

The National Assembly for Wales
Local Government and Public Services Committee
Report on the Civil Contingencies Act 2004 (Contingency
Planning) Regulations 2005

June 2005

Introduction

1. The *Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005* and associated guidance aims to give those involved in the planning of civil protection (Responders) a clear and consistent set of duties.
2. The final regulations are being brought before the Assembly under Standing Order 26¹ for the Assembly's approval.
3. A consultation on The *Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005* and associated guidance was issued by the Cabinet Office in December 2004 and this Committee agreed on 1 December 2004 that it would make a contribution to the consultation. To that end, we heard oral evidence from the Welsh Local Government Association and from the Police (representing all of the emergency services in Wales) on 9 February 2005.
4. A copy of the Committee's response to the consultation was laid on 8 March and a copy is at Annex 1 of this report.
5. The final draft of the regulations and guidance were brought before the Committee on 8 June and this report forms the Committee's response to the final regulations. It outlines the issues raised at the meeting and the recommendation of the Committee.
6. The guidance will not be brought before the Assembly as its approval has been delegated to the First Minister. The Committee will be writing to the First Minister to convey our views on the guidance.
7. A Concordat between the Welsh Assembly Government and the UK Government on the implementation of Part 2 of the *Civil Contingencies Act 2004* (Emergency Powers) was also discussed at the meeting. Concerns were expressed about the wording and content of the Concordat. The Committee will be writing to the First Minister to convey our views on the Concordat.

Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005

7. The Committee was pleased to see that the majority of the recommendations they had made at the consultation stage had been incorporated into the final draft of the regulations.
8. During the meeting the following points were raised about the draft regulations:

Risk Assessment

¹ Orders in Council or Subordinate Legislation submitted by a Minister of the Crown. This Standing Order applies where the Assembly is otherwise given power by or under an Act of Parliament to confirm, approve or give consent to subordinate legislation submitted to the Assembly by a Minister of the Crown.

8.1 The revised draft regulation 14 confers powers on the National Assembly for Wales to issue guidance and/or risk assessments to Category 1 responders in Wales².

8.2 Members were concerned that the Assembly have not been given powers to take sanctions against any Category 1 responders who are non-compliant with any guidance or assessment issued by the Assembly. The powers are vested in the UK government.

Vulnerable persons

8.3 The original draft version of the Regulations contained several draft regulations that would have placed statutory duties on responders to make specific provision for “vulnerable persons”. Those (or commensurate) provisions have not been included in the revised Draft Regulations.

8.4 Members were concerned that these statutory duties had been removed from the draft regulations. It was felt that, as other legislation contains specific duties in relation to vulnerable people, these regulations should also contain specific duties. Concern was expressed that the needs of vulnerable people would not be adequately accounted for if there was no statutory obligation to do so.

9. In response, to the issues raised, the following points were made:

Risk Assessment

9.1 The role of the Assembly has been made clear to acknowledge their expertise in areas where powers are currently transferred to them.

9.2 There would be very little likelihood of a Category 1 responder not complying with any guidance or assessments issued by the Assembly.

9.2. Powers to take sanctions against non compliant responders have been vested in the UK government for the purposes of consistency.

Vulnerable persons

9.4 The UK government is committed to having regard to the needs of vulnerable people.

9.5 The statutory duty was taken out of the regulations as a response to the consultation exercise. Many of the respondents to the consultation indicated that they found the definition of vulnerable persons in the regulation confusing.

9.6 The statutory guidance which accompanies the regulations includes a duty of ‘have regard to’ vulnerable people in emergency planning.

² Category 1 responders are: local authorities, the emergency services, NHS bodies and the Environment and Maritime and Coastguard Agencies.

Recommendation

The Committee would like to register their concerns about the two issues highlighted above. As there is no mechanism for proposing amendments to the regulations, we recommend that they be accepted by the Assembly.

**The National Assembly for Wales
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Planning) Regulations 2005**

March 2005

1. A consultation on The *Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005* and associated guidance was issued by the Cabinet Office in December 2004.

2. The final regulations will be brought before the Assembly under Standing Order 26 for the Assembly's approval.

3. This Committee agreed on 1 December 2004 that it would make a contribution to the consultation. To that end, we heard oral evidence from the Welsh Local Government Association and from the Police (representing all of the emergency services in Wales) on 9 February 2005. This report identifies the key issues subsequently agreed unanimously by the Committee.

