co-ordinator were concerned that these arrangements could lead to inconsistencies in response arrangements.

- British Energy Group: “ British Energy does not agree with the role and accountability of the Emergency Co-ordinator in a devolved country. It is British Energy’s experience that this role is best performed by a Senior Police Officer and that support is provided by Regional Government Representatives through to Central Government” .

Government's Comments

The Government welcomes the strong agreement of consultees that the role and accountability of Emergency Co-ordinator in a devolved territory should be flexible to reflect different types of emergency. See also the Government's response to Q.10 above.

Question 22

Do you agree that the devolved administrations should be able to declare that special legislative measures are necessary, and take action accordingly? If not, please explain why.

Overview

There were 81 responses on this question. Most were in agreement (82%), with 14% against.

Comments and Suggestions

There was general agreement that the devolved administrations should be able to declare a state of emergency.

- ACPO Scotland: "The Scottish Executive should be able to declare special legislative measures to ensure an effective response to any crisis or emergency".
- ASA: "...the advantage of empowering devolved administrations to seek and control solutions to local dilemmas far exceeds any argument to the contrary".
- Fife Constabulary: "The UK Government should endorse any action taken by the devolved countries without question, with the proviso that, if the situation becomes a national one, the devolved administrations would operate in accordance with the wishes of Central Government".

There were concerns raised about the consistency of response if the devolved administrations are able to declare separate special legislative measures. There must be effective cross border working and co-ordination. It was suggested that the Cabinet Office should set standards and co-ordinate the work across England, Wales, Scotland and Northern Ireland.

- United Utilities: "But determination of special legislative measures on a devolved administration basis should reflect the needs of responders whose areas span the border between England and the devolved territory".
- Emergency Planning Society: "Although it is considered that legislative controls on such arrangements should continue to be the responsibility of the devolved administrations, if consistency is to be achieved, then minimum standards and time scales should be set on a national level and the Cabinet Office should have an overseeing role".

It was also suggested that the Devolved Administrations should be able to introduce special legislative measures only if the emergency is contained wholly within their territory. It was argued that where an emergency, as is more than likely to be the case, crosses borders there could be real confusion and disparities in response arrangements with, possibly, two sets of special legislative measures in operation.

- Surrey County Council: “Emergencies do not respect boundaries and, if they embrace a devolved country and an English region, it would be unhelpful to have two methods of declaring the special legislative measures”.
- Network Rail: “It is difficult to see how the flexibility of devolved administration in responding to an emergency would be constrained by having to seek special legislation measures under UK wider legislation. In contrast, it is easy to foresee problems when such emergencies expand outside a devolved administration area or cross border emergencies from the outset”.

Government’s Comments

Having considered the issues in detail with all three devolved administrations, the Government has determined, with their agreement, that emergency powers should remain exercisable only by Westminster.

This decision reflects current practice in which Westminster may create emergency regulations, within the limitations placed upon it by the legislation and the Human Rights Act. If granted the power to use special legislative measures themselves, the devolved administrations would be able to make regulations only in the devolved areas of their responsibility. It is unlikely that in the very serious emergencies for which such powers are designed they would be able to create the full range of emergency regulations needed for effective response. Given this and the need to assure that a consistent and co-ordinated UK-wide response can be mounted where appropriate, such powers should remain with Westminster.

The Bill stipulates that, where possible, the devolved administrations should be consulted if special legislative measures are to be used upon their territory. The administrations will be consulted upon draft emergency regulations that are updated regularly and held in readiness in case needed. Concordats will be drawn up between Westminster and the devolved administrations covering arrangements for the use of special legislative measures. They will enshrine the key roles the devolved administrations would play in very serious emergencies while ensuring that cross-border arrangements are effective and UK-wide priorities are met.

Question 23

Do you agree that London should have different arrangements for co-operation, and that the proposals set out are the right way to deliver this?

If not, what arrangements should be in put in place?

Overview

There were 136 responses on this question. Most were in agreement (73%), with 20% against.

Comments and Suggestions

It was broadly accepted that London will require different arrangements for co-operation under the Bill in order to meet London's unique circumstances.

- Association of London Government: "It is important that the Government recognises the particular circumstances of London and develops appropriate arrangements for co-operation at a borough and London-wide level".
- London Fire and Emergency Planning Authority: "...the proposals as set out are the right way forward".
- Business Continuity Institute: "The proposals seem to be a natural progression from what is currently in place and has proved its effectiveness over time".
- ACPO: "ACPO considers that the proposed arrangements for London are appropriate, in that they reflect existing practice which has been shown to be effective".

Many respondents suggested that, in London, Local Resilience Forums should be based on sub-regional areas, such as the five mutual aid groups. It was considered that this structure may best support the current arrangements in London as well as more nearly reflecting proposals for the rest of England and Wales outlined under the Bill.

