

Chapter 13 Support and challenge

Revision to *Emergency Preparedness*

Chapter 13 (Support and challenge) of *Emergency Preparedness, Revised Version*

Summary

- UK Ministers may require information and explanation of responders' activity and delivery of their duties under the Act ([paragraph 13.1 - 13.4](#)).
- The application of sound performance development principles and practice is essential. No individual inspectorate is responsible for monitoring delivery of the duties under the Act. This is done through Category 1 and 2 responders performance monitoring or regulatory regimes ([paragraphs 13.4 - 13.13](#)).
- Timely, proportionate action should be taken at a local level, in the first instance, to address issues identified through monitoring ([paragraphs 13.8 - 13.29](#)).
- The Act assigns UK Ministers and Ministers in Scotland and Northern Ireland power to monitor performance of the civil protection duties ([paragraphs 13.5-13.7](#)).
- The Act enables Category 1 and 2 responders and Ministers to take enforcement proceeding in the Courts and the High Court or the Court of Session has powers to grant any relief or make any order, as appropriate ([paragraphs 13.37 - 13.40](#)).
- The Act requires these Ministerial powers to be exercised in a way that is consistent with the various devolution settlements ([paragraphs 13.42 -13.45](#)).

WHAT THE ACT AND THE REGULATIONS REQUIRE

Monitoring by the Government and by local responders

- 13.1. The Act gives a Minister¹ powers to require:
- o the provision of information about actions taken by a Category 1 or 2 responder in the performance of its Part 1 duties²; and
 - o an explanation as to why the responder has not taken action to comply with its duties under Part 1 of the Act.³

Box 13.1: How monitoring powers might be used

The Government would be most likely to use its monitoring powers to probe perceived systemic failures in the operation of the Act. For example, if a particular class of Category 2 responder is not sharing information about its local sectoral arrangements, Category 1 responders would be likely to bring this to the attention of their representative bodies. Those representative bodies would then pass this concern on to the Government.

The Government might then use these powers to request from all Category 1 and 2 responders in that particular sector details of the nature and volume of the information requests they had received under the Act, and how they had responded. The material provided would allow the Government to judge whether the sector was avoiding its obligations, or whether it was being put under unreasonable pressure, or whether there was some form of blockage in the system that could be removed. The Government could then take action, from adjusting the guidance so as to change expectations through to taking action in the courts

¹ 'Minister of the Crown' or 'Minister' refers to the most appropriate Minister in the given situation.

² S 9(1)(a)

³ S 9(1)(b)

- 13.2. The Government relies on current good practice in performance management and on established audit and regulatory bodies across the Category 1 and 2 organisations to assess performance.
- 13.3. However, where the Government has reason in a particular case to require more information about responder compliance with the duties, and to seek an explanation for non-compliance, these monitoring powers may be used.
- 13.4. The powers will usually be exercised by the Minister with lead responsibility for civil contingencies. However, all proposals to exercise these powers would be developed in close collaboration with relevant lead government departments, and the Devolved Administrations, and agreed between departments and administrations with an interest.

The role of Ministers in Scotland and Northern Ireland

- 13.5. The Act ⁴ gives Scottish Ministers powers to require:
- o the provision of information about actions taken by Scottish Category 1 or 2 responders⁵ in the performance of its Part 1 duties; and
 - o an explanation as to why the responder has not taken action to comply with its duties under Part 1 of the Act.
- 13.6. The Act ⁶ gives the Northern Ireland Department of Justice powers to require:
- o the provision of information about actions taken by the Police Service of Northern Ireland (PSNI)⁷ in the performance of its Part 1 duties in relation to its devolved functions ; and

⁴ S 11

⁵ Sch1 p 2 & 4

⁶ S 9 as amended by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

⁷ The Act assigns responder status to the Chief Constable.

- o an explanation as to why the responder has not taken action to comply with its duties under Part 1 of the Act in relation to its devolved functions.

