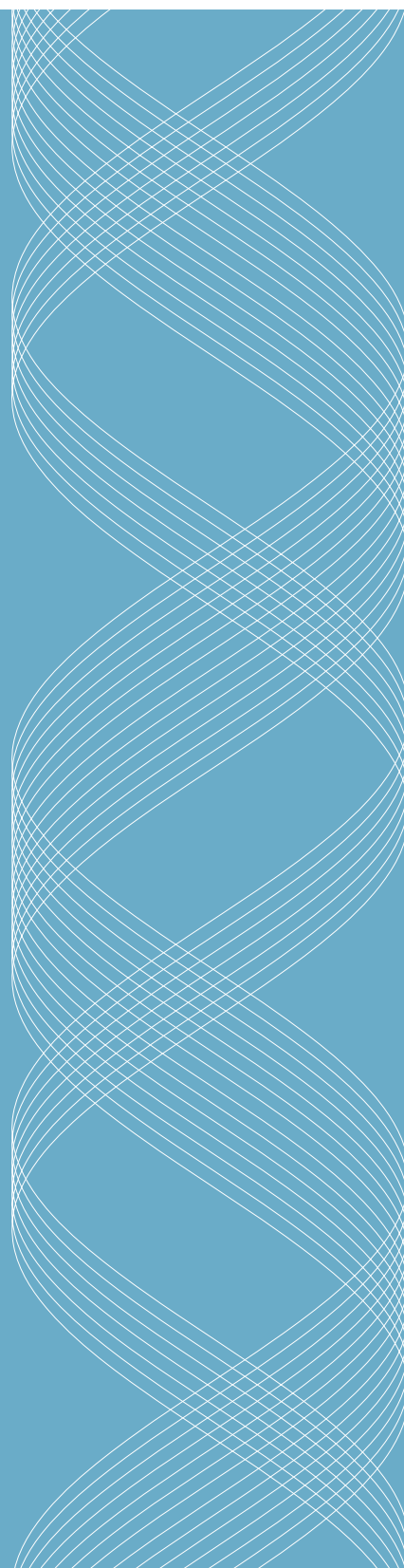




The Government's Response to the Report of the Joint Committee on the Draft Civil Contingencies Bill

**Incorporating the Government's Response to the Report of the
House of Commons Defence Committee on the Draft Civil Contingencies Bill**





The Government's Response to the Report of the Joint Committee on the Draft Civil Contingencies Bill

Incorporating the Government's Response to the Report of the House of commons Defence Committee

Cabinet Office

Presented to Parliament by the Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, by Command of Her Majesty – January 2004

Cm 6078

£7.75

© Crown Copyright 2004

The text in this document (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be addressed to
The Licensing Division, HMSO, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ.

Fax: 01603 723000 or e-mail: licensing@cabinet-office.x.gsi.gov.uk

Government response to the Joint Committee and the Defence Committee on the Draft Civil Contingencies Bill

Introduction

The Government is grateful for the contribution of the Joint Committee and the Defence Committee to the development of thinking on the draft Bill as set out in their reports of 2 July and 28 November. We have considered in detail the recommendations put forward, taking into account also the complementary processes that have informed the deliberations of the Committees, such as the work of the Joint Committee on Human Rights and the responses to the Public Consultation exercise on the draft Civil Contingencies Bill.

Given the connection between the recommendations of the Defence Committee and those of the Joint Committee, the Government has elected to respond to the deliberations of both Committees within this Command Paper. We have carefully considered each of the Joint Committee's 50 recommendations and the Defence Committee's 23 recommendations. Many of the recommendations express a similar sentiment. We have responded to the recommendations of the Defence Committee at Annex A of this paper.

To a large extent, we have accepted, in full or in part, most of the recommendations. Pre-legislative scrutiny by the Committees has assisted the development of the Bill significantly and the Government has either amended or removed a number of clauses from the draft Bill in line with their recommendations. Some recommendations have been accepted in their entirety and the Bill amended appropriately, such as using the term 'human welfare' in both Parts of the Bill. On others we are in agreement with the sentiment expressed by the Committee, though differ in how we consider the recommendation should be implemented. In a small number of instances, we consider that the recommendation is useful but we do not consider that alterations are required to the Bill to effect the proposal.

With a limited number of recommendations, we do not agree with the essence of the Committees' recommendations. With such cases, we have carefully considered this advice, in conjunction with further clarification from Parliamentary Counsel and input from on-going consultation with stakeholders. Even in such cases, we have often found the contribution of the Committees valuable as they have identified areas that we had considered sufficiently clear, but where further explanation might be desirable.



Response to the Recommendations of the Joint Committee

Use of same definition in both parts

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

The Government recognises that Part 1 and Part 2 of the Bill serve very different purposes. There is no reason why the duties imposed under Part 1 should apply in the same circumstances where regulations may be made under Part 2. The Bill reflects this in a number of ways. The definition of “emergency” in each Part is largely the same. This consistency reflects the Government’s view that there is some commonality between the kind of event or circumstance for which responders should plan (under Part 1) and in relation to which emergency regulations may be made (under Part 2). However, the scale of event which constitutes an “emergency” differs in Part 1 and 2. In Part 1, the event or situation must threaten serious damage to human welfare or the environment or the security of a place in the United Kingdom. However, in Part 2, the event or situation must threaten serious damage to human welfare (etc) in a Part of the United Kingdom (England, Scotland, Northern Ireland or Wales) or a region (within the meaning of the Regional Development Agencies Act 1998). This reflects the Government’s intention that Part 1 should apply in relation to more localised events or situations whereas the scale of an event or situation must be greater before emergency powers may be used.

In addition, each Part contains additional, and different, preconditions before the duties under Part 1 apply and before emergency regulations can be made under Part 2.

In Part 1, the duties of Category 1 responders only apply in relation to emergencies which would be likely to seriously obstruct the responder in the performance of his functions or in relation to which the responder could not respond in an appropriate way without changing the deployment of resources or acquiring additional resources (clause 2(2)). In Part 2, emergency regulations may only be made in connection with an emergency if it is necessary to make provision for the purpose of preventing, controlling or mitigating an aspect of the emergency. In particular, existing legislation must be insufficient or insufficiently effective (clause 20). In addition, the need for the provisions must be urgent. There are additional restrictions on the particular provisions that may be included in emergency regulations (clause 22).

We consider that the Bill, as redrafted, reflects the Committee’s concern that the trigger for the application of the civil protection duties imposed under Part 1 should be different to the trigger for the making of emergency regulations under Part 2.

Breadth of definition

2. *We concur with the conclusion of the House of Lords Select Committee on the Constitution that the current definition is unduly broad.¹*

The definition of emergency in the Bill has been drawn up in close consultation with a wide range of stakeholders, including frontline responders. The response to the consultation exercise confirms that the definition reflects the diversity of emergency situations they plan for and deal with.

On the other points, the Government recognises that some aspects of the definition of “emergency” in the version of the Bill which was issued for consultation, cast the net too widely. In particular, it has removed a “threat to political, administrative or economic

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

stability” from the definition of emergency in recognition that the kind of incidents it had in mind should also impact upon human welfare as defined in the Bill in order to constitute an emergency.

We have also removed the references to disruption of “other essential commodities” and “other essential services” from the explanation of what might constitute damage to human welfare.

The Government has also strengthened and clarified the preconditions before the duties imposed under Part 1 apply and before emergency regulations can be made under Part 2. Under Part 1, the duties imposed under clause 2 apply to a Category 1 responder only if the conditions set out in clause 2(2) (essentially, that the event seriously obstructs the performance of functions or that additional resources are needed to respond to the emergency) are met. Under Part 2, the conditions set out in clause 20 must also be met before emergency regulations may be made.

The Government does not agree with the comments from consultees quoted by the Committee. It is highly unlikely that a small fire or damage to one property would be an “emergency” for the purposes of Part 1 or Part 2.

The Government considers that some readers of the Bill may have misinterpreted how the definition of “emergency” operates. Clause 18 in Part 2 contains an exhaustive list of situations in which an event or situation may threaten damage to human welfare, the environment or security. However, to meet the definition of “emergency” the event or situation must threaten **serious damage in the United Kingdom or in a Part or a region** (or, in Part 1, a place in the United Kingdom). So while the Bill treats an event that causes damage to property as an event which threatens damage to human welfare, the event must threaten serious damage to human welfare in the United Kingdom, a Part or region before it is an emergency.

