REPORT OF THE POST IMPLEMENTATION REVIEW OF THE CIVIL CONTINGENCIES ACT (2004) (CONTINGENCY PLANNING) REGULATIONS 2005

Presented to Parliament pursuant to Regulation 59 of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, as amended by the Civil Contingencies Act 2004 (Contingency Planning) (Amendment) Regulations 2012

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A: Background

The legislation

1. The Civil Contingencies Act 2004 (CCA) and its regulations exist to save lives and protect livelihoods in emergency situations. Part 1 of the CCA establishes a set of roles and responsibilities for those involved in emergency preparation and response at the local level. The CCA defines two different categories of responders (**Figure 1**), and the civil protection duties that they are required to perform. The detail of what those duties mean and how they should be performed are described in associated Regulations (The Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005).

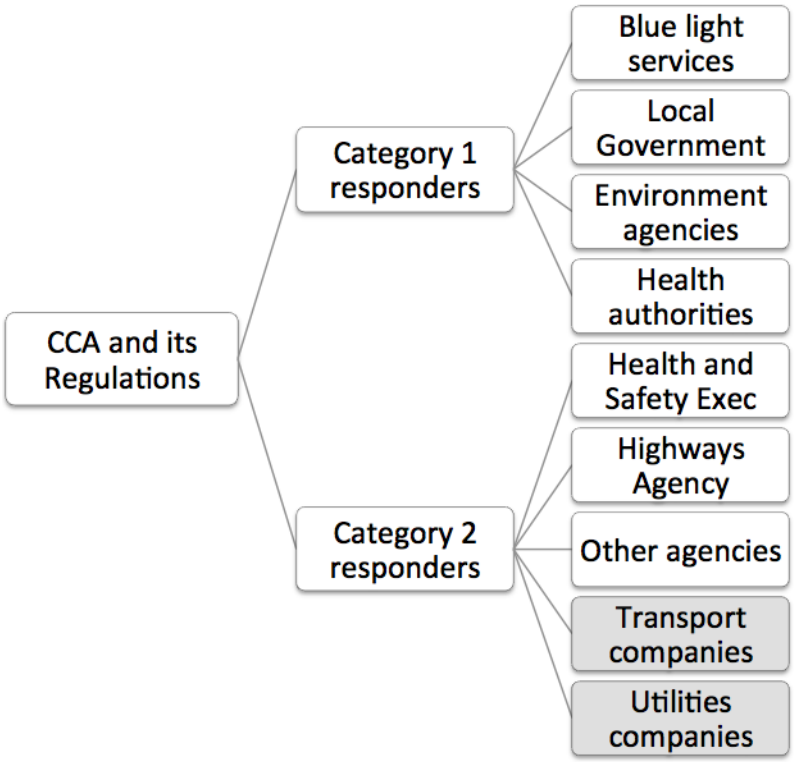

Figure 1: *Responders under the CCA. Responder organisations that are not usually public bodies are in the shaded boxes.*

2. The Regulations require Category 1 responders to fulfil a full set of duties around assessing risk and planning for civil emergencies. Category 2 responders, some of which are businesses, have a lesser set of duties around cooperating and sharing information with other responders. The CCA and the Regulations are also supported by statutory and non-statutory guidance, which describes *how* responders can comply with the legislation, identifies good practice and provides associated useful information.

3. Part 2 of the CCA allows for the making of temporary special legislation (emergency regulations) to help deal with the most serious of emergencies. **Annex 1** gives further information about civil contingencies legislation.

The objectives intended to be achieved by the regulatory system

4. The CCA, Regulations and guidance underpinning the legislation are designed to deliver a single framework supporting civil protection in the UK. The regulatory system establishes clear duties and tasks for responders in relation to emergencies and emergency planning. It intends to:
    - establish a consistent level of civil protection activity across the UK;
    - encourage consistency between category 1 and 2 responders in the way this is carried out;
    - define the tasks that should be performed and establish that organisations should cooperate (**Table 1**);
    - ensure local responders retain the ability to make decisions – in the light of local circumstances and priorities – about what planning arrangements are appropriate in their areas.