13.7. Powers in relation to non-devolved functions of the PSNI would be exercised by a Minister of the Crown.

Local arrangements for assurance and accountability

13.8. Regulations require that specific and generic emergency plans drawn up by Category 1 organisations include provisions to test and exercise those plans.⁸

13.9. The government relies on:

- o all Category 1 responders, as members of the Local Resilience Forum (LRF), taking ownership and responsibility for their performance and supporting their members and partners. By ensuring that:
 - responders fulfil their roles within this framework and, where appropriate, issues are escalated or de-escalated; and
 - members are committed to ensuring the partnership is strong and they can promote high consistent standards and make effective, efficient use of resources.
- o current good practice in performance management within responders and forums;
- o locally driven reviews of plans and risk assessments to provide assurance as part of the Big Society agenda and Localism Bill⁹; and
- o established audit and regulatory bodies across the Category 1 and 2 organisations to assess performance.

⁸ Reg 25

⁹ Regulations also require Category 1 responders to publish community risk registers. It is likely that many responders will be subject to locally driven accountability through the localism agenda, which empowers communities to take decisions about their area and the delivery of public services

- 13.10. A forum could become aware of its collective, corporate strengths and weaknesses, or those of an organisation, through communication from organisations, whistle-blowers, regulators, government departments and agencies, the media, inquiries, de-briefs, or complaints from members of the public.

RESPONDERS WORKING TOGETHER TO SUPPORT AND CHALLENGE

- 13.11. Category 1 and 2 responders need to assure themselves that their arrangements and plans are robust. Those that have legal responsibilities (under the Civil Contingencies Act and other legislation) need to be constantly vigilant to ensure that they are meeting their responsibilities.
- 13.12. Responders should ensure their systems, plans and processes in relation to emergency preparedness are fit for purpose. Periodic reviews of these, using the suggested methods and guidance in [paragraphs 13.13 - 13.14](#) will help them identify their strengths and weaknesses and provide external assurance, where required, to such bodies as:
- o Partners in the wider resilience community ;
 - o Peer groups;
 - o Local resilience forums;
 - o Department for Communities and Local Government (DCLG) Resilience and Emergencies Division (DCLG RED);
 - o Scottish Government;
 - o Welsh Government ;
 - o Northern Ireland Executive;
 - o Regulators and inspectorates;
 - o Cabinet Office Civil Contingencies Secretariat; and
 - o The local community.

13.13. Responders work together identifying strengths and weaknesses to support and challenge each other within local resilience forums or the wider resilience community to:

- o develop knowledge, skills, attributes and capacity;
- o identify capability gaps or emerging issues; and
- o resolve issues by sharing lessons, focusing on improvements and improving transparency to demonstrate improvements in relation to local assessments.

ASSESSMENT TOOLS

13.14. Public and private sector organisations have a clear understanding of their business, what they want to achieve, how to achieve it and whether they are achieving it. The organisation, its managers and its staff must understand what is expected of them and what they can expect of others in all areas of their work. Systems and processes which help achieve this, and external validation and assurance, include:

- o business plans;
- o risk assessment assurance processes;
- o internal audit and quality assurance systems;
- o performance and line management activities;
- o periodic testing and exercising;
- o peer review;
- o plan validation;
- o joint exercising of plans (including debriefing);

- o local authority scrutiny powers (LA scrutiny powers enable local councillors to represent the views of citizens on local services).
- o learning lessons from exercises and incidents;
- o Civil Protection Self Assessment Tools (CPSAT), a voluntary online tool designed to help responders monitor and assess how they deliver their responsibilities for civil contingencies in their areas;
- o *Expectation Set and Indicators of Good Practice for Category 1 and 2 responders* aims to clarify what is expected of Category 1 and 2 responders in England and Wales in relation to:
 - the duties within the *Civil Contingencies Act 2004*; ¹⁰
 - the associated Contingency Planning Regulations 2005 (Regulations) and guidance; ¹¹
 - the National Resilience Capabilities Programme (which is the core framework through which the government is seeking to build resilience across all parts of the United Kingdom; and
 - *Emergency Response and Recovery* <http://www.cabinetoffice.gov.uk/content/emergency-response-and-recovery>, which aims to establish good practice based on lessons identified from responding to and recovering from emergencies, both in the UK and internationally. It accompanies *Emergency Preparedness* which provides guidance on how to implement the CCA regime; and

¹⁰ www.statutelaw.gov.uk provides details.