The Government considers that it is also necessary to consider the definition of emergency in context. The real questions would appear to be “when do the duties imposed by Part 1 apply?” and “when may emergency regulations be made under Part 2?”. While the definition of emergency is one aspect of this issue, it is also necessary to consider the other limitations contained in the Bill.

“Triple lock”

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

The Government agrees that the limits on the making of emergency regulations and the limits on the provisions that may be included in emergency regulations should be made more transparent. Clause 20 now sets out the preconditions to making emergency regulations. Clause 22 sets out the limits on the particular provisions which may be included in emergency regulations. Clause 19 requires the person making the emergency regulations to include in the regulations a statement that the conditions set out in clause 20 are met and that the regulations contain only provision which is in due proportion to the emergency.

The Government, following discussions with many organisations, has acted to make the triple-lock more transparent and robust. As noted above, the restrictions on the exercise of the powers are now contained in 2 separate clauses. These clauses include the “necessity” and “due proportion” aspects of the triple lock. However, the “serious” limb of the triple lock is part of the definition of “emergency”. The Government considers that to incorporate this aspect of the triple lock in the new, separate clauses would distort the drafting.

As the Government has decided that it is inappropriate to retain the requirement for a declaration of emergency, it considers that the second part of the Committee’s recommendation falls away.

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

(1)(a)“ should be removed. It is confusing and can only undermine what is otherwise the clear intent of clause 21(4).

The Government agrees that the Bill should expressly provide that the provisions of emergency regulations should be in due proportion to the aspect of the emergency at which they are targeted. Clause 22 now provides for this. The nature of the “seriousness” test has been made clearer to demonstrate that the damage threatened (rather than merely the threat) must be serious. The Government has considered carefully the Committee’s recommendation to provide expressly that the person making the regulations must act reasonably. As the Committee acknowledge (at paragraph 206 of its Report), the absence of this word does not mean that the decision-maker can act unreasonably or that judicial review is prevented.

Both Her Majesty (in this capacity) and a senior Minister of the Crown are subject to a duty to act reasonably by virtue of public law. It is therefore unnecessary to provide specifically that they must do so in the Bill. To make express provision of this kind in this Bill could be positively harmful; it might imply that action might be taken under other enactments that do not specify that the decision-maker must act reasonably which is unreasonable. So while the Government wholly agrees with the sentiment of the Committee on this point, it does not agree that it is necessary or appropriate to make express provision on the face of the Bill.

The new look triple-lock is as follows:

- 1) A **serious threat of damage** to human welfare, the environment or security must have occurred, is occurring or is about to occur.
- 2) It must be **necessary** to make special provision for the purpose of preventing, controlling or mitigating the emergency as existing legislation is ineffective or risks serious delay and the need for effective provision is urgent (cl. 20(3) and (4)).
- 3) The effect of the provision must be in **due proportion** to that aspect or effect of the emergency it is aimed at (cl. 22).

Taken together the tests of necessity and proportionality deliver the Committee’s recommendation – if it is not necessary for

regulations to extend beyond a certain geographical area they cannot do so.

In light of the redrafting of the Bill, the Committee’s last recommendation falls away.

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

The Government has introduced a new “trigger” in Part 1. This is addressed in full in response to question 11.

In Part 2, the Government is confident that the new-look triple lock (as set out above) goes some considerable way to resolving the Committee’s underlying concerns. The trigger contained in the triple-lock has been amended to make it clearer that an event or situation must constitute a serious threat of damage (i.e. of harm) rather than just a threat that is serious. The Government believes that the definition of emergency is clear and objective. The test of “necessity” constitutes an additional trigger that must be satisfied, namely that regulations can only be made if existing legislation is insufficient or risks serious delay. The new test of urgency reinforces the fact that if time is available the usual Parliamentary processes will be used to make any new provisions necessary. It is only where this is not possible that emergency regulations will be made.

Emergency as a ‘threat to human welfare’

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

In light of the Committee’s concerns, the Government has amended the Bill accordingly.

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

The Government acknowledges the point raised by the Committee. However, a situation such as an environmental catastrophe may have a serious effect with very serious consequences, yet the impact upon

human welfare could be minimal or might not be direct or immediate in the initial stages. Similarly, with a terrorist attack on the stock exchange. As the impact on human welfare may only become clearer as the situation unfolds, it is essential to retain depth and flexibility.

Political, administrative or economic stability

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

The Government has considered this issue carefully and agrees that the possible threats of disruption to political, administrative or economic stability it had in mind would, if they were serious enough to justify use of emergency powers, be captured within the definition of human welfare set out in clause 18. This provision of the Bill has therefore been removed.

The Government continues to consider that, should a situation or event pose such a threat to human welfare, the environment or security that the making of emergency regulations is appropriate, it should be possible for those emergency regulations to contain provision which is designed to protect or restore the activities of Her Majesty's Government, the activities of Parliament or the legislatures of the devolved administrations, the activities of banks or other financial institutions or the performance of public functions. Clause 21(2)(h), (l), (m) and (n) provide for this.

For example, if a terrorist attack on the City of London constituted a threat of serious damage to human welfare, and it was necessary to make emergency regulations, the Government considers that it should be possible (where it was necessary to do so and in due proportion) to declare a bank holiday so as to protect the interests of financial institutions. If the Bank of England was affected, it might be appropriate to move the Government's account from the Bank so as to preserve the functioning of Her Majesty's Government. Any such

provision would only be included in emergency regulations where the necessary preconditions were met. And the need to make such provision would not in itself be sufficient to make emergency regulations.

The Government considers that this approach strikes the right balance between ensuring that emergency powers can only be made where the situation is sufficiently serious and ensuring that the Government can take appropriate action where such a situation occurs.

Educational services

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

The Government agrees with the Committee's recommendation and has amended the Bill accordingly.

Seriousness of "a threat"

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

It has always been the Government's intention that an "emergency" must include a credible threat of serious consequences. However, in light of the Committee's concerns and in the interests of greater clarity, the Bill has been redrafted to refer to an event or situation which "threatens serious damage to". This makes more transparent the fact that it is not just the threat that must be serious but the potential or actual consequences to human welfare, the environment or security.

Meaning of "serious"

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

The Government agrees that the Dealing with Disaster approach is a helpful one. An emergency should be an event or situation that stretches the authorities who are responsible for dealing with it.

An emergency is an event that requires a response from the authorities, which differs from the way in which they would normally exercise their functions.

The Bill has been amended accordingly in respect to Part 1 (clause 2(2)). This provides that the duties imposed under clause 2(1) only apply to a Category 1 responder if the emergency would be likely seriously to obstruct the responder in the performance of its functions or it is likely that the responder would consider it necessary or desirable to respond to the emergency but could only do so by changing the allocation of resources or acquiring additional resources.

One effect of this change is that the application of the duties imposed by clause 2(1) will depend on the nature of the particular responder. One local authority may have allocated resources in such a way that it can deal with a particular situation without changing the deployment of resources or acquiring additional resources. In that case, the duties under clause 2(1) will not apply in relation to that situation. But a neighbouring local authority may have allocated resources differently. In relation to that local authority, the same situation may well constitute an emergency.

The approach in Dealing with Disaster is of course relative. Local responder bodies concerned will have to assess whether the situation is of such seriousness that it requires them to undertake a special mobilisation that changes the way they normally exercise their functions. This procedure is one that has been followed successfully by the emergency services for many years and is understood and accepted by the wider civil protection community. The Government proposes to include in regulations to be made under clause 2 a requirement on Category 1 responders to include provisions in the plans maintained by virtue of clause 2 a procedure for determining whether an “emergency” has occurred.