Category 1 responders	Risk assessment
	Business continuity management
	Emergency planning
	Maintaining public awareness
	(Local Authorities only) Provision of advice to commercial and voluntary sectors
Category 2 responders	Cooperation
	Information-sharing

Table 1: *Tasks required of category 1 and category 2 responders*

Drivers to reviewing the legislation

5. In 2012, the *Civil Contingencies Act Enhancement Programme* assessed whether the CCA was working as intended. It found that emergency planning might not have been carried out as effectively as possible and subsequent changes were made to the Regulations to clarify expectations of responders' duty to cooperate. As a part of these changes and in accordance with standard practice at the time*, a clause was also inserted (Regulation 59) requiring a review of the operation and effectiveness of the Regulations, with a report to be laid before parliament within five years (April 2017). Regulation 59 is available at **Annex 2**.

6. This statutory requirement is primarily intended to assess the impact of the Regulations on businesses. In this context, this means the impact of the obligations imposed on transport providers and utilities companies that are classified as category 2 responders due to the nature of the services they provide.

7. In addition to this statutory requirement, periodic (c. 5-yearly) review of legislation and policy is considered good practice; a wider review is therefore now timely.

The Resilience Capabilities Survey of England and Wales

8. The Resilience Capabilities Survey of England and Wales (RCS)† is carried out by the Civil Contingencies Secretariat (CCS) and gathers data from category 1 and 2

* This also now aligns with the Small Business, Enterprise and Employment Act 2015

† In 2014 the survey was called the *National Capabilities Survey* (NCS)

responders about wide ranging subjects associated with resilience. The survey provides a valuable opportunity to ask members of the resilience community about their activities, experiences and needs. The last survey was carried out in 2014 and the next will be in April/May 2017. In 2014, of the 1012 category 1 and 2 responder organisations invited to participate, approximately 8% were transport providers and 6% were utilities companies.

B: Review objectives

9. The objectives of this review are to:
    - provide a holistic understanding of where there may be governance deficiencies or inefficiencies, and the potential solutions;
    - ensure that the most effective solutions – non-legislative or legislative – are found;
    - align with leading practice in periodic review of policy and legislation; and
    - fulfil the statutory obligation to review the Regulations.

C: The structure of this review

The three workstreams

10. Review activities will address both the Regulations and the CCA. They will comprise three related workstreams (figure 2):
    - appraisal of our current knowledge of the effectiveness of the regulatory system, carried out in time to meet the statutory deadline;
    - specific data gathered via the RCS 2017;
    - the development of Resilience Standards.