¹¹ See above

- o *The Role of LRFs: A Reference Document* highlights some of the key aspects that demonstrate robust compliance with the duties under the CCA and Regulations. The principal aim of this document is to encourage and support LRFs in learning and continuous development, taking forward their capabilities in civil contingencies, emergency preparedness and elements of response and recovery. It is for use individually and collectively by organisations that constitute an LRF or contribute to its work. Assurance agencies may also use this document in guiding their assessments of engagement among local agencies in their collective LRF responsibilities and in supporting the agencies' efforts to manage and develop their individual and collective effectiveness.

- 13.15. Different arrangements apply in Northern Ireland and Scotland; details on the Northern Ireland Civil Contingencies Framework can be found on: http://www.ofmdfmni.gov.uk/ni_civil_contingencies_framework_-_refreshed_september_2011-2.pdf and for Scotland at <http://www.scotland.gov.uk/Publications/2007/06/12094636/3>

Sharing the load

- 13.16. The Civil Contingencies Act also empowers responders to:
- o jointly discharge duties;
 - o identify a lead responder; and/or
 - o delegate delivery of their responsibilities to another organisation.

- 13.17. However, when discharging or delegating duties, the partners involved must determine the arrangements that are best suited to their local circumstances and service users needs. Those that opt for these approaches still retain overall responsibility for their duties under the Act. They can delegate but not abdicate (Chapter 2 of *Emergency Preparedness: Co-operation* explains this in further detail). They must ensure they are effectively represented at LRFs. It is, therefore, vital that when jointly discharging or delegating functions, organisations:
- o actively engage in resilience work
 - o actively support and challenge each other
 - o ensure high performance standards

Support from Local Resilience Forums

- 13.18. Local Resilience Forums are not legal entities and the duties rest with responders. This does not mean that a forum and its members are powerless to intervene to develop its members' performance. A forum's strength rests in the co-operative and team working nature of the relationships between organisations and the trust that the members have built between them. Collectively, forums can give leadership and bring considerable peer pressure and support to bear.
- 13.19. The forums can help their member organisations to:
- o develop knowledge, skills, attributes and capacity;
 - o share best practice;
 - o identify issues;
 - o resolve issues;
 - o support the compilation of the community risk register;
 - o plan for emergencies;

- o develop systematic, planned and co-ordinated approaches to delivering resilience functions;
- o work beyond the LRF boundary; and
- o support the preparation of multi-agency plans.

13.20. They can support their members by encouraging and fostering team-working, co-operation, and bi-lateral arrangements between the member organisations. Forums can also help to broker bi-lateral arrangements.

Peer challenge

13.21. Peer review involves the evaluation of an organisation or individual's work by others working in the same field. Peer challenge takes this a step further. Formally challenging an individual or organisation, can damage relationships, impede co-operation and/or result in those who are challenged becoming defensive or disengaged. Handling of the approach should be proportionate and diplomatic.

13.22. It is important to identify whether the difficulty lies with the organisation or with the individual. For example, an organisation's representative may not have the seniority, or the support from the organisation's senior management, to commit resources or direct strategy. (Chapter 5, *Emergency Preparedness*, provides guidance on senior management engagement). Some responders may need help in engaging their senior managers.

- 13.23. When earlier attempts to support an organisation have been rebuffed, a Local Resilience Forum may need to challenge rather than support that organisation. However, representatives of the LRF must take care to ensure that their approach is not counter-productive; an approach based on influencing and persuading is likely to be more effective than one based on a command and control approach as the relationship is essentially one of co-operation. See [paragraphs 13.24 and 13.25](#) for information about escalating issues.

Formally requesting action on behalf of the LRF

- 13.24 Sometimes a more formal approach is needed, particularly when urgent action is needed to resolve issues and when less formal support and challenge has failed. The members of the LRF can do this collectively through the chair or secretariat.
- 13.25. If a formal approach, usually in written form outlining what action is required and by when, proves necessary, the LRF members will set a deadline for action to be taken and monitor the response to the request and the response's impact. This will inform the next steps and the decision on whether it needs to de-escalate the issue, intervene further, or escalate the issue.