This clarification of the definition has not been inserted into Part 1 of the Bill as part of the definition of “serious” for two reasons. Firstly, the Government considers that the definition of “emergency” should remain an objective one. What really matters is that the scope of the duties imposed on each Category 1 responder is appropriate. The inclusion of this test in clause 2(2) scales back the duties of Category 1 responders under clause 2(1). The Government

therefore considers that this approach achieves the end that the Committee wished to achieve. Secondly, the Government does not consider that this approach should apply to the duties imposed on certain responders under clause 4 (advice and assistance to business). The Government considers that the scope of this duty should not depend on whether the discharge of a responder’s functions is affected by a particular emergency or how a particular responder has allocated its resources. As a result, the Dealing with Disaster test is more apt as a qualification to the scope of the duties imposed under clause 2 than as an aspect of the Part 1 wide definition of “emergency”.

In Part 2, it has proved necessary to incorporate this policy in a different way. While the capacity of local bodies to deal with an event will be an important factor in determining whether it is appropriate to make emergency regulations, it will also be necessary to consider the powers of bodies at the regional level and central government and related agencies. For example, powers to control the spread of diseases which affect animal health are, under the Animal Health Acts, largely conferred on Ministers, rather than local bodies. The key factor will be what powers are already available in existing legislation and what provision can be made under existing legislation. The Government considers that clause 20, which provides that it is necessary to make emergency regulations if existing legislation is inadequate or ineffective in some respect reflects the spirit of the Committee’s recommendation.

Meaning of “stability”

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

Given the Government’s acceptance of the Committee’s 8th recommendation, this recommendation is no longer relevant.

Open-ended definition

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

The Government accepts that “in particular” is not necessary and has removed it from the relevant clause. Clause 18 now contains an exhaustive list of the kinds of event and situation which may threaten damage to human welfare.

14. *While we recognise that the Government wishes to leave the definition wide enough to “cover the full spectrum of current and future events and situations”,³ we suggest that this degree of latitude leaves the Bill wide open to possible misuse. The phrases “another essential commodity” and “other essential services” should be removed from the Bill. Any amendments to the Bill which may become necessary in the event of future, unforeseen events, should be enacted through proper parliamentary procedure, not left to the discretion of the Government of the day.*

The Government considers that the list of essential services and commodities in the Bill may become out of date at some point in the future. Experience with the Emergency Powers Act 1920 shows that it is not possible to predict what may become an essential service or commodity in ten, thirty or eighty years. (For example, the 1920 Act did not include computers or means of communication.) However, the Government agrees that any “up-dating” of the list of essential commodities and services should be subject to proper Parliamentary scrutiny.

The Government has therefore removed the reference to “essential services” and “essential commodities” and instead proposes to take a power to amend the definition of emergency so as to provide that it includes disruption of a particular supply, system, facility or service.

The Government also proposes to take a power to remove one of the services or commodities listed in the Bill, should it cease to be essential at some point in the future. Such a power will be exercisable by way of secondary legislation, subject to the affirmative resolution procedure.

Overlapping responsibilities

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

We consider that the concerns which have been raised with the Committee by certain utilities reflect a misunderstanding of the scope and nature of the duties to be imposed by (and under) the Bill. The duties upon Category 1 and 2 responders are very different. As Category 2 responders, utility companies will have a duty to share information and co-operate with Category 1 responders. The duties to assess risk and maintain plans will not apply to Category 2 responders. The Government recognises that the majority of Category 2 bodies also have emergency planning requirements as part of their regulatory or licensing regimes. This was one of the reasons for placing them in Category 2, so as to avoid duplicating or cutting across these existing duties.

Category 1 responders will have a duty to plan in relation to emergencies that are connected with the operation of the utilities, for example, plan for drought or for major loss of water, and possibly for major loss of electricity or telephone supply. However, the duty on Category 1 responders to maintain plans in relation to these emergencies will not duplicate or cut across the duties imposed on utilities as part of their regulatory or licensing regimes. The duty imposed by the Bill to maintain plans in relation to emergencies is not a duty to maintain plans to direct or manage each and every emergency. It is highly improbable that a Category 1 responder would plan to direct the details of a telecommunications recovery, for example. The duty to maintain plans under the Bill is linked to the exercise by the Category 1 responder of its functions. So the plan must ensure, so far as reasonably practicable, that if an emergency occurs the responder is able to continue to perform its functions or to ensure that the responder can perform its functions so far as necessary or desirable for the purpose of responding to the emergency. The functions of Category 1 responders do not include the operation and maintenance of the utilities, but they do have functions which may be engaged by a utility based emergency such as duties towards school pupils and elderly or disabled residents or nursing mothers and hospital patients and to ensure that streets remain open and traffic moving or traffic lights and street lights or fire alarm warning systems are in order. Thus while Category 1 responders and the utilities may be planning in relation to the same event, the content of the plans will be very different.

³ Consultation Document, chapter 2, para 7, p 13.

Public functions

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

This recommendation relates to the definition of “public functions”. This term was used in the consultation version of the Bill as part of the definition of threats to the “political, administrative or economic stability.” As outlined in the response to question 8, this aspect of the definition of emergency has been removed. In so far as it relates to Part 1 of the Bill, the Committee’s concern falls away. In Part 2, while the definition of “public functions” is no longer relevant to the definition of “emergency”, emergency regulations may be made for the purpose of protecting or restoring the performance of public functions (clause 21(2)(n)). In light of the concerns of the Joint Committee and the Defence Committee, Part 2 now provides that emergency regulations may also be made for the purpose of protecting or restoring the activities of Parliament or any of the devolved legislatures (clause 21(2)(m)). The activities of Parliament have not been included in the definition of “public functions” as the other functions currently included in that definition are of an executive nature. The activities of Parliament are distinct from such functions and the Government considers that it is appropriate to deal with the activities of Parliament (and the devolved legislatures) separately.

The functions of the National Assembly for Wales are included in the definition of “public functions”. The activities of the Assembly are also cited in their own right. This reflects the fact that the Assembly both acts as a legislature and has executive functions.

Threat to environment

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

The Government accepts that oils that are not fuel oils may indeed pose a serious threat to the environment. We have therefore amended the Bill to refer to “oil” rather than “fuel oil”.

We have considered whether “water” needs further clarification so as to make it clear that it includes river water, estuarial water and sea water. We do not consider that this is necessary. Each of these is a form

of “water” and we do not consider that there is any significant doubt as to whether such forms of water are included in the Bill. We were also concerned that any attempt to list in the Bill certain types of water might cast doubt as to whether the term “water” included other forms of water, which were not listed. For example, if “water” was defined to include river water, estuarial water and sea water, there might be some doubt that lake water, the water table or rain water were included.

Category 1 and 2 Responders

Local flexibility

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

One of the aims of the Bill is to ensure a consistency of approach across the country which will enable Government to be sure that a basic level of co-operation and good practice is established everywhere and to help bodies which are not organised on a local level but which have dealings at that level (like many of the Category 2 bodies) to have confidence that they will find similar arrangements in every locality.

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, where that group or organisation should be included because of the particular risk profile and circumstances of their area, but this co-operation should not be required by way of legislation.

The Government is aware of 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 examined the case carefully and consider 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.

Central and regional tiers

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

The roles and responsibilities of government departments are agreed by Ministers who are directly accountable to Parliament, this is standard procedure. Ministers may task their departments with appropriate roles and responsibilities without any need for legal duties or powers. The Government Offices of the Regions are outposts of central government and do not have a separate legal identity.

The Government is currently considering the most effective way to communicate its own role and responsibilities in this area to practitioners at other tiers, Parliament and the public.

Local government arrangements

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

The responsibility for civil protection will fall onto county councils and shire districts. This reflects the fact that the two tiers of local authority in these areas each have functions which may need to be exercised during an emergency. It is important that duplication and overlap between the two levels of local authority be avoided as much as possible. Shire districts in some areas are heavily involved in civil protection work because they deal directly with emergencies affecting, for example, environmental health and housing.

Where shire districts choose to carry out these functions under the Bill they will be permitted by regulations to do so. However, under regulations, they may also choose to combine with other shire districts in the delivery of these functions or to

delegate them (by agreement) to the County Council. A particular area for guidance will be the operation of Local Resilience Forums in these areas.

This approach will be made clear in regulations made under Part 1 and in accompanying guidance.

