

6 May 2003

The Financial System and Major Operational Disruption  
FSM team  
Room 4 / 16  
HM Treasury  
1 Horse Guards Road  
LONDON  
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Dear Sir

**The Financial System and Major Operational Disruption – CM 5751**

Since the Y2K exercise, the Bank of England and APACS have maintained close contact with LINK and all the major banks to ensure that emergency communications are in place and that Business Continuity Plans exist. There is a high degree of information sharing carried out through this channel and, indeed, within the member banks of LINK.

We have seen and indeed, support many of the comments made in the APACS response and would not wish to over duplicate.

It is against this background that our response is made which addresses the Key Broad Questions on page 6 only

**Question 3b**

The Force Majeure mechanism which is a common clause in almost every contract, could be made more specific to strengthen its effect at times of national crisis.

The statutory responsibilities of commercial undertakings, considered sufficiently vital to the national interest, could be extended to enforce the making and testing of Continuity Plans which complied to a national standard. Compliance to this could be monitored by, for example, the BSI or other such body on a regular basis to ensure that an appropriate state of readiness was maintained. This of course, at its most basic level, could be a voluntary co-operation between individual pairs of business partners through contractual obligations between the pairs or a more national arrangement supported by some form of legislative/regulatory "guidelines".

**Question 3c**

The events of 11 September demonstrated an enormous amount of co-operation often between active competitors uniting against a perceived common enemy. In the UK, events during the last major war demonstrated similar levels of co-operation. Whether this could (or needs to) be facilitated by the private sector (over and above normal levels of co-operation between businesses) is debatable as is the question of whether the authorities could assist. It may be that the authorities are best placed to assist by being able to relax/suspend rules,



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timescales and, maybe, certain types of trading to enable such co-operation to take place more effectively.

There is some considerable scope for extending the testing of Business Continuity Plans beyond individual organisations through to other parties and suppliers. This could be an extended role for NISCC, maybe, or some other agency capable of monitoring such an activity.

#### **Question 4a**

Responsibility for managing companies lies with their Directors and any legislation which seeks to either “nanny” or over impose may have a disadvantageous effect. On the other hand, the last thing needed in a crisis is anarchy or panic measures. Somewhere between the two would seem to be appropriate with the authorities providing support and guidance on a national scale to assist the private sector in coming to terms with the crisis, stabilising operations and moving quickly into a recovery position and minimising the effects of the crisis on businesses, on the public and international contacts. A degree of “light touch” legislation to provide breathing space, should disaster strike, would be appropriate providing that it was developed and implemented in a sensible and flexible way through constructive communication between all the parties.

#### **Question 4b**

It may be possible to avoid excessive risk by providing additional legislation which guides/enforces a better continuity planning environment. This needs to be seen to be helpful to the private sector and not just providing (more) legally enforceable control for the sake of it. A uniform (even if minimum) level of risk management is better than a patchy approach which enables large areas of risk to be overlooked. Of course, any new legislation should only be used in appropriate and, maybe, limited circumstances. The use of the Standing Committee arrangements to decide under what circumstances they may be invoked is as good a method as any and provides for timely consideration of the issues and an objective view taking into account the costs and benefits at national level. It goes without saying that a level of co-operation/communication with the private sector at the time of crisis will keep all parties committed and “on side”.

#### **Question 4c**

The Suspension and Direction Powers, as described, earlier in the document represent a reasonable compromise between no control/intervention at all and an overbearing level of interference which might be counter-productive.

It has to be said that any new powers should be subject to full discussion and communication between the parties concerned and drawn up in an atmosphere of mutual co-operation. The imposition of ill thought out legislation at a time of crisis would be catastrophic for all parties.

Should the unthinkable happen the private sector will be looking for help and support from the authorities to guide them through the crisis not more rules and regulations to prevent them making due progress with their own business continuity and recovery plans.

**Question 6f**


The idea of a suspension power, proving it is used under the right circumstances, in the interests of the private sector and for the benefit of commerce and the general population would seem a sensible instrument to be available in the event of a national crisis.

**Question 7f**

The impact of a direction power goes further than a suspension power and this can have advantages and disadvantages as described in the document. On the one hand it may help the private sector avoid prosecution should obligations be prevented from being met by a national disaster. On the other hand, depending on the nature of the crisis it may direct that things be done which are physically impossible to do because of the crisis. It is therefore more complex in its formulation and in its execution and the point has been well made elsewhere that a "one solution fits all" approach is never going to work .

Use of a direction order in an enabling form to "oil the wheels" during the crisis and in co-operation and full communication with the private sector, may be more "do-able" and more effective.

Yours faithfully



**J T Hardy**  
**Chief Executive**