

MEMORANDUM
CIVIL CONTINGENCIES BILL

Motion

1. The motion to be put to the Parliament is:

“That the Parliament endorses the principle of a single statutory framework for civil protection across the UK, as set out in the Civil Contingencies Bill, and agrees that the relevant provisions in the Bill should be considered by the UK Parliament.”

Background

2. Civil protection in the UK is largely based on permissive powers and arrangements to deal with threats which range over a wide spectrum, from local incidents to those that have national implications. Recent experience of severe emergencies in the UK and the changing threat from international terrorism have indicated that civil protection arrangements should be revised in order to make the UK more resilient to the threats it faces today.
3. The Civil Contingencies Bill is one strand of work that central government is undertaking to enhance our ability to prepare for and deal with emergencies. The Bill contains 2 distinct Parts. Part 1 is concerned with contingency planning while Part 2 deals with events which require the use of emergency powers.
4. Part 1 of the Bill will place broad duties on organisations which are involved in the response to emergencies. These duties will be to assess the risk of emergencies occurring, plan for emergencies, promote business continuity advice and co-operate and share information in preparing plans. There is value in ensuring that organisations across the UK have a single framework in which they plan and prepare for emergencies. This will help ensure the use of common standards and expectations in these organisations. Emergency planning is devolved to the Scottish Parliament and the application of Part 1 of the Bill to Scotland will therefore require the consent of the Scottish Parliament.
5. Part 2 of the Bill will update the powers that central government has for dealing with the most severe emergencies. It will allow the UK Government to declare a state of emergency (including on a regional basis, for example in response to a request from Scottish Ministers to declare an emergency in Scotland) and make emergency regulations to deal with the situation. Emergency Powers are reserved to the UK Government but clause 21 provides for UK Ministers to confer functions through emergency regulations on bodies that include Scottish Ministers. This will require the consent of the Scottish Parliament.

Consultation

6. The Scottish Executive consulted on the draft Bill with stakeholders in the civil protection community during the summer of 2003. The consultation responses revealed that emergency responder organisations largely welcomed statutory duties as opposed to permissive powers, as these would provide clarity about what was expected of them and consistency in the work that was undertaken.

Financial Effects

7. The Bill is enabling legislation which will allow Scottish Ministers to make regulations specifying the actions that organisations must undertake to fulfil their duties under the Bill. Initially, these regulations will formalise existing arrangements between emergency responder organisations for planning and co-operation and should not add materially to their financial burdens. Regulations would be made following consultation which would enable any potential resource implications to be identified in advance.

Content of the Bill affecting devolved matters

Part 1 - Local arrangements for civil protection

8. The Bill sets out a number of broad duties that should be undertaken by organisations which may have to deal with the response to emergencies. The detail of the responsibilities will be set out in regulations made under the Bill. There will be two categories of responder organisation, reflecting two levels of statutory obligation: the principal bodies involved in planning for emergencies will be *Category 1* responders and those that support the planning will be *Category 2*. Scottish Ministers will have regulation making powers to confer duties on Scottish Category 1 and 2 organisations (see paragraph 31 below).

9. The Bill sets up two parallel systems: Scottish responders will be regulated by Scottish Ministers while English and Welsh responders will be regulated by UK Ministers. A number of UK bodies operating in Scotland will be regulated by UK Ministers with agreement to consult Scottish Ministers. Likewise, a number of Scottish bodies operating in generally reserved areas of law will be regulated by Scottish Ministers after consultation with UK Ministers. The Responders which relate to Scotland are set out separately in Schedule 1 of the Bill.

10. Scottish Ministers will only have powers to regulate bodies in the Scotland in accordance with the provisions of the Bill. The main provisions of the Bill which relate to local arrangements for civil protection are described below.

Clause 1 – Meaning of “emergency”

11. This clause defines ‘emergency’ for Part 1 of the Bill and includes a possible range of events or circumstances that could meet the definition. The clause enables Scottish Ministers to clarify in regulations whether particular events or situations are or are not to be regarded as constituting an emergency for this part of the Bill.

Contingency planning

Clause 2 & 3 – Duty to assess, plan and advise

12. These clauses place general duties on Category 1 bodies to assess risk, make plans to deal with some identified risks, and publish information about these assessments and plans

that may be necessary. Clause 2 enables Scottish Ministers to make regulations that specify the manner and extent in which these duties are to be performed.

13. Clause 3 enables Scottish Ministers to issue guidance to organisations about these duties and requires bodies to comply with regulations and to have regard to guidance.

Clause 4 – Advice and assistance to business

14. This clause places a duty on Category 1 and 2 organisations to provide advice and guidance to the public about the continuance of business activities in the event of an emergency. It enables Scottish Ministers to clarify the extent of this duty in regulations and guidance. The clause also enables organisations to charge for advice or assistance.