Fire and Civil Defence Authorities

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

The current situation with Fire and Civil Defence Authorities is variable. In most metropolitan areas, the metropolitan districts carry out the whole range of emergency planning tasks, and the FCDA has a very limited role. In some areas, the FCDAs have negotiated agreements with the districts to carry out the functions on their behalf, and it is to these successful FCDA operations that the Committee's recommendation refers. In light of this variance, the Government considers that there is merit in a local authority being free to delegate its functions under the Bill to another local responder body (which might include a fire and civil defence authority).

Clause 2 enables regulations under clause 2(3) to permit delegation of the performance of a duty under clause 2. The Government, subject to consultation, proposes to exercise this power to enable a local authority to delegate the performance of its duty under clause 2 to a fire and civil defence authority.

NHS

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

After careful consideration with the Department of Health of contributions to the consultation and further discussions which DH has conducted internally, the Government has agreed that the following health bodies should be included in Category 1: Ambulance Trusts, Primary Care Trusts, NHS Acute Trusts, Foundation Trusts, The Health Protection Agency, Local Health Boards in Wales and any Welsh NHS Trust which provides public health services.

The Government believes that this will ensure a thorough integration of the health service into local civil protection arrangements.

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

The Government has decided that the Health Protection Agency should be placed in Category 1 because of its important role in providing advice during emergencies. It is considered, however, that the national blood service is not a local responder body and that it should not be included in what are essentially multi-agency arrangements, because its important emergency role is internal within the health service.

Utilities

24. *We recommend that the Government's proposal to involve utilities at local resilience forum level represents a practical compromise.*

We welcome the Committee's endorsement of our proposal.

Voluntary sector

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

The Government places a high value on the role that the voluntary sector plays in the response to emergencies. Voluntary organisations have a great deal of involvement in local multi-agency planning and response. However, we anticipate their contribution will continue on a voluntary rather than a statutory basis, because there is disagreement within the voluntary sector about what their status should be and it is, in any event, doubtful whether voluntary organisations could sustain a statutory obligation consistently in all parts of the country and for the foreseeable future.

Throughout the consultation period, the major national voluntary organisations expressed mixed views on their inclusion, and we would not wish to impose an unrealistic and unwanted obligation. Given that the status of a voluntary organisation does not have the same level of certainty of resources or legal framework that public sector bodies have, it is felt to

be unrealistic to place a duty on them. There are often differences between the national and local levels, with some organisations being local or regional in nature.

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

We fully endorse Category 1 responders seeking advice from organisations they believe could be of assistance to them. Though not specifically detailed, there are no impediments to this type of relationship within the Bill. We consider that details of this policy are best placed in the guidance and not on the face of the Bill.

Nuclear and chemical sites

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

The Government considered carefully the case for bringing the COMAH Regulations under the umbrella of the Bill. Integration across the two complementary frameworks is desirable, and the Government believes that this is best done on a voluntary basis to avoid the dangers of overlap and possible contradictions. COMAH is managed by the HSE and Environment Agency under the Health and Safety at Work Act and both these regulatory bodies are included under the Bill and will sit on the Local Resilience Forums. Bringing the operators of hazardous industrial sites themselves under the Bill would cause unnecessary duplication – and to ensure that these risks are avoided the Government has decided that COMAH emergencies can best be excluded by regulation from the definition of emergency.

Planning for COMAH emergencies will not be carried out under the Bill because it is already done effectively under a separate statutory instrument. In

regard to chemical and nuclear hazards associated mainly with transport accidents, the difficulties of including under the Bill all organisations that are involved in these voluntary schemes, as suggested for consideration by the Joint Committee, are too great at this time. It would involve including universities, road transport hauliers, industrial firms and various government agencies as well as the emergency services and other bodies already captured by the Bill. Effectively, the proposal would make these voluntary schemes statutory schemes and this is considered to be unnecessary when many of the key bodies will be sitting on the Local Resilience Forums. They can bring any difficulties they have encountered with them, or lessons learned from incidents, to the Forums and encourage improvements accordingly.

Private sector industries

28. *We recommend that the Government consider whether to include the Highways Agency, transport and enterprises, fuel suppliers, the food sector and private security firms as Category 1 or 2 Responders.*

The Government examined the case for inclusion of each of these areas in turn. The Government agrees with the Committee that the Highways Agency should be included as a Category 2 responder because the Agency is shortly to be taking on a new role on trunk roads, including motorways, which will involve them directly in responding to emergencies at a local level. All the other bodies suggested may have roles in emergencies as a risk-source or as a key resource to be drawn on in response.

It is not felt reasonable however to oblige these bodies to attend the local Forums at the heart of the Bill on a statutory basis. This would make the Forums unworkable. On the other hand, any of them can be invited to attend when a local Forum chooses to do so. Suggestions have been made that key parts of the critical national infrastructure, such as the food and fuel sector, should be included to provide greater security of arrangements – but this goes beyond the purpose of the Bill which is focused on responder bodies. Insofar as food, fuel and security firms can provide additional resources for responder bodies during emergencies, these are matters for voluntary local arrangements which can be spelt out in guidance, but do not need to be included in the Bill.

Human Rights Issues

Treating secondary legislation as an Act of Parliament

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

The consultation paper outlined the Government's reasons for including this provision in the draft Bill. The Government considers that in an emergency, it is necessary to balance individual rights against the need to respond to an emergency. The Government was keen to hear what the Committee and consultees had to say on how best to strike this balance. The provision included in the draft Bill providing for emergency regulations to be treated as primary legislation for the purposes of the Human Rights Act was one way to strike the balance. However, the Government made clear in its consultation paper that the case for its inclusion in the final bill was by no means certain.

The Government has very much appreciated the care and attention with which the Committee has considered this difficult issue. The Government has also found the comments on this point in the reports on the draft Bill from the Defence Committee and the Joint Committee on Human Rights very useful and has read with interest the comments of the Lords Select Committee on the Constitution, the Transport Committee and the Delegated Powers and Regulatory Reform Committee in their memoranda to the Committee. The Government has also had very fruitful discussions with consultees on this issue.

In light of this, the Government 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 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.

As the Committee has indicated, 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. The

Government largely agrees with the Committee’s analysis of this point.

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.

Protections for human rights currently mentioned within the Bill

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

The Government considers that, in line with the position under the Emergency Powers Act 1920, it should not be possible for emergency regulations to make any alteration to procedure in relation to criminal proceedings, even alterations which would be compatible with Article 6 of the ECHR. The Bill has been amended to reflect this (clause 22). It considers that such procedures enshrine fundamental rights that only Parliament should be permitted to alter

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

As part of its evidence to the Joint Committee, the Government committed to consult the Council on Tribunals about the use of emergency regulations to confer jurisdiction on a court or tribunal, including a tribunal established by the regulations.

The Council does not favour provisions giving a general power to establish new tribunals by secondary legislation. The Council’s view is that tribunals should be established by primary legislation and that their basic constitution, jurisdiction and powers should also be set out in primary legislation. Procedural rules are generally a matter for secondary legislation, on which there is normally a requirement to consult the Council. On the other hand, it is acceptable from the Council’s viewpoint to enlarge

the jurisdiction of an existing tribunal by subordinate legislation.

But the Council noted the Government's commitment to retaining flexibility in the use of emergency regulations, and in particular retaining the provisions in relation to tribunals.

In these circumstances, the Council agreed that it should be consulted on any regulations made or to be made under the powers contained in the provision, and that this requirement should be written into the Bill. The Council considered that the inclusion in the new Bill of provision for consultation with the Council would represent an important protection for the public.

The Government has accepted the Council's recommendation, and amended the Bill accordingly.

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

32. *We conclude that the intention of the draft legislation would be prohibition on regulations which would breach any of the Convention rights from which it is not possible to derogate or any provision in the Geneva Conventions of 1949 and Protocols thereto of 1977.*

Any emergency regulations made must be compatible with the Convention rights, within the meaning of the Human Rights Act. The Bill does not amend or modify the Human Rights Act or cast any doubt on its application. (The Government does not agree that the former clause 25 would, had it been enacted, have cast any doubt on the application of the Human Rights Act but assume that its deletion will reassure the Committee.) The Government therefore considers that it is wholly unnecessary expressly to provide that emergency regulations may not be made in contravention of the Convention rights. (As noted above, the term "Convention rights" must be read in accordance with any derogation which has been designated for the purposes of the Human Rights Act.)