- Brent Council: "In order to include the utilities and others in Category 2 use should be made of the existing 5 Mutual Aid Groups in London, otherwise the meeting burden and logistics would be unworkable".
- Enfield Council: "It is vital to retain those local links, through the mutual aid groups, otherwise the Regional Resilience Forum will be seen to be too far away and out of touch, particularly when an incident or emergency occurs".

Some respondents suggested that the unique make up of local government within London meant that the proposed five Mutual Aid Groups should be given a legal identity, in order to ensure consistency of attendance and arrangements throughout London.

- EPS: "...if the Groups were put on to a legal footing that would provide a practical solution, allowing the co-operation envisaged in the Bill".

Alternatively, several respondents highlighted the importance of the Borough level in London multi-agency arrangements. Some suggested that the LRFs should be based at Borough level.

- Association of London Government: “The final arrangements must respond to the need for the regional tier to be effectively integrated with Borough-led planning at a local level”.

The promotion of business continuity in London by local authorities was seen by a number of respondents as particularly difficult, given the number, size and diversity of businesses.

- London Borough of Richmond Upon Thames Emergency Planning Group: “In the London area, the imposition of a duty to encourage business continuity arrangements throughout the business community could become a particularly onerous requirement”.

Some respondents, particularly from those organisations that border with London or cut across its boundaries, argued that special arrangements should not be made in isolation. Any proposals must accommodate neighbouring authorities. It was suggested that consultation about the solution for London should be extended to other regions.

- Rochford District Council: “London, as the capital city, requires arrangements for co-operation. However, those proposals should not be London-centric, as to ignore the consequences to the Home Counties.”
- Association of British Insurers: “Arrangements will... need to dovetail sufficiently with those outside London...”

Finally, some respondents asserted that different arrangements for London were difficult to justify and should not be seen as implying priority or primacy.

- LGA: “Notwithstanding the potentially higher level of risk, the LGA believes that resources for London should not be top-sliced from national grant, to the detriment of other parts of the country”.
- Institute of Emergency Management: “Each region should all aspire to a common consistent policy”.

Government’s Comments

In developing its proposals in the Bill for London, the Government has endeavoured to ensure that the arrangements for delivering Civil Protection will be consistent with those proposed for the rest of England and Wales. At the same time, the Bill should reflect the special circumstances and requirements of London.

In large measure, the Bill will translate easily to London. Just as elsewhere, the Bill will improve co-ordination and consistency at the local level.

The main difficulty in applying the principles of the Bill in London is the large number of boroughs (33) within a single regional police force area, with no intervening “county” or sub-regional structure. Other specific considerations

have included the role of the Greater London Authority, with a geographic area of responsibility coterminous with that of the Government Office for London, and the increased visibility and status of London as capital city, centre for business and location of much of central government.

Consistent multi-agency co-ordination and co-operation at a local level across all the local responder bodies in London requires a special set of arrangements under the Bill. The Government has followed suggestions from a number of respondents that the model of the existing mutual-aid groups be considered. Thus the equivalent of the Local Resilience Forums (LRFs) in the rest of England and Wales will be created by regulations in London on a sub-regional basis.

Because the emergency services are organised on a London-wide basis and do not have operational structures for response to emergencies which match these proposed sub-regional Forums, it is deemed necessary to support the proposed LRFs in London strongly. For this reason, we have decided that the London Fire and Emergency Planning Authority will support the Forums, having regard to the need for a London-wide, strategic policy in civil protection. It will continue too to act as a support for the Boroughs.

The Government has also concluded that Transport for London and London Underground should be included in Schedule 1 under the Bill as Category 2 responders in line with transport operators in the rest of England and Wales.

“24”

Miscellaneous further issues raised by respondents to the Consultation

Overview

Several issues, important to some respondents, were not wholly captured by the 23 questions. The following discussion sets out those topics most frequently commented on.

Comments and suggestions

Role of Central Government

Many respondents were concerned that the role of central government was not captured under the Bill.

Many commented that inconsistencies in the response to national emergencies, such as the fuel protest of 2000 and the Foot and Mouth outbreak of 2001 were caused by failings at the centre. It was argued that an equivalent duty to that proposed under the Bill should be placed on Central Government.

Many national organisations were concerned that there was not sufficient focus on national arrangements, with clear leadership from the centre. It was

suggested that a National Resilience Forum should be established with responsibility for strategic oversight for contingency planning.

Others called for the creation of a National Emergency Management Agency, which would provide a central focus for activity, disseminate best practice as a consistent approach, and be in a position to set up a robust standards and performance management framework.

Others suggested that the Emergency Planning College should be resourced sufficiently enough to become the centre of professional excellence with regard to civil protection.

- Institute of Civil Defence & Disaster Studies: “The Institute is concerned at the lack of inclusion of Central Government’s roles and responsibilities within the Bill. It would seem in the light of defining local responders’ roles, that this process should be carried out for the other tiers”.
- ACPO: “... there is a role for a national resilience forum with responsibility for strategic oversight of contingency planning”.
- Fire Officers’ Association: “...arrangements for multi-agency working would be established more efficiently if they were placed under the control of a single Emergency Management Agency, reporting to a single co-ordinating Cabinet Minister”.

