

# **The Cabinet Meeting**

*2 February 2005*

# **REPORT**

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## **THE CIVIL CONTINGENCIES ACT 2004**

### **EXECUTIVE SUMMARY**

1. The purpose of the report is to explain the implications of the Civil Contingencies Act for Salisbury District Council and to highlight the options open to the Council of becoming a Category One Provider as part of the Local Resilience Team.
2. The Civil Contingencies Bill received Royal Assent on 18<sup>th</sup> November 2004 and is now known as the Civil Contingencies Act 2004. The Act introduces, under Part I, the concept of Resilience and imposes seven new duties on all councils as Category One responders, (or 'Care Responders'), in conjunction with the Emergency Services and other care agencies
3. How does this effect Salisbury District Council? Flooding, the fuel crisis and foot and mouth have all in recent years disrupted essential services and the bill is about a better civil resilience to the disruptive challenge and so is not just about terrorism. An effective response requires the commitment of all responders and district councils have a vital role that flows from national activities.
4. Local Resilience Forums may need to be formed and clearly local circumstances will dictate the proportion of responsibility.
5. The Council has two clear options, they are as follows:
6. **A.** The Council could as a Category I Responder choose to directly discharge the responsibilities of a Category I Responder as detailed above. However, this would not be possible within existing staffing resources.
7. **B.** The Council could devolve the duties as Category One responders to the County Council under the new legislation through a Service Level Agreement. Salisbury District Council would still be part of the Local Resilience Forum.
8. That Cabinet is recommended to;
  1. Agree that Option B is adopted as the position of Salisbury District Council and delegated authority is given to the Head of Development Services, in his role as Emergency Planning Coordinator to enter into detailed negotiations with the County Council regarding the drafting of a Service Level Agreement.
  2. That the existing arrangement of Voluntary call-out for LAIO's be continued.

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### **THE CIVIL CONTINGENCIES ACT 2004**

#### **1. Report Summary:**

The purpose of the report is to explain the implications of the Civil Contingencies Act for Salisbury District Council and to highlight the options open to the Council of becoming a Category One Provider as part of the Local Resilience Team.

#### **2. Background:**

The Civil Contingencies Bill received Royal Assent on 18<sup>th</sup> November 2004 and is now known as the Civil Contingencies Act 2004. A consultation paper is currently being circulated on the draft regulations and guidance and it is envisaged that enactment will follow in April 2005. A fuller explanation of the background to this act is contained at Appendix A.

The Act introduces, under Part 1, the concept of Resilience and imposes seven new duties on all councils as Category One responders, (or 'Care Responders'); in conjunction with the Emergency Services and other care agencies

- Assess local risks and use this to inform emergency planning,
- Put in place emergency plans,
- Put in place Business Continuity Management arrangements,
- Put in place arrangements to make information available to the public about civil protection matters and maintain arrangements to warn, inform and advise the public in the event of an emergency,
- Share information with other local responders to enhance co-ordination,
- Co-operate with other local responders to enhance co-ordination and efficiency and
- Provide advice and assistance to businesses and voluntary organisations about Business Continuity Management. (Local Authorities only).

It provides a single framework for civil protection and is designed to meet the challenges of the 21<sup>st</sup> century. It brings up to date legislation of the 1920s and 40s and takes into account Human Rights and in particular proportionality.

The Act introduces a three tier system of Central Government, Regional/Resilience Teams and local responders with the emphasis on the Local Authorities and Emergency Services bearing the brunt of the responsibility with the other two tiers becoming involved when the disruption to service provision is beyond the local capability.

Other peripheral issues, outside the Act, but pertinent is the introduction of Local Indicators by the Audit Commission as to what is required and the National Capability Programme where activities involve Local Authorities.

Every local responder will have to undertake a risk assessment on the activity undertaken.

Category Two Responders are 'co-operating' responders who help the core responders in the discharge of their duty. This could be for example a transport company who would assist in an evacuation of the public to a safe area.