The Government considers that to make express provision of this kind in this particular Bill would potentially undermine the application of the Human Rights Act. Making express provision in this case might cast doubt on the application of the Human

Rights Act to other legislation where no express provision was made. In light of this, the Government rejects this aspect of the recommendation.

The Geneva Conventions of 1949 (as amended) relate to war and armed conflict. They are just one of a number of international obligations of the United Kingdom which would have to be taken into account were emergency regulations to be exercised. As the Conventions are binding on the United Kingdom as a matter of international law, it is not necessary to refer to them in this Bill.

Interference with property rights without compensation

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

As outlined above, emergency regulations cannot lawfully be made in contravention of the Convention rights. Whether the Convention rights require compensation to be paid in relation to interference with property rights will depend on the nature of the interference and the particular circumstances. It is not therefore possible to state in the abstract when compensation will necessarily be paid. Of course, it might be appropriate to pay compensation even where the Convention rights did not require it. It is not necessary to provide that emergency regulations must provide for compensation to be paid when required by Article 1 of Protocol 1. The Human Rights Act achieves this.

Also the extension of schemes like Pool Re and Bellwin will be considered on a case by case basis.

Constitutional Matters

Power to amend all Acts of Parliament

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

The Government has carefully considered this recommendation. In broad terms, the Government agrees with the concern underlying this recommendation. Emergency powers should not be used to make major modifications to the constitutional fabric of the United Kingdom. Should it be necessary to make such a modification in an emergency, it is likely that it would be appropriate and, for the reasons given below, necessary to bring forward emergency primary legislation.

The Government has two concerns with the way in which the Committee recommends that this shared policy objective is achieved. First, the Government does not consider that it is possible to prepare and maintain a list of enactments which should be “protected” from amendment. The Government is aware of no precedent in legislation for doing so. This reflects the constitutional history of the United Kingdom. There is no written constitution. Nor have the courts (until very recently) recognised any hierarchy of enactments. Parliament is sovereign and is free to amend and modify any previous enactment it considers fit. As a result of this, it is very difficult to identify provisions of constitutional significance. Indeed, the rationale used by the Committee for selecting the enactments listed at paragraph 183 of the Report was not clear to the Government. For example, on what basis is the legislation dealing with the salaries of Ministers and Leaders of the Opposition (the Ministerial and Other Salaries Act 1975) an enactment of constitutional importance? And on what basis is an enactment prohibiting discrimination between men and women (the Sex Discrimination Act 1975) not?

Second, the Government considers that it may be appropriate in certain circumstances for a minor modification of an enactment of the kind listed by the Committee to be made in an emergency. Even in an enactment of undeniable constitutional importance as, for example, the European Communities Act, it is possible to conceive of appropriate amendments. Again, this reflects the constitutional history of the United Kingdom. The same piece of legislation may contain provisions that have profound importance and provisions which relate to procedure or technical detail. While the Government does not generally consider it appropriate for emergency regulations to be capable of amending provisions of the former variety, it does consider that it is appropriate and necessary for

emergency regulations to be capable of amending the latter.

We have sought advice from Parliamentary Counsel as to the scope of the power to “modify or disapply an enactment”, and in particular whether it would permit regulations under Part 2 of the Bill to modify an enactment which has constitutional importance – such as the Human Rights Act 1998 or the Bill of Rights Act 1689.

They have advised that each proposed exercise of such a power must be assessed by reference to whether or not it is within the class of action that Parliament must have contemplated when conferring the power. There are certain rebuttable presumptions as to what Parliament must have intended in conferring a power of this kind. These may be presumptions of common law (for example, the presumption against the imposition of taxation) or presumptions based on statute (for example, section 2 of the European Communities Act 1972 or section 3 of the Human Rights Act 1998). These presumptions apply even where Parliament has used general language. The courts have also suggested rules in relation to provisions of particular constitutional importance, requiring statutory modification to be express.

The Bill does not contain any express provision that enables regulations under Part 2 of the Bill to modify or disapply a constitutional enactment. While the specific powers listed in the Bill are very wide-ranging, they are capable of being exercised without interfering with a constitutional enactment. In particular, they are capable of being exercised in accordance with the Convention rights. Nor is the permission to do anything that an Act could do sufficiently precise to displace the general approach detailed above.

In light of this, Parliamentary Counsel have advised that, in exercising the power conferred under Part 2 of the Bill, in the unlikely event of needing to use this power, Parliament will not permit interference either with a general presumption or with a “constitutional” enactment. However, it may be safe to assume that Parliament intended to confer the power to interfere with such a statute if the interference is trivial in so far as it concerns the substance of the presumption or the constitutional enactment.

Given the inherent limits on the scope of the power, Parliamentary Counsel have advised that if we wished to be able to modify or disapply a constitutional enactment, we should take an express power to do so. We do not propose to do this.

Without such an express power, we cannot presently envisage circumstances in which this power would lawfully enable us to make a substantive amendment to a constitutional enactment.

In light of this, the Government does not consider that it is appropriate expressly to protect the enactments cited by the Committee from modification or disapplication. The effect of the current drafting appears to achieve the right result in a less inflexible way.

The Government considers that the Civil Contingencies Bill itself is unlikely to be treated as a “constitutional enactment” for these purposes. The Government does not consider that it would be appropriate for emergency regulations to modify Part 2 of the Bill itself. Clause 21 in the new draft of the Bill reflects this.

Regulations under Part 1

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

The Government is in agreement with the Joint Committee. Directions will elapse 21 days after the day on which they are made, during which time, if necessary, legislation can be brought forward.

After discussions with the National Assembly for Wales, the Government considers that it is unnecessary to make provision for action to be taken under Part 1 prior to consultation with the Assembly or prior to obtaining the Assembly’s consent. The provision providing for this has been deleted. This aspect of the Committee’s recommendation therefore falls away.

Publication of emergency regulations

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

We understand the Committee’s desire for transparency and are considering the matter. Draft regulations are designed to respond to emergencies including terrorism and disruptive industrial action. There is a risk that access to draft emergency regulations could highlight both potential weaknesses and targets or likely counter-measures. Regulations, if made, would be tailored to the emergency at hand and therefore those published may be misleading.

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

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

The Government agrees that regulations under Part 2 of the Bill should, like regulations under the 1920 Act, be subject to amendment by resolution of both Houses of Parliament. Although it is highly unusual for secondary legislation to be subject to amendment by Parliament, the Government agrees with the Committee that this is appropriate in this case and has amended the Bill appropriately. In order to ensure that the legal effect of emergency regulations is clear and, for example, that the legality of action taken under the regulations does not depend on the precise time the relevant resolution was passed, the Bill makes specific provision as to when any amendment or revocation will come into force. This provision is not found in the 1920 Act. The Bill makes provision for Parliament itself to override these provisions, thereby ensuring that Parliament may amend the regulations with immediate effect should it consider that this is necessary.

The Government agrees that the Minister responsible for the Parliamentary debate on the regulations in each House should make a statement as to whether

he considers that the regulations are compatible with the Convention rights. This reflects the undertaking that the Government has already given to volunteer a statement of compatibility in relation to instruments that are subject to the affirmative resolution procedure.⁴ The statement will generally be made in the explanatory memorandum which is prepared for the debate or, should the urgency of the matter mean that no explanatory memorandum is available, by the Minister in charge of the debate.

Expiry and renewal

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

The inclusion of a provision in an Act that provides for the expiry of the Act after a certain length of time, commonly referred to as a “sunset clause”, is relatively unusual and requires careful consideration. Where substantive legislation is enacted to deal with a short-term situation, it may well be appropriate for that legislation to include a sunset clause. This is particularly so where the exercise of powers conferred by the Act will not be subject to further Parliamentary scrutiny. Where the nature of the powers is such that it is appropriate to enable Parliament to assess whether it is appropriate for those powers to continue in light of the way in which the powers have been exercised, a sunset clause may also be appropriate.

The Government does not consider that it would be appropriate to include a sunset clause in Part 2 of the Bill. Part 2 is an enabling provision that is designed to provide the necessary powers to deal with a large range of emergencies. This would include terrorist attacks, floods, catastrophic storms, oil spills and war. While the Government would hope that the need for such an enabling power would not exist in 5 years time, this seems unlikely. Part 2 is not there to deal with a short-term problem. It should be noted that the previous legislation on emergency powers was enacted in 1920.