Triggers for escalating and de-escalating issues

- 13.26. It is important that issues are addressed at the most appropriate level. All members of the resilience community must take responsibility for ensuring that an issue is referred to the appropriate person, team or organisation in a timely proportionate manner.

Support from Department of Communities and Local Government Resilience and Emergencies Division (DCLG RED) in England

- 13.27. The Resilience and Emergencies Division helps responders identify for themselves the risks they face, mitigate those risks, and manage the impact of risks that materialise, including through liaison with central government departments. See Chapter 16: *Collaboration and Cooperation between Local Resilience Forums in England*
- 13.28. The Resilience and Emergencies Division will:
- o act as a critical friend, question rationales, suggest alternatives, share good practice and support local planning activities;
 - o provide a support mechanism – helping local partners develop an appropriate response capability, brokering advance mutual aid agreements between areas;
 - o make links between local responders and the lead government departments;
 - o supporting cross boundary strategies, protocols and procedures whilst ensuring a close fit with both the needs of Government in a national emergency and the needs of the local responders; and
 - o support local and national exercising - helping to ensure lessons learnt are effectively shared across the relevant partnership.

Support from Welsh Government Resilience Team in Wales

13.29. The Welsh Government Resilience Team fulfils a similar role in Wales to that undertaken by DCLG RED in England. Additionally, the team:

- o supports local and cross-LRF activities and leads on all-Wales co-ordination;
- o acts as a link between LRFs through representation on the forums and their supporting co-ordinating groups;
- o facilitates all-Wales capabilities groups which bring together the relevant LRF sub-group Chairs;
- o works in conjunction with the joint emergencies services groups and LRFs to delivery pan-Wales training and exercising; and
- o acts as a link with Cabinet Office, other Whitehall departments and other devolved administrations.

Role of the regulators and inspectorates

13.30. In addition to the self monitoring processes outlined within this guidance, the Government relies upon regulatory and inspectorate bodies across the range of responder organisations to support self assessment in relation to responders meeting their responsibilities under the Act. Regulators have an important role to play and can help responders in a number of ways through:

- o undertaking governance or diagnostic interventions to highlight organisational strengths and weaknesses and follow up as necessary;
- o reducing the bureaucratic burden on responders by accepting evidence from self assessment and peer reviews as part of their inspection regimes;

- o highlighting and validating good practice for organisations to build upon;
- o sharing knowledge and good practice within and between organisations;
- o contribute to Government work in producing self assessment tools and guidance.

13.31. Outputs from regulatory reviews or inspections can provide responders with a rich source of information upon which to produce and implement plans to improve and fill identified capability gaps.

13.32. Bodies which oversee performance of public service provision by Category 2 responders operating under license arrangements such as Ofcom for the telecommunications industry or Ofwat for the water industry, impose sector specific standards relating to the provision of services and are responsible for monitoring performance and taking remedial action when standards fall below expectations.

Role of the national tier

13.33. The Government has established a framework to support national emergency planning in a linked and structured way. This is now well established and embedded. Parliamentary scrutiny of the activities of the Government is ongoing and the National Audit Office audits departmental accounts and reports to Parliament. The Cabinet Office Civil Contingencies Secretariat provides cross-cutting oversight and co-ordination of resilience activity at the national level. All the current duties of Category 1 and 2 responders are reflected and shadowed by activity co-ordinated by the Cabinet Office Civil Contingencies Secretariat (CCS) at the national level. Similar activity is undertaken in lead government departments. This activity and attendant responsibilities are driven and/or monitored via:

- o the National Resilience Capabilities Programme (NRCP) (see [paragraph 13.34](#));
- o the Lead Government Departments Expected Capabilities, this amplifies guidance in *CONOPs and The Lead Government Department and its role – Guidance and Best Practice* – <https://update.cabinetoffice.gov.uk/sites/default/files/resources/lead-government-departments-role.pdf>
- o *Central Government’s Concept of Operations* (CONOPs);
- o National Capabilities Survey;
- o the Resilience sub-committee of the National Security Council.
NSC oversees all aspects of the UK’s security. Government departments with key security related functions are all represented on the National Security Council. NSC (THRC) is a Ministerial sub-committee of NSC. Its remit is to consider threats, hazards, resilience and contingencies strategy; and
- o Ministerial departments are required to develop and publish business plans, which show how they will deliver their services and objectives. They are judged against their delivery of these and ministers are required to report publicly on them.