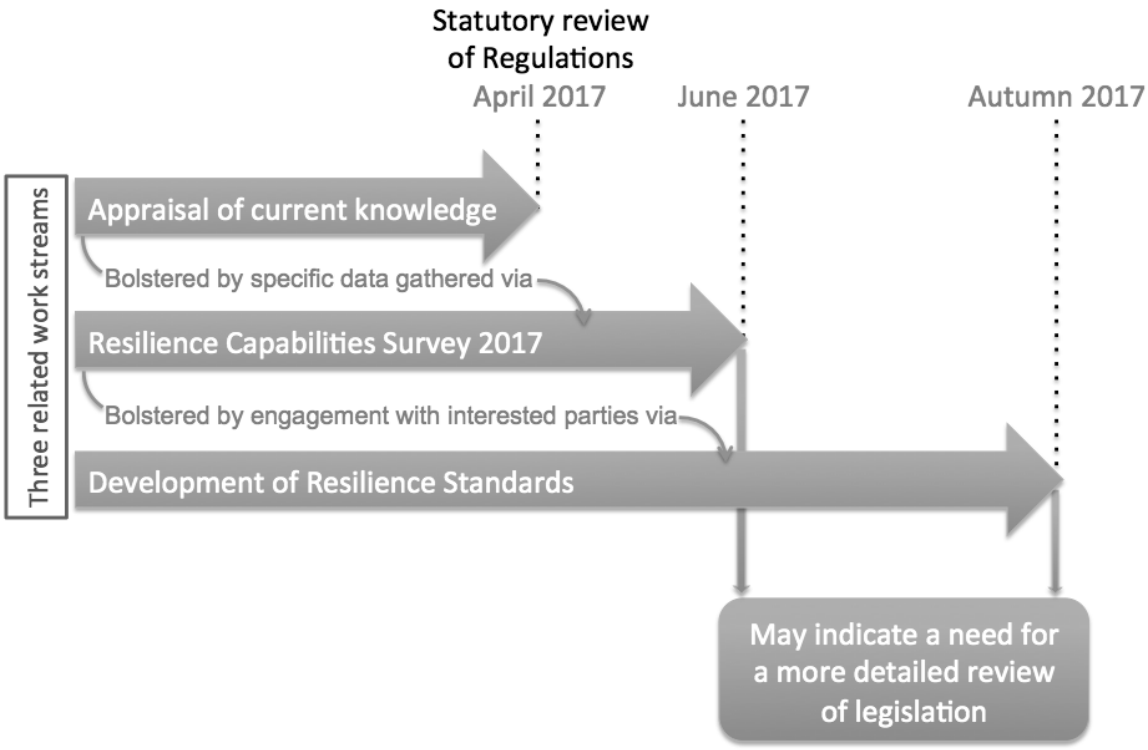

Figure 1: *Review workstreams*

Rationale

11. A review of the Regulations is a statutory requirement. However, reviewing only the impact of the regulations without a broader examination of the statutory framework and associated guidance within which the regulations sit would not be give a proper picture of the effectiveness of the system and/or the regulations. Given this, and the fact that a review of the CCA is due in line with good practice, a broader approach is advisable.

12. Our approach is to identify first what changes to *practice* are needed and then establish what means would be most effective to deliver those changes, including a consideration of the regulations and their effectiveness. It:
    - will not necessarily require legislative change;
    - can identify and if necessary address issues that would not be soluble purely by focussing on legislative change; and
    - can ensure that legislative amendment is only considered once all non-legislative options have been explored.

Workstream 1: Appraisal of current knowledge

13. This is a summary of the existing evidence with respect to
    a. the extent to which the objectives intended to be achieved by the regulatory system are being achieved;
    b. the extent to which the legislative objectives could be achieved with a system that imposes less regulation; and
    c. benchmarking against the success criteria defined in the Regulations' 2012 Impact Assessment.

14. This appraisal sets the scene for the two following workstreams, and also informs the post-implementation review required by Regulation 59.

15. The evidence for our findings is based on data from the National Resilience Capabilities Survey (2014), and the knowledge and experience of local resilience shared by local responders and other interested parties.

Workstream 2: Resilience Capabilities Survey data

16. This year's survey will ask both public bodies and businesses specific questions around their assessment of:
    - the burden that Regulations impose in practice on businesses;
    - opportunities to reduce that burden without affecting operational effectiveness;
    - barriers to reducing the burden on businesses;
    - unintended and unwanted consequences of the Regulations; and
    - the success criteria defined in the 2012 Impact Assessment.

Workstream 3: The development of *Resilience Standards*

17. The 2015 Strategic Defence and Security Review made a commitment "to develop a new set of resilience standards". Consequently CCS is leading work to create a coherent set of shared expectations for the UK resilience community, which will guide

the work of practitioners and aid the assessment of capabilities and performance. The project is expected to be underway in mid-2017.

18. These standards will be created by the responders themselves (the organisations to which the standards will apply), which will increase their accuracy, relevance, acceptance and eventual uptake. In order to do so, CCS will facilitate detailed discussions with responders and other interested parties to agree what "good" looks like and the nature of barriers to achieving it. It is during these discussions that any governance or legislative issues will be uncovered, and non-legislative means to addressing those issues can be fully explored.