The exercise of powers under Part 2 will be subject to further Parliamentary scrutiny. Regulations made under Part 2 must be approved by both Houses. Exceptionally, the regulations may also be amended

by Parliament. The Government considers that the Bill adequately provides for Parliamentary scrutiny of action taken under Part 2.

The exclusion of the Crown under clause 19

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

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

As the Committee recognise, it is unnecessary expressly to provide that a senior Minister of the Crown must act “reasonably”. The use of subjective wording does not serve to oust the application of public law. For the reasons given in response to recommendation 4, the Government considers that expressly providing that a senior Minister of the Crown must act “reasonably” is both unnecessary and might cast doubt on other legislation where such wording is not used.

As the Government has concluded that it is not necessary to retain a separate “declaration”, the Committee’s second recommendation no longer applies.

Resource Implications

40. *We recommend that the Regulatory Impact Assessment (Local Responders) be redrafted in order to address the concerns voiced by business and to ensure that it meets the rigorous requirements of Better Policy Making: A Guide to Regulatory Impact Assessment. It needs to set out in much more detail, with supporting evidence, the costs and benefits of the options and to review the options comprehensively in the light of the regulations to Part 1, which are now due to be published with the Bill.⁵*

The Government has reviewed, updated and improved the Regulatory Impact Assessment (RIA) in the light of the Committee’s comments and responses received from the public consultation and subsequent discussions with key stakeholders. RIAs are specifically designed to be improved over time, the partial RIA

⁴ Hansard, HL Debs 1999 2 November cols.737-738

⁵ Q 237, Mr Alexander (Minister of State, Cabinet Office).

being re-assessed post-consultation. This is therefore standard practice. We have, for example, revised our calculations on the time commitment and financial costs for category 2 private sector bodies in participating in the sharing of information and co-ordination of activities with other key local responders and in Local Resilience Forums. The Government has included a case study of a major utility company in order to illustrate how the Bill will impact upon existing activities of private sector companies.

The Government is satisfied that the final RIA meets the exacting guidance set out in *“Better Policy Making: A Guide to Regulatory Impact Assessment.”*

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

The Government has reviewed and updated the Regulatory Impact Assessment (RIA) in the light on the Committee’s comments and responses received from the consultation exercise as is standard practice. We share the Joint Committee’s view that costings should be as accurate as possible but it is difficult to be precise with an enabling bill across a large range of bodies. It should be noted that none of the Category 2 bodies querying or reserving judgement on the costings in the Partial RIA have argued that they are punitive, nor that as a consequence they wished to be excluded from the provisions of the Bill.

The revised Explanatory Notes include estimates of public sector financial cost and of public sector manpower effects of the Bill, as is standard practice.

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

The Government published a ‘Partial’ RIA that measures costs to private and voluntary sector organisations alongside the Draft Bill. The costs and benefits of the proposals have been reviewed and revised in the light of the comments of the Joint

Committee and the input of those who have participated in our extensive and pro-active consultation process.

A summary of the final Regulatory Impact Assessment forms part of the Explanatory Notes to the Bill.

At the time of the Joint Committee’s deliberations, the detailed policy was still under discussion and the Government did not want to delay consultation on the draft bill while this further work was carried out. And one of the points on which we consulted was whether the scope of the enabling powers in Part 1 of the draft Bill would enable the Government to strike the right balance between local flexibility and consistency of civil protection. Had the draft Bill been accompanied by draft secondary legislation, there would have been a risk that consultees in particular would have concentrated on the detail of the draft secondary legislation rather than the scope of the enabling power.

A draft of the regulations will be laid before Parliament and we will listen carefully to what Parliamentarians have to say on the draft regulations in the course of the passage of the Bill. We will also be consulting publicly on the draft regulations following Royal Assent.

On the general principle, where a draft bill which is published for consultation contains a power to make secondary legislation, and that power goes to the heart of the Bill, there will often be merit in publishing a draft version of the proposed secondary legislation. Similarly, it will often be helpful to the process of pre-legislative scrutiny to make a copy of the draft secondary legislation available to the relevant Committee. However, each case must be judged on its own merits. There may be issues relating to the urgency of the matter, the need to consult relevant stakeholders or the need to conduct further work which mean that the draft secondary legislation cannot be made available at that stage. And where it is likely that the scope of the enabling power itself is likely to alter as a result of the pre-legislative scrutiny process, it may not be appropriate to prepare detailed draft secondary legislation.

43. *The Government’s consultation process was seriously flawed by the absence of draft regulations, making it impossible for Responders to estimate the costs of the proposals in Part 1 the Bill. In these*

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

The draft Bill is an enabling bill covering a large number of bodies in a general way.

The indicative regulations available to Parliament are general in their application and they do not necessarily provide the detail that will enable a complete assessment of costing and burdens. The Government believes that all responsibilities on local government should be properly funded. However, funding arrangements are being reviewed. 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 an additional commitment of resources. 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.

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

We welcome the Committee's recommendation. There is clear support for the move from specific to a general grant from consultees. We are committed to maintaining the right level of spending on local civil protection and will not remove the specific grant until the new framework is in place.

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

It is not the purpose of explanatory notes to deal with an issue such as this, which is a detailed matter of policy and will be the subject of guidance. Promotion of BCM by local authorities will be a matter for the local authority itself to determine: it may for example decide to use its economic development unit to carry out this task or may feel that it is a matter for its emergency planning unit or some other unit. The outline of the task, which will be contained in guidance, is that the local authority will aim to generate awareness of the benefits of BCM through the distribution of materials, including booklets and videos, through information which may be on a website and through seminars and meetings.

It is expected that Government will publish materials for local authorities to use thus limiting costs and unnecessary duplication of efforts. There will be no onus on firms under the Bill to adopt BCM planning. Where they choose to do so, local authorities may refer them to a qualified consultant or, if they are competent to do so, offer the firm a full BCM consultancy service and charge them accordingly.

On the second proposal, that an outline business plan be included, the Government believes such an approach risks being over-prescriptive and is in any case inconsistent with its general approach in Part 1 since it is not proposed to publish outline plans for emergency response or prevention. These are matters for local determination. It is important that each local authority has the most appropriate arrangements in place for its particular area and the freedom to organise itself as it chooses to meet the requirements of Part 1 of the Bill and its regulations. Appropriate guidance will be issued to local authorities to make it clear what is expected of them.

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

The RIA has satisfied the criteria laid down by the Regulatory Impact Unit and the Minister for Regulation. The nature of Part 2 of the Bill means that it has no regulatory impact in itself.

47. *A review of the Bellwin Scheme was conducted in 2001, following which the Government concluded that a change to the statutory basis of the Scheme would not be appropriate.⁶ We would recommend that the Government, when it comes to finalise the Bill and its supporting documentation, explains the part which the Bellwin scheme plays in resilience and how it fits within the new framework.*

The Government is grateful to the Committee for raising this issue. The Bellwin scheme certainly has a role to play in the encouragement of resilience and provision of funding at the local government level.

Audit and Management

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

The recommendation to instigate an inspectorate body has been repeated by a number of stakeholders. The Government examined the case for an inspectorate body at an early stage and concluded that there was little merit in the proposal. 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 and stakeholders have also 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. A dedicated inspectorate is deemed to be unnecessary because audit can be carried out by the existing inspectorate bodies for each of the responder organisations, and regular meetings can be arranged across the inspectorates at national and regional levels to ensure that there is a consistency in their approach.

49. *We recommend that the Government gives careful consideration to the establishment of a Civil Contingencies Agency which, like other Agencies,*

would have both advisory and supervisory responsibilities.

