

## **CIVIL CONTINGENCIES BILL**

### **WLGA SUBMISSION TO THE NATIONAL ASSEMBLY FOR WALES LOCAL GOVERNMENT AND PUBLIC SERVICES COMMITTEE 25TH FEBRUARY 2004**

#### **INTRODUCTION**

This submission sets out the Welsh Local Government Association's (WLGA) views on the key issues for local government in the Civil Contingencies Bill, which received its Second Reading in the House of Commons on 19 January 2004 and is currently in the Standing Committee stage.

#### **BACKGROUND**

The WLGA has long advocated the introduction of legislation to put emergency planning on to a clear statutory basis, based on the need to plan for peacetime emergencies rather than for Civil Defence. At present, Principal Councils (local authorities) currently have no statutory duties at all with regard to civil protection or emergency planning; there are only permissive powers under disparate pieces of legislation. The WLGA acknowledges that the level of provision varies and the Bill will do much to achieve consistency.

Following the fuel crisis and severe flooding in the autumn and winter of 2000, the Government set in train a review of these arrangements, with its 2001 discussion document "The Future of Emergency Planning in England and Wales", to which the WLGA responded. In August 2002, the Cabinet Office commenced consultation with key stakeholders, including the WLGA, to produce a draft of the new legislation, which was the subject of a Government consultation over the summer of 2003. The WLGA submitted a response to the Cabinet Office and in conjunction with the Local Government Association (LGA), gave both written and oral evidence to the Joint Select Committee set up to give pre-legislative scrutiny to the draft bill, having also jointly made a submission to the Defence Select Committee's Inquiry into the draft bill earlier in 2003.

#### **THE BILL**

The Bill is an enabling measure, set out in two main parts:

Part 1: Local arrangements for civil protection

Part 2: Emergency powers

(Part 3 deals with General issues such as minor and consequential amendments etc.)

General view

The WLGA is pleased that the Bill will finally place emergency planning on a proper statutory basis and welcomes many of the provisions in Part 1, including the provision of local authorities as ‘Category 1 Responders’. However, without a review of the funding levels to ensure that the new duties in the Bill are properly resourced, local authorities may well be unable to carry out this essential role in the protection of the public.

WLGA key messages

**Regulations and Guidance:** the detail of roles and responsibilities under this legislation will be set out in the supporting Regulations and Guidance, to be published for public consultation once the Bill has received Royal Assent. WLGA’s concerns centre round what the final version of the Regulations and Guidance will contain. For example, the illustrative draft of the Regulations, published with the Bill, leaves many questions still unanswered.

We are concerned at the potential for significant liabilities, both financial and legal, arising out of the detail of the new duties for councils but have no option but to take many things on trust for the purposes of the enabling legislation now before Parliament

**Funding:** a key concern centres on the financial implications of the Bill. It is the WLGA & LGA’s contention, based on supporting evidence provided by a major survey carried out amongst members during 2003, that the emergency planning service is already severely under funded. Part 1 sets out seven duties for all local authorities, all of which present significant new financial burdens.

We are aware of the Government’s presentation of the current funding levels - ring-fenced through the Civil Defence Grant and totalling just over £19 million per annum - and would challenge the assertion that funding has grown considerably. It is estimated that in real terms, i.e. if the Grant had not been reduced in the 1990’s and allowing for inflation increases since, the total expenditure on the Emergency Planning service would have reached £36 million which, coincidentally, is the actual cost of the current service.

The table below sets out the significant milestones in emergency planning funding since 1991 and shows that a £17 million contribution is made by local councils to fund the service over and above the Government grant of £19m, creating a total spend of £36 million.

Funding of emergency planning:

Year	Amount of Government Grant	Reason for changes	Local Government Contribution	Total Expenditure

1991	£24.5m	Peace dividend. Grant reduced year-on-year between 1991-1997	Not available	Not available
1997-2000	£14m	Grant stands at £14m, where it remained for 3 years	Not available	Not available
2001-2	£19m	35% increase as the result of a judicial challenge and pre-dates 9/11	Not available	Not available
2003	Just over £19m	Very small inflationary increase in Grant, which represents just £10 (ten) for some authorities.	£17m	£36m

Unlike the emergency services (police, fire etc), local authorities have received no extra funding to undertake additional anti-terrorism work expected of them by Government as a result of 9/11.