Civil Protection

Clause 5 – General measures

15. In order to provide flexibility and accommodate future policy developments, this clause enables Scottish Ministers to impose new civil protection duties on Category 1 responders. These may only relate to the manner in which existing functions are performed.

Clause 6 – Disclosure of information

16. The Bill will require organisations to co-operate with each other and share information for the purposes of emergency planning. This clause enables Scottish Ministers to make regulations that require organisations to share information relating to emergencies and to issue guidance on the sharing of information. It also enables Scottish Ministers to issue guidance to organisations about the performance of functions under these regulations and requires bodies to comply with regulations and have regard to guidance.

General

Clause 8 - Urgency: Scotland

17. This clause enables Scottish Ministers to make directions that would normally be made by regulation under clauses 2(4), 4(3) or 6(2) in circumstances where there is insufficient time because of urgency to take action through regulation. Such directions, which may be written or oral, will be valid for up to 21 days and must be revoked as quickly as reasonably practical or replaced by regulations or order as appropriate.

Clause 9 – Monitoring by Government

18. Government will be able to obtain information from organisations to ensure compliance with the legislation. This clause enables Scottish Ministers to require a Category 1 or 2 organisation to provide information about action taken (or not taken) in compliance with duties set out in this part of the Bill.

Clause 11 – Enforcement: Scotland

19. This clause enables Scottish Ministers, or any Scottish Category 1 or 2 organisation, to bring proceedings in the Court of Session against other bodies that do not comply with duties under clauses 2(1), 3(3), 4(1) or (8), or 5(3), 6(6) or 9(4) of the Bill.

Clause 12 – Provision of information

20. This clause enables Scottish Ministers to specify the timing or way in which information is required to be provided under clauses 2(5)(i), 5(4)(e) or 6(1) or (2) of the Bill.

Clause 13 – Amendment of list of responders

21. This clause enables Scottish Ministers, by order, to add or remove bodies from the list of Category 1 and Category 2 responders. Any such order would be subject to the approval of a draft by the Scottish Parliament, (as set out in Clause 16(3)).

Clause 14 – Scotland: consultation

22. There are a number of responder bodies in the Bill that are UK or GB-wide as well as others operating only in Scotland whose functions are generally reserved. This clause sets out who is responsible for regulations and orders affecting these bodies, and what consultation will be required between Ministers. The clause states that UK Ministers will regulate such bodies that operate in parts of the UK beyond Scotland but must consult with Scottish Ministers before making regulations or orders that affect such bodies where they also exercise functions in relation to Scotland.

23. The clause also sets out that organisations that operate wholly in Scotland will be subject to regulation by Scottish Ministers, but that Scottish Ministers shall consult with UK Ministers on orders and regulations affecting those bodies. This need to consult reflects the view of both the UK Government and Scottish Ministers that such dialogue will help to promote a common framework for civil protection across the UK. It does not however, give UK Ministers powers to regulate Scotland-only bodies.

Clause 16 – Regulations and orders

24. This clause provides that regulations and orders made by Scottish Ministers under this legislation will be made by statutory instrument. Orders made under the clause 1(5), 5(2) or 13(2) will be subject to the draft affirmative procedure, whilst regulations under the Bill are to be subject to the annulment procedure. This mirrors the proposals for the regime in England and Wales.

Part 2 of the Bill

25. As already indicated, emergency powers are reserved to the UK Parliament. However, the provisions for UK Ministers to make emergency regulations may, in emergencies, impact on the responsibilities of Scottish Ministers.

Clause 21 – Scope of emergency regulations

26. Subsection (3) of this clause provides for emergency regulations made by UK Ministers to confer additional functions on a number of bodies including Scottish Ministers.

Part 3 of the Bill

Clause 33 – Commencement

27. This clause prescribes which provisions will be brought into force by UK and Scottish Ministers, some following consultation between the two.

Clause 34 – Extent

28. This clause provides for the Bill to extend to the whole of the UK.

Schedules

Schedule 1

29. Parts 1 and 3 of this schedule set out the criteria for organisations that are subject to regulation by UK Ministers.

30. Parts 2 and 4 list the responders that will be subject to regulations and orders made by Scottish Ministers.

Part 2

31. This schedule lists the criteria for Scottish Category 1 responders which will be the key organisations subject to the duties to plan for emergencies. They are:

Local Authorities
Police authorities
Fire authorities
The Scottish Ambulance Service
Scottish Health Boards
The Scottish Environmental Protection Agency

Part 4

32. This schedule lists the criteria for Scottish Category 2 responders who will have lesser duties to support the planning function. They are:

Scottish Water

The Common Services Agency of the NHS (Scotland)

Gas providers that operate only in Scotland

Electricity providers that operate only in Scotland

Telecommunications companies that operate only in Scotland

Railway companies that operate only in Scotland

Airport operators that operate only in Scotland

Harbour authorities that operate only in Scotland

SCOTTISH EXECUTIVE

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