13.34. The cross-Government National Resilience Capabilities Programme is co-ordinated by the Cabinet Office. It brings together work stream lead departments. Each of these departments has particular responsibility for one or more aspects of emergency response at the national level, for example the Department of Health has responsibility for the national tier of emergency response in the event of pandemic flu. To assess the level of preparedness and capability nationally, the programme uses the National Resilience Planning Assumptions (NRPAs) which set out the baseline capability necessary to respond to, and recover from, specific risks as set out in the annually updated National Risk Assessment (NRA).

MINISTERIAL POWERS AND ACCOUNTABILITY

- 13.35. All Secretaries of State are accountable to Parliament for the performance of their department and may be called to account by the relevant Select Committees. There is a constitutional expectation that ministers will co-operate across government. Resilience activity is co-ordinated across Government by NSC (THRC)(R). This is shadowed by an officials committee NSC (THRC)(R)(O).
- 13.36. The aim of NSC (THRC)(R) is to develop the resilience of the UK to withstand disruptive events (both malicious threats and non-malicious hazards), ensuring that (inter alia):
- o government at all levels identifies and assesses emerging short/medium term risks and vulnerabilities;
 - o specific contingency capabilities are in place where specific risks are in sight; and
 - o there is rigorous evaluation of UK resilience.

ENFORCEMENT

Enforcement under the Civil Contingencies Act 2004 via Category 1 and 2 responders

- 13.37. A Category 1 or 2 responder may itself take court action, in respect of a failure by another responder body to comply with its main duties under the Act.¹² Examples of the cause for such an action might be where one responder is unreasonably:
- o withholding information from another; or
 - o failing to be represented at an LRF meeting.

¹² S 10(1)(b)-(c) and S 11(1)(b)-(c)

- 13.38. It is not anticipated that these powers will be used frequently. Where they are used, the Act also gives the High Court or the Court of Session powers to grant any relief or make any order as it thinks appropriate.¹³

Enforcement by Ministers

- 13.39. In a particular case, the Government may not be satisfied with the information received from a Category 1 or 2 responder, about the performance of its duties, or with the explanation given for non compliance. In these circumstances, the Minister may choose to take enforcement proceedings in the High Court or Court of Session.¹⁴
- 13.40. As with the powers to monitor performance, court proceedings will usually be taken by the Minister with lead responsibility for civil contingencies. However, all proposals to do so would be developed in close collaboration with relevant lead government departments and the Devolved Administrations and agreed between departments and administrations with an interest.

Enforcement under other legislation

- 13.41. Other resilience legislation is monitored and enforced under the terms of that legislation. See Chapter 19 on The Fit with Other Legislation.

Liaison with the Devolved Administrations

- 13.42. The Act requires a Minister of the Crown to consult Welsh Ministers before making any legislation, issuing any guidance, issuing any direction or bringing any proceedings in relation to a Category 1 or 2 responder in Wales.¹⁵ The Act also requires a Minister of the Crown to obtain the consent of Welsh Ministers

¹³ S 10(2) and S 11(2)

¹⁴ S 10(1)(a) and S 11 (1)(a)

¹⁵ S 16(1)

before undertaking such action in relation to a Category 1 or 2 responder which has functions that are devolved.¹⁶

- 13.43 The Act requires a Minister of the Crown to consult the Scottish Ministers when making legislation in relation to Category 1 or 2 responders in Scotland.
- 13.44. The Act requires a Minister of the Crown to consult the Northern Ireland Department of Justice when making regulations or an order in relation to the PSNI. A Minister of the Crown may only make regulations in relation to the non-devolved functions of the PSNI. Where the Department of Justice in Northern Ireland proposes to make regulations or an order in relation to the devolved functions of the PSNI, the Act requires that it consult a Minister of the Crown.
- 13.45. Ministers of the Crown will consult the Devolved Administrations when considering monitoring and enforcement action.

¹⁶ S 16(2)-(4)