D: Our current knowledge

Broad situation

19. We have regular contact with those with responsibilities under the CCA through a variety of forums. There is no specific evidence, anecdotal or from the RCS, to suggest that major legislative change is required. In practice – based on our regular conversations with interested parties, exercises and lessons learned from real incidents – the legislative framework appears fit for purpose.

Knowledge of local resilience and the practice of local responders

20. CCS and the Department for Communities and Local Government's Resilience and Emergencies Division (DCLG RED) have a well-developed knowledge of the practice of local resilience through working with both local resilience forums, and with local responders planning for and responding to emergencies. This knowledge, which includes learning from emergencies and exercises, indicates that although there may be a need to consider the way in which the CCA, Regulations and guidance are being interpreted by central government and responders, there is no clear case for reviewing the regulatory framework itself.

Data from the National Capabilities Survey 2014

21. A total of 79 transport companies and 57 utilities companies were invited to participate in the survey. Responses were received from 10 transport companies and 34 utilities companies.

22. The responses highlighted the following issues to be carried forward for further exploration in workstreams 2 and 3 of this review:
    - Are there any opportunities for aligning, coordinating or sharing assurance activities or their outcomes to improve efficiency and effectiveness?
    - Are category 2 responders aware of the minimum requirements made by the legislation?
    - What are the motivators for taking part in activities beyond these minimum requirements?
        - To what extent does this align with commercial, corporate social responsibility or other "business as usual" imperatives?

The extent to which the objectives *intended* to be achieved by the regulatory system *are* being achieved

Intention	Being achieved?	NCS 2014 evidence	Other evidence
Establishing a consistent level of civil protection activity across the country	Broadly, yes, but **further exploration of this issue is merited**	Data is not easily comparable across the UK due to reporting variation	Evidence suggests there may be some inconsistency from area to area in *how response is organised*, although this is not a comment on effectiveness or level of activity
Encourage consistency between category 1 and 2 responders in the way civil protection activity is carried out	Yes, although **further exploration of this issue is merited**	NCS data indicates consistency and cooperation between category 1 and 2 responders	No feedback from interested parties to suggest that major change to the legislation is required, however there may be some inconsistency from area to area in *how response is organised*
Define the tasks that should be performed and establish that organisations should cooperate	Yes	Not applicable	This is written into legislation and guidance documents
Ensure local responders retain the ability to make decisions – in the light of local circumstances and priorities – about what planning arrangements are appropriate in their areas	Yes	NCS data evidences high engagement and activity levels by Local Resilience Forums	Real-life emergencies and exercises prove this is happening, and that it continues to be the best approach

Table 2: *The extent to which the objectives intended to be achieved by the regulatory system are being achieved*

23. The two issues highlighted in bold in **Table 2** will be carried forwards for further exploration in workstreams 2 and 3 of this review.

The extent to which the legislative objectives could be achieved with a system that imposes less regulation

24. There is no indication that the legislative objectives should be changed. In practice, the system is found to have worked well when civil emergencies have occurred.

25. No evidence is currently available to suggest that there are significant opportunities to reduce the legislative burden on responders, or that the regulatory burden is regarded as problematic or disproportionate to the need to be prepared for civil emergencies.

26. However, it is acknowledged that specific data on the burden of regulation has not been gathered to date. Workstreams 2 and 3 provide a suitable opportunity to gather

views on this issue. Workstream 2 can also initiate the inclusion of relevant questions in future surveys[‡] to ensure that opinions on this issue are tracked over time.

Benchmarking against the success criteria defined in the Regulations' 2012 Impact Assessment

27. The 2012 Impact Assessment of the Regulations provided some indicative success criteria:
    a. protocols are routinely in place;
    b. fewer formal information requests are made; and
    c. the principles of responder engagement (i.e. the right issue, the right level at the right time) are embedded in practice.