Role of Elected Members

Some respondents were concerned about the level of democratic accountability in contingency planning and the perceived absence from the Bill of a role for elected members, at both the local and regional levels.

- English Forum of Nuclear Free Local Authorities: “...are concerned... by lack of provision within the Draft Bill for local elected member scrutiny over emergency plan development”.

The Role of the General Public

There was disappointment that, according to some respondents, the Bill failed to address the role and responsibilities of the public during an emergency.

Some respondents believed that more priority should be given to the promulgation of information to and education of the public about their role in civil protection activities in their community. It was also suggested that the emergency planning process should focus more on the victims of an emergency, both during and in the aftermath of an incident, and that more account should be taken of the implications of ethnic and religious diversity.

There was also concern at the lack of reference under the Bill to the role of the media. Some respondents commented that the media’s role during an emergency was vital, acting as the crucial link between the response agencies and members of the public. In order to ensure a consistent approach, it was argued that this role should be formalised through legislation.

- Disaster Action: “[A] variation and lack of multi-agency joint working in responding to welfare-related issues should be addressed through the Bill”.
- British Red Cross: “Humanitarian support for people affected by a disaster is an essential part of emergency response”.
- London Media Emergency Forum: “The role of the media will clearly be very important in any civil emergency... We urge you to consider making reference to the media’s role in an emergency”.

Clarity of Terminology

A number of respondents felt that the terminology within the Bill (and its accompanying documents) should be more clearly defined. They suggested that there was inconsistency in the use of terms such as “emergency planning”, “civil protection” or “emergency management”. Moreover, the use of terms did not necessarily correspond with that understood and used by emergency planning professionals in the field.

- UK Advisory Committee for Natural Disaster Reduction: “The terminology used within the Bill differs from that normally associated with the field of disaster management... This leads on to confusion as to exactly what is meant by an emergency and by resilience”.

Government’s Comments

Role of Central Government

The Government is committed to effective civil protection throughout the UK and at all tiers of governance. No reference to the role of central government is needed within the Bill as no statutory provision is required for the Government to engage in the full range of civil protection duties. Its efforts are agreed by Ministers who are accountable for them to Parliament and are therefore not appropriate for the face of a legal instrument. This is standard practice.

The Government is currently considering the most effective means of communicating its activities to practitioners at other levels and engaging with them. Several of the points raised by respondents are likely to be addressed in this context.

Role of Elected Members

Elected members have a key role in local authorities, as well as police and fire authorities. Ultimately, they are responsible for the actions of these authorities to which they have been elected to provide formal oversight.

Generally, it is accepted that elected members do not play a direct role in emergencies and that planning and response, for example, are a matter for their professional officers. However, elected members may be asked to approve planning arrangements – and in an emergency it may often be the role of the relevant elected member to speak publicly for the authority as part of its media plans. Elected members also are closely tied to the communities which elect them. In emergencies, they will often contact professional officers privately, giving them information and advice about problems they have encountered on

the ground. Their role in feedback and evaluation can be vital to ensuring that planning arrangements are improved in the light of experience.

The Government recognises the key role of elected members in ensuring that civil protection meets the needs of the public locally. It is not considered, however, that this role requires to be legislated in the Bill.

The Role of the General Public

Part 1 of the Bill includes duties on all Category 1 responders to publish all or part of risk assessments and plans and to make arrangements to warn, inform and advise the public. These responsibilities go a long way to meeting the concerns of respondents who want the important link with the general public to be more firmly enshrined in the Bill. One of the tasks of regulations and guidance will be to clarify and limit these duties so that they become practical and appropriate for each responder body, rather than burdensome, with the risk of breaching confidentiality or security and of causing public alarm unnecessarily.

The proposal that a civil protection duty should fall directly on the general public itself to co-operate in civil protection was examined in some depth at an early stage of policy development, but considered to be unfeasible and not pursued, partly on civil liberties grounds

The importance of placing the potential and actual victims of emergencies at the centre of policy making for civil protection is of course vital. The purpose of the structural arrangements to be delivered under the Bill is to improve preparedness which will benefit possible victims. This is a concern that will be addressed in guidance.

Similarly, specific arrangements for media plans are not addressed on the face of the Bill and are matters for guidance.

Clarity of Terminology

The terminology used in the Bill is not necessarily the same as that used by practitioners, but the Government hopes that the reasons will be understood and not the cause of unnecessary concern.

Legal terminology attempts to be as clear and precise as possible, but is often not identical to common and especially professional usage. It will be a task for guidance to clarify for professionals what is the scope and intent of the legislation as worded. The working terminology used by civil protection professionals after the passage of the Bill may need to be adapted in recognition of clauses in the Bill; equally, the language of the Bill may in certain cases be used to put statutory support behind words and concepts which will continue unchanged.