Part II of the bill deals with emergency powers legislation and confers power upon the Monarch or a Senior Minister to make regulations in the event of an emergency. A 'triple lock' is imposed and the impact of the event must be serious and the response both necessary and proportionate.

Funding is a key issue and no doubt WCC will want to open channels of communication on this point as within the Act, (via secondary legislation) will be the provision of a one category responder and a mechanism for the County Council to provide the delivery. At present the budget of WCC is approximately £245k comprising £195k Government grant and £50k by WCC. £12k of this is as a direct result of the service provision for SDC.

The Government will transfer its contribution to English local authorities' civil protection work into the mainstream Revenue Support Grant from 2005/6, which is distributed according to a broadly population-based formula. This is consistent with wider Government policy to reduce the amount of money paid in ring-fenced grants, and to distribute all funding through the mainstream Revenue Support Grant unless there are exceptional circumstances. The Government has listened carefully to the calls for "transitional arrangements" to smooth the transfer.

It may also be helpful to set out how the transfer will work in a number of areas:

Shire areas – Shire counties and shire districts are Category I responders under the Act, and both tiers will receive direct funding to fulfil their duties. The Government has decided that sixty percent of the total funding in each county area should be paid to the county authority, with the remaining forty percent going to the district authorities.

Recent guidance issued by the Cabinet Office indicates that the Formula Spending Share (FSS) for Salisbury 2005/6 will be £31,073.

The Bill gives local authorities the flexibility to enter into collaborative arrangements to fulfil their duties.

### **3. How does this effect Salisbury District Council?**

Shire Districts, at present, are not regarded by the government, as emergency planning authorities and so do not receive Civil Defence Grants. The Act now includes all councils as Category One Responders.

District will have the same roles and responsibilities as a County Council and therefore SDC needs to consider the options.

Flooding, the fuel crisis and foot and mouth have all in recent years disrupted essential services and the bill is about a better civil resilience to the disruptive challenge and so is not just about terrorism.

An effective response requires the commitment of all responders and district councils have a vital role that flows from national activities.

Districts already have a role in responding to

- Support to whatever agency finds difficulty dealing with an emergency situation beyond their capability
- Shelter for persons affected by the incident who cannot return to their normal place of residence.
- Air quality monitoring
- Water quality testing
- Dangerous buildings
- Recovery
- Clearing up

In addition there is a public expectation that the district will be involved in both major and local incidents and are often the first call for information and more importantly explanation. Therefore if we are to engage in the process we must be prepared, ready and have the capacity to respond, which immediately raises the question of resource. The budget for the Emergency Support for Salisbury District Council is £6, 480, which includes the maintenance of the Emergency Support unit, a Rollalong facility that is stored at the depot. The size of the budget relies heavily on volunteer help and goodwill for the service provision. Eight Local Authority Incident Officers, (LAIO's) led by an Emergency Planning Coordinator provide the response on a voluntary cascade basis for call-out. No standby payments are received but a call out fee is payable when a LAIO attends an incident out of office hours. They provide the initial response with, depending on the incident, scale and complexity, other resources drafted in, from council resources as required.

Kennet District Council currently has a budget of £ 70,000 for emergency planning functions. In essence, this budget covers the physical response element and funds the provision of; an out of hours LAIO service, compilation and update of a comprehensive Major and Minor incident manual and the running of one multi-functional vehicle that is deployed as a forward response vehicle in the event of any district wide emergencies

Member engagement is important as there are a range of partnerships that need to be involved and co-operation and dialogue with WCC is fundamental to any outcome.

Local Resilience Forums may need to be formed and clearly local circumstances will dictate the proportion of responsibility.