The Government already has arrangements in place to achieve the aims of resilience. A duty on the face of the Bill is not necessarily the right way to achieve this. The recommendation suggests the establishment of a body similar to US Federal Emergency Management Agency. In July 2001, the civil protection function transferred from the Home Office to the Cabinet Office as part of the machinery of government changes, with the formation of the Civil Contingencies Secretariat. The role of the CCS is to co-ordinate across central government in the development of resilience policy and procedures and also to identify deficiencies, such as the need for this Bill and the recent innovation adopted by the Office of the Deputy Prime Minister (ODPM). ODPM have established a civil protection component, the regional resilience teams, in each of the government offices. CCS has a responsibility to oversee the development of resilience programmes across government and as such occupies both an advisory and supervisory position. The Secretariat was established in part to address perceived deficiencies of central co-ordination. As a result, the Government has concluded that there is no current requirement for an agency.

50. *We recommend that:*

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

The planning responsibilities of local responders under the Bill are clear. The regional tier will dovetail with the responsibilities of the local tier. The planning responsibilities of the regional tier are currently being developed as the regional

⁶ Questions for the Bill Team, Appendix 9, question 47.

resilience teams undertake resilience surveys of their regions and identify pragmatically areas where a regional-level plan may add value. The question of establishing the role of central and regional government in civil protection on a statutory basis, was addressed in answer to recommendation 19 above.

The Government established the regional structure in order to provide regional level co-ordination as necessary, through regional application of government advice and directions, a regional voice to the media and support for central government's response at the regional level. Regional level arrangements are comprised of three clear and inter-related components; the Regional Resilience Forums, which become Regional Civil Contingencies Committees during crisis, Regional Resilience Teams and Regional Nominated Co-ordinators. The first bring together relevant organisations at the regional level to facilitate regional level planning, the second support their work and act as a two-way conduit for information between the national and regional levels. The RNC would play a key role in co-ordinating a regional response to a very serious emergency in co-operation with both. These arrangements play a vital role in providing a link between the local and national levels, dovetailing with local arrangements and enhancing the overall response. We intend to specify the roles and responsibilities of the regional tier in the guidance.

The relationship between the national and regional levels is straightforward. It is founded upon the Government Offices of the Regions and overseen by the Regional Co-ordination Unit within ODPM. The Government Offices, as outposts of central government, are run and organised in a standardised fashion within established departmental procedures. Each office contains a regional resilience team that is directly linked into central government and acts as a two-way conduit for communication between the tiers. The relationships between the two levels are clear and transparent and work well.

A key principle within emergency planning is that, by and large, response structures should mirror planning structures. There is no substantial benefit gained through using geographical areas over administrative areas, which are in any case defined by geographic boundaries. Organisations and their

plans are flexible enough to deal with emergencies within and across geographical boundaries, and there is long experience of working in this way which the standard framework provided by the Bill, together with the new role for the Regional resilience Teams, will greatly assist. Emergency Powers will be used to complement and build upon existing emergency planning arrangements where needed. The latter are a response to an emergency and must therefore fit the administrative arrangements in place for delivering such a response. In practice many emergency powers would be used on a discretionary basis and only apply within the specific area in which they are needed allowing them to be targeted on a more specific "geographical" basis as required.

Annex A

Response to the Recommendations of the Defence Committee

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

The Government welcomes the Committee's endorsement of the Draft Bill. We have undergone a process of detailed and productive consultation by way of both Public Consultation and pre-legislative scrutiny. The Government is very grateful to the Defence Committee and for the contributions supplied by a number of other Committees. This process was crucial to finalising policy and to shaping the final Bill.

It is right and proper that these processes took place, that the time was taken to get the Bill right and that it was finalised through informed debate with interested parties. We have sought to introduce the Bill as soon as practicable following this scrutiny process and believe the final Bill laid before Parliament has benefited from the debate that has informed policy development.

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

The Bill has been drafted following an open and inclusive policy development process in which key stakeholders were, from the very beginning, engaged in discussions surrounding both its broad thrust and on the fine policy detail. A "Policy Steering Group"

advised the Bill Team and discussed proposed policy before its finalisation: members included the Local Government Association, Emergency Planning Society, Association of Chief Police Officers and Chief And Assistant Chief Fire Officers Association. Those organisations affected by the Bill were engaged in its development and had a direct contact with the Bill Team through which they were able to express their views throughout the development of the Bill. This followed public consultation on the idea of new legislation in this field in 2001.

The 2003 public consultation period lasted 12 weeks in line with the Cabinet Office Code of Practice on written consultation. Copies of the draft Bill and accompanying documents were sent by post to all key stakeholders, including all of the organisations listed above, all known UK human rights organisations, the utility companies and professional bodies such the Association of British Insurers. Over 2,000 copies were distributed and many organisations such as the NHS were sent a 'gateway' copy to enable access for the entire organisation.

The Government recognises that the Consultation exercise did fall partly during the traditional UK Summer holiday period. The guidance notes that this is not ideal. However, the significance of this should not be exaggerated. Every effort was made to ensure copies of the consultation documents were delivered to interested parties. The documents were also available on www.ukresilience.info and on request from a range of sources. Key stakeholders, such as the EPS, actively sought the views of their members during the consultation exercise and press coverage of the draft Bill no doubt alerted many others.

During the public consultation exercise seminars were held in all of the English Regions, in North and South Wales and in Northern Ireland in which the content of the draft Bill was explained to emergency planning practitioners and other interested parties alongside the policies behind it. Question and answer sessions

allowed attendees to express their views directly to members of the Bill Team responsible for the development of policy.

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

The issue contained here is similar to that raised by the Joint Committee in its 36th, 42nd and 43rd recommendations.

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

The Joint Committee raised this issue. The Government's position is set out in its response to the Joint Committee's 16th recommendation.

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

The Joint Committee raised this issue. The Government's position is set out in its response to the Joint Committee's 19th recommendation.

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

The Bill provides for the post of Regional Nominated Co-ordinator. The intention is that the post would only be formally filled in the event of a state of emergency applying to a region, though in practice we think that an 'RNC-designate' would be appointed to deal with any serious wide area emergency.

Regional Nominated Co-ordinators (RNCs) will be trained crisis managers. Relevant expertise is clearly important to the analysis and control of an emergency situation. However, the Government recognises the value of leadership and decision-making skills within such a situation and that no two emergency situations are the same. This necessitates

people with differing sets of skills and experience and the criteria for appointment would combine a combination of all these qualities.

The intention is that a pool of people with sets of different skills and experience would be available. This would provide a range of skills that should cover a range of possible emergency situations, with the most effective candidate in the specific circumstances becoming RNC.

We have not yet finalised the appointment arrangements and we will be consulting with stakeholder groups including category 1 and 2 responders to ensure we have the required skills and expertise. The intention is that the post would only be formally filled in the event of emergency regulations applying to a region, though in practice we think that an 'RNC-designate' would be appointed to deal with any serious wide area emergencies.

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

Government Offices are technically part of the Office of the Deputy Prime Minister, though nine departments are represented in them. These departments do not have a separate legal identity. They also have very varied functions. While they have a key role to play in regional civil protection, they also have a wide range of functions not relating to emergencies.

Government Offices do not have a direct role in front line response. Their role is to provide support to front line responders, and to support the flow of information.

The regional resilience structures are still at an early stage of development. A number of bodies have been established including Regional Resilience Teams and Regional Resilience Forums, though their precise roles are not fixed because each Team is assessing how it can best "add value" in a context where it is not designed to take over from the primacy of the local level in most emergencies and of central government when serious disruptive challenges occur. To specify regional roles upon the face of the Bill would be unwise at this stage.

At the same time, the Regional Resilience Teams are engaging with local responders and establishing

through the various Forums a good understanding of the needs of local level responders. This development will be of considerable benefit in future, by keeping central government departments informed of local level perspectives and actions when an emergency occurs and ensuring that central departments are responsive to particular requests and issues at the local level as they arise. At the same time, through the regions, central departments will have improved links with the local level in order to ensure that centrally-driven planning and response strategies are soundly based, well co-ordinated and consistently delivered.

