EXPLANATORY MEMORANDUM TO
THE CIVIL CONTINGENCIES ACT 2004 (CONTINGENCY PLANNING) (AMENDMENT) REGULATIONS 2012

2012 No. 624

1 This Explanatory Memorandum has been prepared by the Cabinet Office, and is laid before Parliament by Command of Her Majesty.

2 Purpose of the instrument

This Instrument amends the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 ('the Principal Regulations'). It clarifies the duty to co-operate, shared by all organisations with duties under the terms of the Act[1].

3 Matters of special interest to the Joint Committee on Statutory Instruments

None.

4 Legislative Context

The Amendment Regulations –

- substitute regulation 4, which requires organisations with responsibilities under the Act in England and Wales (Category 1 and Category 2 responders) to co-operate with each other;
- clarify regulation 7 by setting out the duties under regulations 4 and 49 of the Principal Regulations that may be included in protocols entered into by Category 1 and Category 2 responders, and which may thereby be varied;
- amend regulation 16 of the Principal Regulations to substitute "Minister of the Crown" for "Secretary of State";
- introduce a new regulation 44A and amend regulation 47 to clarify information sharing powers and responsibilities.

In addition, a new regulation 59 is inserted into the Principal Regulations which requires the Minister for the Cabinet Office to review the operation and effect of the Principal Regulations.

5 Territorial Extent and Application

This instrument applies to England, Wales and Northern Ireland (though in relation to Northern Ireland, the amendments do not alter the current effect of the Principal Regulations).

6 European Convention on Human Rights

[1] http://www.legislation.gov.uk/ukpga/2004/36/contents

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy Background

7.1 The Civil Contingencies Act 2004 (the Act) delivers a single framework for civil protection in the United Kingdom. The Act is separated into two substantive parts: local arrangements for civil protection (Part 1) and emergency powers (Part 2).

7.2 Part 1 of the Act establishes a set of roles and responsibilities for those involved in emergency preparation and response at the local level. The Act divides local responders into two categories, imposing a different set of duties on each.

- Category 1: those organisations at the core of the response to most emergencies (e.g. emergency services, local authorities, NHS bodies). Category 1 responders are subject to the full set of civil protection duties.
- Category 2: organisations (e.g. Health and Safety Executive, transport and utility companies). These are less likely to be involved in the heart of planning work but will be heavily involved in incidents that affect their sector. Category 2 responders have a lesser set of duties, they are required to cooperate and share relevant information with other Category 1 and 2 responders.

7.3 All these organisations come together to form Local Resilience Forums (LRF) (based on police areas) to support co-ordination and co-operation between responders at the local level. There are around 1,200 responders in England and Wales, of which about 12% are Category 2 responders

7.4 The Cabinet Office review of Part 1 of the Act began in 2008. Its focus was to review whether the Act was working as originally intended, and if not, to recommend a course of action.

7.5 Through consultation it was discerned that, although generally across England and Wales co-operation was working well, there were some specific areas of difficulty. The most significant of these was the relationship between Category 1 and 2 responders. Both Category 1 and 2 responders called for clarification of what the co-operation and information-sharing duties involved. Independent reviews of recent emergencies had highlighted similar concerns, for example the Pitt Review into the summer floods of 2007 highlighted the difficulties that Category 1 responders have in obtaining basic briefing on critical infrastructure in their areas; and the Investigation into the Buncefield Fire in 2005, found that national guidance needed to be reviewed to ensure LRF structures encourage multi-agency co-operation and information sharing.

7.6 Changes were also needed to reflect a recent change to the structure of emergency planning in London. In London each Borough has had a Borough Resilience Forum (BRF) that worked in conjunction with the LRF. However, these BRFs were not defined in the Regulations. It was agreed that this should be addressed by defining the BRF as a group of the LRF, strengthening the role of the BRF and its links to the LRF. Further guidance on the BRF has been added to the statutory guidance.

7.7 The amendments are, therefore, primarily designed to:

- clarify what is required of both Category 1 and 2 responders in fulfilling the co-operation and information sharing duties as set out in the Act;

- add flexibility to the ways in which fulfilment of the duties can be achieved therefore reducing the burden, especially on Category 2 responders;
- enhance the status of the Forum, with a significant local presence and extensive activities associated with it; and
- formalise the way in which resilience planning activity is undertaken in London.

7.8 Other policy objectives are as follows:

- to enable Category 2 responders under the Act to require co-operation from Category 1 responders;
- to facilitate the introduction of protocols which will permit Category 1 responders to release some Category 2 responders from some of their obligations under the Act, on condition that they meet those obligations in other ways which are acceptable to the Category 1 responders;
- to amend attendance and representation rules to clarify the obligations on Category 1 and 2 responders and to ensure that "new burdens" are not placed on Category 1 or 2 responders as a result of these changes.

8 Consultation Outcome

These changes have emerged following an extended period of informal consultation. A formal public consultation took place from 6th July 2011 to 27th September 2011. Between 76-92 per cent of respondents were content with the proposed changes to the regulations. This Instrument and the Government response to the consultation will be published concurrently.

9 Guidance

The Guidance that has been issued under section 3 of the Act, *Emergency Preparedness* has been updated and revisions to the relevant chapters will be published in parallel with this Instrument.

10 Impact

10.1 The impact on business, charities or voluntary bodies is minimal and does not reach the five million pounds threshold for completion of an impact assessment.

10.2 The impact on the public sector is minimal as the legislative changes formalise arrangements that are already in place and allow for greater flexibility in the fulfilment of duties.

10.3 Notwithstanding the above, a full Impact Assessment has been prepared for this instrument and it will be made available on the Cabinet Office Impact Assessments site and in the Better Regulations Executive Impact Assessment Library. A copy is attached as a separate document.

10.4 This policy was screened for impact on equalities on 23/11/11. As a result of this screening, it has been decided that a full equalities impact assessment is not required.

11 Regulating Small Business

The legislation does not apply to small business.

12 Monitoring and Review

A new regulation 59 requires the Minister for the Cabinet Office to review the operation and effect of the Principal Regulations, including the amendments made by these Regulations, and lay a report before Parliament within five years after these Regulations come into force. Following each review, the Minister will decide whether the Regulations should remain as they are, or be revoked or amended.

13 Contact

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