Initially SDC should be thinking about

- Cross-county co-operation
- Mobilisation
- Command and control
- Access to resources

This in itself then raises issues of

- Mutual aid
- The role of elected members
- Administrative procedures and plans
- Operational continuity
- Training and exercising
- Funding

The County Council have approached the four districts within the County and proposed that the County Council undertake the high level duties and responsibilities as detailed in the Act, on behalf of the council on a Service Level Agreement basis, particularly the seven areas listed at the beginning of this report. The cost of the Service Level Agreement would be equivalent to the amount of any future grant received by the districts as Category One responders. This is currently £12,000 plus any increases contained in SR 2004. The likelihood is if this option is pursued the budget for EP will be covered by the increase in Formula Grant distributed through the Formula Spending Shares.

The view of the other districts is that 'even with' the changes in funding arrangements they will not have the capacity or the budget to fully comply as Category One responders. The relevant Chief Officers from West Wiltshire District Council, North Wiltshire District Council and Kennet District Council will be recommending the introduction of a Service Level Agreement with the County Council to the Cabinets and/or relevant Committee within their authority.

#### **4. Options for Salisbury District Council:**

The Council has two clear options they are as follows:

#### **5. Option A**

The Council could as a Category I Responder choose to directly discharge the responsibilities of a Category I Responder as detailed above. However, this would not be possible within existing staffing resources and the Council would have to consider employing an officer with specific responsibility for the implementation and subsequent management of the Act and associated functions. It is envisaged that this post would be graded at Principal Officer level and the cost to the Council, including on-costs would be in the order of £39,000 per annum.

Further support would rely upon volunteers and the goodwill of officers, unless a more formal arrangement for standby, over and above the existing voluntary cascade system and call out fee, is required. This of course would require further funding.

#### **6. Option B**

The Council could devolve the duties as Category One responders to the County Council under the new legislation through a Service Level Agreement. Salisbury District Council would still be part of the Local Resilience Forum.

#### **7. Member Representation:**

At present there is no clear member representation for Emergency Planning at cabinet level and it is requested that Cabinet identifies a Councillor to take on this responsibility.

**8. Conclusion:**

It is not considered that even with the change in funding arrangements envisaged by ODPM that as a council we will not be able to discharge all of the requirements of the Act and therefore the pragmatic approach is to rely upon the County Council as the Category One provider and through a suitable Service level agreement achieve a collaborative arrangement to discharge the statutory duties required of Local Authorities

**9. Recommendation:**

That Cabinet is recommended to:

1. Agree that Option B is adopted as the position of Salisbury District Council and delegated authority is given to the Head of Development Services, in his role as Emergency Planning Coordinator to enter into detailed negotiations with the County Council regarding the drafting of a Service Level Agreement.
2. That the existing arrangement of Voluntary call-out for LAIO's (with callout fee) be continued.
3. That a cabinet member be identified to undertake the portfolio for Emergency Planning at Salisbury District Council.

**10. Background Papers:**

Cabinet Office Civil Contingencies Act 2004.

**11. Implications:**

**Financial:** Funded by the RSG in part and future FSS

**Portfolio Holder:** Councillor 's Wren and Noeken have been consulted on this paper until Recommendation 3 above has been resolved.

**Legal:** None

**Personnel:** None

**Community Safety:** None

**Council's Core Values:** To provide Emergency Support to internal and external agencies as required.

**Ward(s) Affected:** All wards.

**Consultation Undertaken:** Kennet DC, West Wilts DC, North Wilts DC.

### **Civil Contingencies Act 2004:**

#### **Background**

Following the fuel crisis and the severe flooding in the autumn and winter of 2000 the Deputy Prime Minister announced a review of emergency planning arrangements. The review included a public consultation exercise, which reinforced the Government's conclusion that existing legislation no longer provided an adequate framework for modern civil protection efforts and that new legislation was needed.

A draft Bill received Royal Assent on 18 November 2004 and henceforth will be known as the Civil Contingencies Act 2004 (the "Act").