4. The report is formatted in accordance with the consultation document issued by the Cabinet Office.

Q1 Do the draft Regulations strike the right balance between prescription and permissiveness?

The WLGA considered the regulations to be very prescriptive but, in some areas, found there was room for interpretation of the regulations. It was generally agreed that, as many of the structures set up by the regulations already exist in Wales, the balance in the regulations has been demonstrated to be about right.

Q2 Are there any of the Regulations that should be in the Guidance?

We have had no evidence to suggest any should be.

Q3 Are there any areas of the Guidance that should be in the Regulations?

We have had no evidence to suggest any should be.

Q4 Do you have any comments on the structure and design of the draft guidance document *Preparing for Emergencies*?

The evidence we received emphasised that this is a very long and detailed document. We consider that there are a large number of organisations who will be bound by the regulations and who therefore have to understand their role through the guidance.

We recommend that an attempt be made to produce a more streamlined form of guidance which can be easily accessed and understood.

Q5 Is there additional guidance or are there further references that should be included in the draft guidance document *Preparing for Emergencies*? For example, are enough practitioner examples provided?

We heard evidence that a concordat to be agreed between the Welsh Assembly Government and the UK Government will be a key instrument in outlining the role and responsibilities of the Welsh Assembly Government in civil contingencies planning.

There is only 1 mention of the concordat within the guidance and we consider that this is insufficient for such a crucial document.

We agree with the Welsh Assembly Government's submission to this consultation that their role has been largely marginalised, with Wales being regarded as a 'region' and little consideration being given to devolved matters.

We recommend that the role and content of the concordat be made more explicit in the guidance.

We recommend that the guidance contains more explicit references to Wales and to the role of the Welsh Assembly Government especially in relation to devolved matters which are covered by the guidance.

Q6 Introduction

No comments

Q7 Co-operation

We received evidence from all witnesses that there is already a good degree of co-operation in Wales between all the bodies involved in the Local Resilience For a (LRF). It was agreed that, although there was recourse to legal action in the case of a body not co-operating, in practice, constant monitoring should make this option redundant.

Superintendent Michael Long expressed concern that a UK wide monitoring regime had not been put in place.

Q8 Information sharing

No comments

Q9 Risk Assessment

Questions were raised about the problems of co-terminosity in risk assessment across the four LRF boundaries. As these boundaries do not coincide with the boundaries of devolved bodies such as Fire and Ambulance Authorities, concern was expressed that there may be a potential conflict in assessing risks.

Whilst it was emphasised that the risk assessment criteria for LRF are clearly defined, the issue of co-terminosity was acknowledged as a potential problem.

We consider that risk assessment for civil contingency planning and the integrated risk management plans being developed by the newly devolved Fire Authorities cannot be developed in isolation.

We recommend that the guidance be amended to include guidance on how individual bodies' risk assessments can be integrated into LRF risk assessments.

Q10 Emergency Planning

No comments

Q11 Business Continuity

No Comments

Q12 Communicating with the public

No comment

Q13 Advice and assistance to business and the voluntary sector

No comment

Q14 London

No comment

Q15 Scotland

No comment

Q16 Wales

We were disappointed to see that the chapter on Wales only relates to the existing structures in Wales and gives only a description of the regional 'tier' of civil protection in Wales.

We consider that there is insufficient clarity about the role of the National Assembly for Wales (including the Welsh Assembly Government) in Civil Contingencies planning in Wales.

The guidance also lacks clarity in defining the provisions for lines of communication and authority for the Assembly.

We consider that, as the National Assembly for Wales has devolved powers over some of the bodies and functions undertaking civil contingencies planning in Wales, these lines of communication and authority are of vital importance.

We recommend that the guidance be amended to reflect the ‘Welsh’ dimension of the LRF and the role of the Wales Resilience Forum (WRF).

We recommend that the guidance be amended to show clear lines of communication and authority between the civil contingencies planning process and the National Assembly for Wales.

Q17 Northern Ireland

No comments

Q18 Monitoring and enforcement

No comments (see section on co-operation above).