In the view of the WLGA the Bill significantly widens the scope of existing statutory emergency response arrangements. This imposes a range of new burdens upon local authorities and would require instigation, in line with the Assembly's general commitment to the WLGA, of a thorough new burdens review before implementation.

In conjunction with this the WLGA are concerned that the proposals to cease Civil Defence grant and to allocate future funding through the block grant system may result in an actual reduction, rather than increase, in the levels of grant to local authorities in Wales. Should the £19M Civil Defence specific grant merely be transferred to the block grant system, the Assembly may receive from the Treasury less than 70% of the present allocation of specific funding to Local authorities in Wales. This situation arises from the increased reliance upon population as a factor in the allocation of funding within the block grant system. Any such consequent reductions in funding to local authorities in Wales would severely disadvantage their ability to even sustain present levels of service, without implementing the additional duties imposed by the Bill. The Association is opposed as a matter of principle to the creation of additional specific grants but recognises that provision for Civil Contingency requires special attention in what is a transitional period. Therefore, as an interim measure during the initial 2-3 years of the block grant system the WLGA / LGA support ring fencing of funding, subject to a minimum of current levels.

***The role of the National Assembly for Wales:*** the WLGA has noted the absence from the Bill of details in respect of the role of the National Assembly, with the intention of encompassing such issues within a Concordat. The WLGA does not oppose this approach. It also acknowledges the intentions of the Assembly to consult during the development of the Concordat. However until such time as details are released, the WLGA must reserve judgement on what could be critical measures in relation to:

- the management of the implementation of the legislation, in terms of preparedness;
- the operational management of emergencies.

# THE MAIN PROVISIONS OF THE BILL

## Part 1 – Local arrangements for civil protection

The Bill provides a new broad definition of an "emergency", imposes a series of duties on local bodies in Wales, England, Scotland and Northern Ireland (Category 1 Responders) including local authorities in Wales, and provides the mechanism to impose duties on other local bodies (Category 2 Responders) such as Utility companies.

The new duties to be imposed on all local councils are:

- emergency planning
- risk assessment
- internal business continuity planning
- provision of warning and information to the public
- provision of business continuity advice and information to commercial bodies
- co-operation
- information sharing

## WLGA view

As indicated above, the WLGA is concerned to ensure that any new burdens will be properly funded.

With regard to the individual duties proposed, the WLGA is aware that the final definition of the duties, to be contained in Bill, Regulations and Guidance, must be specific and not open to interpretation. A number of examples of this are set out below.

- Part 1 clause 2. 1 © - as presently drafted the Bill imposes a duty to plan for the continuation of all functions of all Category one responders. It is the WLGA view that the term "functions" be limited in some way in order to enable the setting aside of non critical services and provision of greater focus on those functions deemed of greater importance to the community. This could be achieved by limiting such function to those in support of "human welfare" and the "environment" as defined within Part 1 clause 1 of the Bill.
- Terminology within the Bill such as "is likely" clause 2.1.(g) is somewhat vague and its implementation through regulation 19 (b) will be potentially inconsistent without the use of more appropriate and quantifiable definitions such as "reasonably foreseeable" which is defined within some current specific statutory contingency planning legislation.

The duty to warn and inform the public must be clarified to ensure that councils need only apply this duty in the context of their particular area of functional responsibilities. There is a fear that unless the duty is sufficiently clearly defined, councils and other Responders

could find themselves liable for provision of any and all information.

## Part 2 – Emergency powers

The bill repeals the existing emergency powers legislation and confers a power on the Monarch, or in certain very limited circumstances on a senior Minister of the Crown, to make regulations if an "emergency" has occurred or is about to occur. It defines "emergency" and details what may or may not be included in emergency regulations.

### WLGA view

The WLGA supported the view that the existing emergency powers legislation was outdated and needed modernising. Whilst this section of the Bill primarily relates to potential powers for Government (and the National Assembly via the Concordat) the implications of this Part of the Bill for local authorities in Wales are not yet clear.

With regard to any potential civil liberties concerns surrounding these powers, the WLGA recognises clearly that the UK Government and through it the Assembly, needs to have power to act in a variety of ways in an emergency, for the common good and so has no argument with the proposed powers themselves, provided that all reasonable checks and balances are in place.