

**The National Assembly for Wales**  
**Local Government and Public Services Committee**  
**Report on the Civil Contingencies Bill**  
**March 2004**

1. On 2 December 2003, following a plenary debate on the Queen's Speech, the National Assembly for Wales remitted the Civil Contingencies Bill to its Local Government and Public Services Committee<sup>1</sup> for consideration. This Committee invited views from key bodies affected by the legislation<sup>2</sup> and took further oral evidence from the Welsh Local Government Association and from the Police (representing all of the emergency services in Wales) on 25 February 2004. This report identifies the key issues subsequently agreed unanimously by the Committee.

### **The powers of the National Assembly for Wales**

2. The Committee feels that the Bill does not take into account the constitutional and practical implications of devolution in Wales and does not provide the National Assembly with adequate powers to ensure the proper preparation and implementation of emergency plans in Wales.

3. To illustrate the potential difficulties that arise from such confusion over the respective roles and powers of central and devolved government, the Committee would draw attention to the handling of the Foot and Mouth outbreak in Wales. As the report into the handling of the Foot and Mouth outbreak by the National Assembly's Agriculture & Rural Development Committee identified:

*the existence of the National Assembly meant that, in several key areas, policy could have been tailored, and decisions taken more quickly, had the National Assembly had greater legislative responsibility. Devolution of ... powers would also have aided public understanding of governmental accountability in Wales and provided a clearer and more efficient decision-making structure<sup>3</sup>.*

4. The contradiction implicit in having political accountability for matters for which legal responsibility has not been devolved has since been recognised, with the Welsh Assembly Government requesting the transfer of animal health and welfare powers to the Assembly. The Secretary of State for Environment, Food and Rural Affairs has confirmed that the UK Government does not expect to have difficulty with this proposal and the transfer of powers is now scheduled for autumn 2004<sup>4</sup>.

5. A specific example of the constitutional contradiction currently written into the Bill is the effect of Clause 9. This Clause allows Ministers of the Crown to require Category 1 and 2 responders to provide information on compliance with Part 1 of the Bill and to specify how and when such information should be provided. At present, the Bill does not require the UK Government even to notify the National Assembly that they are obtaining such information from agencies in Wales. Many such bodies obtain funding from the National Assembly, work in partnership with it to deliver services in devolved areas and, as a result, already have their performance in other areas monitored by the National Assembly. The Committee feels that the Bill should be amended to confer monitoring powers under Clause 9 on the National Assembly for Wales or, at the very least, to require the UK Government to consult the National Assembly before exercising those powers.

6. The Local Government and Public Services Committee **recommends that Part 1 of the Bill be amended in order to confer on the National Assembly for Wales powers with regard to Wales that are equivalent to those given to Scottish Ministers with regard to Scotland<sup>5</sup>**. In turn, this would remove the need for Clause 15 of the Bill, which requires the National Assembly

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<sup>1</sup> A cross-party Committee of 10 Assembly Members.

<sup>2</sup> The Assembly Minister for Finance, Local Government and Public Services, the Welsh Local Government Association and members of the Wales Resilience Forum.

<sup>3</sup> Report of the National Assembly for Wales Agriculture and Rural Development Committee investigation into the handling of foot & mouth disease in Wales, April 2002.

<sup>4</sup> National Assembly for Wales Record of Proceedings 21 January 2004.

<sup>5</sup> Clauses 1(5), 2(4), 3(2), 4(3), 4(7), 5(2), 6(2), 6(5), 8, 9(2), 11, 13(2), 14, 16(3) and 16(5).

to be consulted or to give its consent before Ministers of the Crown act under certain provisions of Part 1 of the Bill in relation to Wales.

7. Similarly, to ensure that practical issues arising from an emergency in Wales can be dealt with swiftly and efficiently, the Committee **recommends that Clause 19 of the Bill should be amended so as to allow the National Assembly to make emergency regulations in respect of events or situations in Wales.**

8. If such an amendment is not made, the Committee **recommends that Clause 28 be amended to strengthen the requirement for the UK Government to consult the National Assembly before making emergency regulations**

#### **Lead co-ordinating agency**

9. At present, the Bill does not require a lead agency to be identified from among the Category 1 responders listed in Schedule 1. The Committee believes that this could lead to confusion and should be clarified. In most cases, we believe that the lead agency should be the police but, depending on the nature of the emergency, other agencies might be more suitable to undertake this lead role. The Committee **recommends that the Bill should require a lead agency to be identified, from the list of Category 1 responders, for any given emergency in Wales.**

#### **Regional Emergency Co-ordinators**

10. Clause 23 relates to the appointment of regional emergency co-ordinators. The Committee **recommends that the Bill should require the regional emergency co-ordinator for Wales to be pre-nominated and for that person to be the First Minister of the National Assembly or another suitably qualified individual with knowledge and expertise specific to Wales, depending on the nature of the emergency.**

#### **Issues not for the face of the Bill**

11. The breadth of the definition of emergency used in the Bill and the additional responsibilities the Bill places on public bodies have significant funding implications for all Category 1 responders. Whilst the Committee supports the enforcement powers conferred by Clause 10, which allows Court action to be taken for failing to comply with requirements of Part 1 of the Bill, we are concerned that such action might be invoked because Category 1 responders lack the funding necessary to comply. The Committee **recommends that the financial implications of assessing, producing and testing emergency contingency plans should be reflected in the funding provided to the public bodies affected. To ensure clarity, such funding should be ring-fenced.**

12. Many of the responsibilities placed upon public bodies in Wales will be contained in the secondary legislation that will flow from the Bill. The illustrative regulations that have been published to date lack the necessary detail for a proper assessment of their impact to be made. If our previous recommendations for amendment to the Bill are not accepted, the Committee **recommends that consultation on subordinate legislation flowing from the Bill should be informed by an assessment of its financial impact.**

13. In its current form, or amended in line with the Committee's views in this report, the Bill will require the National Assembly to amend its own procedures to ensure that relevant regulations can be made swiftly and efficiently, whilst being subject to proper scrutiny. The Committee **recommends that the Business Committee of the National Assembly ensures that the Assembly's procedures are revised in order to take account of the consequences of the Bill when enacted.**

## **Summary of recommendations**

The Local Government and Public Services Committee recommends that:

1. Part 1 of the Bill should be amended in order to confer on the National Assembly for Wales powers with regard to Wales that are equivalent to those given to Scottish Ministers with regard to Scotland
2. Clause 19 of the Bill should be amended so as to allow the National Assembly to make emergency regulations in respect of events or situations in Wales. If such an amendment is not made, the Committee recommends that Clause 28 be amended to strengthen the requirement for the UK Government to consult the National Assembly before making emergency regulations
3. The Bill should require a lead agency to be identified, from the list of Category 1 responders, for any given emergency in Wales.
4. The Bill should require the regional emergency co-ordinator for Wales to be pre-nominated and for that person to be the First Minister of the National Assembly or another suitably qualified individual with knowledge and expertise specific to Wales, depending on the nature of the emergency.
5. The financial implications of assessing, producing and testing emergency contingency plans should be reflected in the funding provided to the public bodies affected. To ensure clarity, such funding should be ring-fenced.
6. Consultation on subordinate legislation flowing from the Bill should be informed by an assessment of its financial impact.
7. The Business Committee of the National Assembly ensures that the Assembly's procedures are revised in order to take account of the consequences of the Bill when enacted.