Q19 The role of the voluntary sector

No comments.

Q20 Sectors not covered by the Act

No comments.

Q21 The role of the Minister

We received evidence that the role of the Chief Constable could be weakened or compromised if there was Ministerial intervention. It was felt that this potential situation was not made clear in the guidance.

We recommend that the guidance be amended to clarify the role of a Chief Constable during Ministerial intervention.

There was also concern expressed amongst Members about the role of a UK Minister in declaring an emergency. In the case of a foot and mouth outbreak originating in Wales, the DEFRA minister would declare the emergency even though animal health powers are devolved to the National Assembly.

We recommend that further consideration be given to where the authority to declare an emergency lies when it solely involves a devolved matter.

We are also concerned about the role of a UK Minister in obtaining information from bodies over whom the Assembly has devolved powers. We consider that the guidance does not make the role of the Assembly in such issues clear.

We recommend that the guidance be strengthened to clarify the roles of the National Assembly for Wales and UK Ministers in civil contingencies planning in Wales.

Q22 Co-operation at the regional level chapter

We received evidence from Superintendent Michael Long that there is no reference in the regulations or guidance to the handling of cross border issues.

We consider that, as three out of the four Welsh Local Resilience Fora have a joint border with England, issues of cross border co-operation are of great importance in Wales.

We recommend that the guidance be amended to include guidance on issues of cross border co-operation between English and Welsh LRFs.

Q23 Planning at the regional level

No comments.

Q24 Glossary

No comments.

Draft Guidance *Responding to Emergencies*

Due to constraints on our time and the non statutory nature of this guidance, we did not consider *Responding to Emergencies*.

Other Issues

Funding

Many of our Members expressed concern about the way in which the measures contained in the regulations are to be funded. Despite assurances that the implementation of the regulations has been fully costed and additional resources made available to the Welsh Assembly Government by the UK Government, we consider that these measures will be underfunded.

We consider that this underfunding could have far reaching consequences in Wales' ability to plan for civil contingencies effectively.

We welcome the assurance from the Cabinet Office that funding will be kept under review and that if a minister places an additional burden on services under the terms of the *Civil Contingencies Act 2004*, their department will provide additional funding.

We recommend that funding for Wales for the implementation of the regulations be kept under close review by both the Welsh Assembly Government and the Cabinet Office.

We recommend that the guidance be updated to clarify the issues of funding for additional burdens imposed under the terms of the Act.

Concordat

We received evidence that many of the concerns expressed by the witnesses would be addressed in the concordat. We are concerned that some of these issues should be incorporated into the regulations and guidance rather than into a non-statutory document. We are particularly concerned about the clarification of the National Assembly's role in civil contingency planning being contained in the concordat rather than in the regulations or guidance.

We welcome the Minister for Finance, Local Government and Public Services' offer to bring the concordat before us at the same time as the final regulations.

We are concerned, however, about the lack of consultation on the concordat with the Committee and the National Assembly for Wales.

Summary of recommendations

We recommend that an attempt be made to produce a more streamlined form of guidance which can be easily accessed and understood.

We recommend that the role and content of the concordat be made more explicit in the guidance.

We recommend that the guidance contains more explicit references to Wales and to the role of the Welsh Assembly Government especially in relation to devolved matters which are covered by the guidance.

We recommend that the guidance be amended to include guidance on how individual bodies' risk assessments can be integrated into LRF risk assessments.

We recommend that the guidance be amended to reflect the 'Welsh' dimension of the LRF and the role of the Wales Resilience Forum (WRF).

We recommend that the guidance be amended to show clear lines of communication and authority between the civil contingencies planning process and the National Assembly for Wales.

We recommend that the guidance be amended to clarify the role of a Chief Constable during Ministerial intervention.

We recommend that further consideration be given to where the authority to declare an emergency lies when it solely involves a devolved matter.

We recommend that the guidance be strengthened to clarify the roles of the National Assembly for Wales and UK Ministers in civil contingencies planning in Wales.

We recommend that the guidance be amended to include guidance on issues of cross border co-operation between English and Welsh LRFs.

We recommend that funding for Wales for the implementation of the regulations be kept under close review by both the Welsh Assembly Government and the Cabinet Office.

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