#### **Overview of the Act**

The Act, and accompanying regulations and non-legislative measures, will deliver a single framework for civil protection in the United Kingdom to meet the challenges of the twenty first century. The Act is separated into two substantive parts: local arrangements for civil protection (Part 1) and emergency powers (Part 2). The overall objective for both parts of the Act is to modernise outdated legislation. Key to this is an updating of the definition of what constitutes an "emergency".

#### **Definition of Emergency**

Civil Protection activity at the local level previously took place under Civil Defence legislation dating from 1948 and The Emergency Powers Act 1920, defines an emergency in terms of interference with specified services and resources which will deprive the community of the essentials of life. A great deal has changed since 1920. The list of services and resources in the 1920 Act was out of date.

The Act focuses on three types of threat -

- *an event or situation that threatens serious damage to human welfare;*
- *an event or situation which threatens serious damage to the environment; or*
- *war, or terrorism, which threatens serious damage to security.*

For Part 1 of the Act the definition sets out the range of possible incidents which local responders must prepare for as set out in specified civil protection duties. For Part 2 it sets out the situations in which it may be possible to use emergency powers if the appropriate safeguards are met.

#### **Part 1: local arrangements for civil protection**

The purpose of Part 1 of the Act is to establish a new statutory framework for civil protection at the local level. This, together with accompanying guidance and regulations, will set out clear expectations and responsibilities for front line responders at the local level to ensure that they are prepared to deal effectively with the full range of emergencies from localized incidents through to catastrophic emergencies. It divides local responders into two categories.

Those in **Category 1** will have duties placed upon them to:

- Assess local risks and use this to inform emergency planning,
- Put in place emergency plans,
- Put in place Business Continuity Management arrangements,
- Put in place arrangements to make information available to the public about civil protection matters and maintain arrangements to warn, inform and advise the public in the event of an emergency,

- Share information with other local responders to enhance co-ordination;
- Co-operate with other local responders to enhance co-ordination and efficiency; and
- Provide advice and assistance to businesses and voluntary organisations about Business Continuity Management. (Local Authorities only).

Those to be covered by the duties at present are:

**Local Authorities**

- All principal local authorities

**Government agencies**

- Environment Agency
- Scottish Environment Protection Agency

**Emergency Services**

- Police Forces
- British Transport Police
- Police Service of Northern Ireland
- Fire Authorities
- Ambulance Services

**NHS Bodies**

- Primary Care Trusts
- Health Protection Agency
- NHS Acute Trusts (Hospitals)
- Foundation Trusts
- Local Health Boards (in Wales)
- Any Welsh NHS Trust that provides public health
- Maritime and Coastguard Agency
- Health Boards (in Scotland)
- Port Health Authorities

**Category 2** organisations will be placed under the lesser duties of co-operating with these organisations and sharing relevant information. Those to be included at present are:

**Utilities**

- Electricity
- Gas
- Water and Sewerage
- Public communication providers (landlines and mobiles)

**Transport**

- Network Rail
- Train Operating Companies (Passenger and Freight)
- Transport for London
- London Underground
- Airports
- Harbours and Ports
- Highways Agency

**Government**

- Health and Safety Executive

**Health**

- The Common Services Agency (in Scotland)



**Part 2: emergency powers**

In the UK emergency powers allow the making of special temporary legislation to deal with the most serious of emergencies. They are not a means for instigating martial law, for undermining Parliament, banning political parties or anything else of that nature. An essential point to note is that Emergency Powers legislation is a mechanism for dealing with only the most serious of emergencies that require an urgent response, an instrument of last resort. The Government needs a tool that can be deployed to address all forms of disruptive challenge where existing legislation is insufficient.

The Act repeals the existing legislation and sets out a new definition of what constitutes an emergency appropriate to the times in which we live and incorporating new risks and threats, including terrorist attacks, contamination of land following a biological or chemical terrorist attack and loss of communications systems on which we now depend.