8. *We believe that the Government must provide much more detailed information on the content of the regulations which Ministers propose to make under the draft bill. Without that information it is impossible to judge to what extent the Government intends to do more at local level than entrench existing best practice.*

The indicative regulations under Part 1 will be made available to Parliament. These are general in their content and therefore do not go much, if at all, beyond the Bill in indicating what new initiatives may be required at local level. If anything, they narrow down the impact of the Bill by indicating for example how the duty to warn, inform and advise is limited by the responder bodies' functions. As the Committee rightly surmises, a key aim of the Bill is to entrench existing good practice and, because its main aim is to cement the existing framework rather than prescribe how the details of civil protection should be undertaken, it will tend to establish a baseline of good practice at a minimum acceptable rather than a maximum desirable level. Many responder bodies have commented that they are already doing what the Bill requires them to do. The aim is to achieve greater resilience through greater certainty that civil protection is being carried out in a consistent and satisfactory manner in all parts of the UK.

9. *The Government clearly believes that genuine resilience can only be secured by contributions from the local, regional and national levels. They have described the structures by which they expect it to be delivered. They must now demonstrate not only that each is needed but also that the elaborate machine which they have designed will work efficiently and will deliver a level of resilience significantly greater than could be achieved by the ad hoc, but often effective, arrangements which these proposals replace.*

The Joint Committee made a number of recommendations based around the sentiment of the Defence Committee. Our response can be read at the response to recommendations 19 – 25 and 48 – 50 detailed above. Probably the best evidence that the new duties will deliver an increased level of resilience across the UK is that in two consultations, carried out in 2001 and 2003, there has been virtually unanimous and enthusiastic support for the new civil protection duty from all the stakeholders who are likely to be covered by it.

10. *We recommend that the Joint Committee explore the possibility of including some voluntary organisations as Category 2 Responders with the organisations.*

The Joint Committee raised this issue. The Government's position is set out in its response to the Joint Committee's 25th and 26th recommendations.

11. *We believe that there are strong arguments for including the Armed Forces on Local Resilience Forums.*

The Government agrees with the sentiment expressed by the Committee. Given their undoubted experience within this area, representatives of the Armed Forces are permitted to attend both the existing Senior Co-ordinating Groups (SCGs) at county level and the Regional Resilience Forums, and may be expected to attend many of the Local Resilience Forums which will replace the SCGs. However, owing to the nature of business of the Armed Forces, we have not imposed a statutory requirement upon them to attend. Their participation could not be guaranteed in the face of operational requirements.

12. *In our view there are strong arguments for substantially increasing the membership of Category 2, although it might not be necessary that all the additional bodies be members of Local Resilience Forums.*

The membership of Category 2 has been established after careful consultation with stakeholders. The aim is to establish in Category 1 a core framework of responder bodies which are involved in most emergencies, together with a supporting network in Category 2 of bodies, many of which may in certain circumstances constitute a risk-source and which also have a more limited response role. The task of the Bill, as the Government sees it, is to establish this framework on a closely defined basis so that it can

bed down and become a consistent and predictable network of civil protection activity across all parts of the UK. Local variation is inevitable and there are therefore demands for other bodies which are risk-sources or responders in certain circumstances to be included. This is understandable and indeed welcome, because it shows the enthusiasm of responder bodies for the Bill. But the task at this stage is get the new structure functioning effectively without over reaching itself and without imposing new legislative and regulatory burdens on a much wider range of bodies than is strictly necessary.

The current list of bodies in Schedule 1 proposed for Category 2 represents those organisations that have been assessed as being pivotal in developing sound response arrangements for the generality of emergencies. The Bill does not prevent bodies not currently listed from taking part in local civil protection. On the contrary, it will provide them too with a statutory framework which they can rely upon and through which they can make their contribution. Many will be approached by the responder bodies as part of the planning process. They will also be invited to attend multi-agency meetings, including the LRFs, as and when necessary.

13. *We believe that bodies owning or operating sites covered by the existing statutory arrangements for managing major accident hazards at industrial sites, or on oil and gas pipelines or radiation emergencies should be included in Category 2.*

The Government considered carefully the case for bringing the operators of certain risk-sources under the umbrella of the Bill. We are in agreement that integration across the frameworks is desirable, but consider that this is best done on a voluntary basis to avoid the dangers of overlap and possible contradictions.

The Joint Committee raised this issue. The Government's position is set out in its response to the Joint Committee's 27th recommendation.

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

The Joint Committee raised a similar point in its 28th

recommendation. The Government examined the case for inclusion of the private security industry. Whilst the sector undoubtedly has a role within some emergency situations, it does not generally play a role as a key or subordinate responder body in the generality of emergencies. In emergency planning, security firms do need to co-ordinate with the Police in, for example, organising evacuations from private premises, including shopping centres and other places where the public may be present in large numbers. However, the formal responsibility for co-operation with the Police rests with the management of the premises concerned, who employ the security firms, and it is not proposed to place an additional regulatory burden on retail and entertainment premises by including them under the Bill. The sensible approach in the Government's view is to continue with the present situation, where the security firms and their employers are brought into civil protection arrangements on a voluntary basis as and when necessary.

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

See recommendation 11.

16. *We are concerned that, if those bodies which are charged with promoting business continuity management do not have the resources to do it properly themselves, still less to promote it effectively, the exercise will be undermined from the outset. This is not an area in which 'do as I say, not as I do' is likely to be a persuasive argument.*

The Joint Committee raised this issue. The Government's position is set out in its response to the Joint Committee's 45th recommendation.

17. *We are concerned that the level of funding proposed in the consultation document is inadequate for the responsibilities envisaged under the bill and we recommend that the Joint Committee examine this issue further.*

The Joint Committee raised the issue of funding. The Government's position is set out in its response to the Joint Committee's 43rd recommendation.

18. *We recommend that the Government list in respect of each of the major emergencies of the last ten years or so (eg floods, fuel crisis, foot and mouth, 11 September 2001) whether they would have used the powers in Part II had they been available.*

The Joint Committee considered this issue during its evidence gathering. The Government's position is set out in Appendix 9 of the Joint Committee's report.

19. *We believe that the Joint Committee should consider whether for certain types of emergency Ministers might require access to only some of the powers set out in Clause 21 and, if so, whether the bill should limit access to certain powers for certain types of emergency.*

The Government has carefully considered the recommendation of the Committee. However, the Government does not agree with the recommendation. It is impossible to predict with any certainty the course of or response to an emergency. The Government believes it is important to retain maximum flexibility. Nevertheless, the Government has strengthened the safeguards in the Bill. Further detail of the Government's position is set out in its response to the Joint Committee's 4th recommendation.

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

The Joint Committee raised this issue. The Government's position is set out in its response to the Joint Committee's 4th recommendation.

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

The Joint Committee raised this issue. The Government's position is set out in its response to the Joint Committee's 29th recommendation.

22. *We believe that regulations made under Clause 2 of the bill should be subject to affirmative resolution by both Houses of Parliament.*

The Government does not agree. The duties of Category 1 responders are set out in clause 2(1). While regulations under clause 2 can limit those duties or make provision as to how those duties are to be performed, the regulations cannot expand the scope of the duties. The regulations under clause 2 are likely to contain detailed, technical provisions.

Many of these provisions will relate to procedure (for example, exactly how often responders should hold meetings as part of their duty to co-operate with each other) and administrative points of detail (for example, the form in which a request for information should be made).

The regulations may also require amendment on a not infrequent basis. The Government therefore considers that it would be an inappropriate use of Parliamentary time to subject these provisions to the affirmative resolution procedure.

23. *We believe that consideration should be given to whether the proclamation of an emergency, or its renewal, should require to be approved by Parliament, perhaps in the same way as the regulations made under it.*

The Government agrees with the sentiment underlying this recommendation and has decided to streamline the procedure for the exercise of emergency powers.

There will no longer be a proclamation of an emergency and emergency regulations. There will just be emergency regulations. These regulations must be approved by both Houses of Parliament.

Emergency regulations will lapse 30 days after they are made. Should the Government wish to renew emergency powers beyond this period, it would have to make a new set of emergency regulations, which would need to be approved by both Houses of Parliament.



Published by TSO (The Stationery Office) and available from:

Online

www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: book.orders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

123 Kingsway, London, WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

18-19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

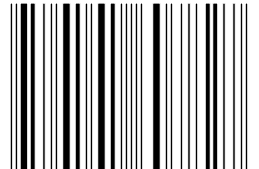
0870 606 5566 Fax 0870 606 5588

TSO Accredited Agents

(see Yellow Pages)

and through good booksellers

ISBN 0-10-160782-2



9 780101 607827