Success criteria	Being achieved?	NCS 2014 evidence	Other evidence
Protocols are routinely in place	To some degree, although **further exploration of this issue is merited**	Responders broadly agree that information-sharing protocols are useful, but that there are still challenges in accessing information (however, there is no available data on the frequency of protocols being in place)	No other relevant evidence
Fewer formal information requests are made	Unknown, **further exploration of this issue is merited**	No relevant data available	No other relevant evidence
The principles of responder engagement are embedded in practice	To some degree, although **further exploration of this issue is merited**	No specific data available, although there is evidence of engagement between responder organisations	Extensive evidence of good practice at the local tier, implying that these principles have been at least partially adopted

Table 3: *Benchmarking against the success criteria defined in the Regulations' 2012 Impact Assessment*

28. The two issues highlighted in bold in **Table 3** will be carried forwards for further exploration in workstreams 2 and 3 of this review.

E: Next steps

29. Next steps are to
    a. complete workstreams 2 and 3; and
    b. present a further report summarising the findings and any actions arising from all three workstreams to RPC in autumn 2017.

[‡] The Resilience Capabilities Survey is carried out every two years

ANNEX 1: CIVIL CONTINGENCIES LEGISLATION – A BRIEF GUIDE

Civil protection duties are detailed on the face of the Civil Contingencies Act 2004 (CCA). Details on what those duties mean and how they should be performed are set out in Regulations made under the Act (Civil Contingencies Act 2004 (Contingency Planning) Regulations 2012). Statutory guidance provides further detail.

The Civil Contingencies Act 2004 (CCA)

Part 1 of the CCA sets out the local arrangements for civil protection. It contains the following key provisions:

- the definition of "Emergency";
- the duties on the organisations covered by the CCA to assess risks, to maintain plans in the event that an emergency occurs, and to maintain arrangements to advise and warn the public;
- requirements on organisations covered by the CCA to put in place business continuity management arrangements;
- provisions to reflect the various devolution settlements (the CCA applies to the whole of the UK);
- ministerial powers to monitor and enforce the CCA's provisions;
- powers of ministers to make urgent orders in certain circumstances;
- regulation-making powers; and
- lists of the Category 1 ("core") and Category 2 ("cooperating") responders to whom provisions in the CCA apply.

Part 2 of the CCA contains emergency powers provisions.

CCA Regulations

The Regulations describe the extent of the duties imposed on organisations under the CCA and the manner in which those duties are to be performed. The main provisions cover the following:

- the requirement to cooperate in a 'local resilience forum' (England & Wales) (and equivalent provisions for Scotland), including the ability to identify lead responsibilities amongst responders;
- the duty of responders to assess risk and maintain a 'community risk register';
- the nature of response plans, including the requirement to have regard to the role of voluntary sector agencies and to include arrangements for exercising and training;
- the requirement to publish risk assessments and plans, and to have regard to the importance of not alarming the public unnecessarily;
- arrangements for discharging the duty to warn and inform the public;
- arrangements for the provision of advice and assistance to the public on business continuity (applies to local authorities);
- information sharing between responders, including the conditions in which information can be requested and shared;
- particular arrangements for London and Northern Ireland; and
- the requirement to conduct a review of the regulations.

ANNEX 2: REGULATION 59 OF THE CIVIL CONTINGENCIES ACT 2004 (CONTINGENCY PLANNING) REGULATIONS 2005, AS AMENDED 2012

[59]

[(1) Before the end of the review period, the Minister for the Cabinet Office must--

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) lay the report before Parliament.

(2) The report must in particular--

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) "Review period" means--

(a) the period of five years beginning with 1st April 2012; and

(b) subject to paragraph (4), each successive period of five years.

(4) If a report under this regulation is laid before Parliament before the last day of the review period to which it relates, the following review period is to begin with the day on which the report is laid.]

NOTES

Amendment

Inserted by SI 2012/624, regs 2, 9.

Date in force: 1 April 2012: see SI 2012/624, reg 1.

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