
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 494

CIVIL CONTINGENCIES

**The Civil Contingencies Act 2004 (Contingency
Planning) (Scotland) Regulations 2005**

Made - - - - 6th October 2005
*Laid before the Scottish
Parliament* - - - - 7th October 2005
Coming into force - - 14th November 2005

The Scottish Ministers, in exercise of the powers conferred upon them by sections 2(4) and (5), 4(3), (4) and (5), 6(2), 12, 15(1) and 17(6) of the Civil Contingencies Act 2004⁽¹⁾ and having consulted a Minister of the Crown as required to do so under section 14(2) of that Act; hereby make the following Regulations:

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 and come into force on 14th November 2005. .

Interpretation

2.—(1) In these Regulations—

“the Act” means the Civil Contingencies Act 2004;

“body which deals with security matters” means any of—

- (a) the Security Service;
- (b) the Secret Intelligence Service;
- (c) the Government Communications Headquarters;
- (d) the National Criminal Intelligence Service;

(1) 2004 c. 36. Section 2(5) has effect in relation to section 2(4) by virtue of subsection (6) of that section and with the modifications specified in subsection (6).

- “Category 1 responder” means a body or person listed in Part 1 or 2 of Schedule 1;
- “Category 2 responder” means a general Category 2 responder or a Scottish Category 2 responder;
- “community risk register” has the meaning given by regulation 12;
- “emergency” has the meaning given by section 1(1);
- “function” has the meaning given by section 18(1);
- “general Category 1 responder” means a person or body listed in Part 1 of Schedule 1;
- “general Category 2 responder” means—
- (a) body or person listed in paragraphs 19 to 22, 24, 25 28, 29 or 29A(2) of Part 3 of Schedule 1;
 - (b) a body or person listed in paragraph 23 of Part 3 of Schedule 1 which is a relevant railway operator;
 - (c) a body or person listed in paragraph 26 of Part 3 of Schedule 1 which is a relevant airport authority; and
 - (d) a person or body listed in paragraph 27 of Part 3 of Schedule 1 which is a relevant harbour authority;
- “non lead Category 1 responders” has the meaning given in regulation 6(3);
- “relevant airport operator” means an airport operator, within the meaning of section 82(1) of the Airports Act 1986(3), which is responsible for an airport through which, in the most recent year for which data is available, at least 50,000 passengers or 10,000 tonnes of freight and mail were transported;
- “relevant harbour authority” means a harbour authority, within the meaning of section 46(1) of the Aviation and Maritime Security Act 1990(4), which is responsible for a harbour through which the average annual maritime traffic, calculated by reference to the most recent three years for which data is available, is at least 1.5 million tonnes of cargo or 200,000 passengers;
- “relevant railway operator” means a person who holds a licence under section 8 of the Railways Act 1993(5) (operation of railway assets) in so far the licence relates to activity in Great Britain and in so far as the licence held is—
- (a) a network licence (within the meaning of that Act);
 - (b) a passenger licence (within the meaning of that Act);
 - (c) a station licence (within the meaning of that Act); or
 - (d) a non passenger licence (meaning a licence authorising a person to be the operator of a train being used on a network for a purpose other than carrying passengers), where such licence is held for the purpose of operating trains for the carriage of goods by railway and connected purposes,
- except where such a licence is held only for the purpose of carrying out light maintenance activities (within the meaning of that Act);
- “responder” means a Category 1 responder or a Category 2 responder;
- “Scottish Category 1 responder” means a person or body listed in Part 2 of Schedule 1;
- “Scottish Category 2 responder” means—
- (i) a body or person listed in paragraph 30 to 35 or paragraph 38 of Part 4 of Schedule 1;

(2) Paragraph 29A was inserted by S.I.2005/2043.

(3) 1986 c. 31.

(4) 1990 c. 31.

(5) 1993 c. 43.

- (ii) a body or person listed in paragraph 36 of Part 4 of Schedule 1 which is a relevant airport operator; and
- (iii) a body or person listed in paragraph 37 of Part 4 of Schedule 1 which is a relevant harbour authority;

“Sensitive information” has the meaning given by regulation 39;

“Strategic Co ordinating Group” has the meaning given by regulation 3(3);

“voluntary organisation” means a body (other than a Scottish public or local authority) whose activities are not carried on for profit.

(2) In these Regulations, unless otherwise specified, any reference to a section, Part or Schedule is a reference to that section or Part of, or Schedule to, the Act.

PART 2

General

Co-operation and Strategic Co-ordinating Group

3.—(1) Scottish Category 1 responders which have functions which are exercisable in a particular police area must co operate with each other and with general Category 1 responders which have functions which are exercisable in that area in connection with the performance of their duties under section 2(1).

(2) The co-operation referred to in paragraph (1)–

- (a) may take the form of two or more Scottish Category 1 responders co operating with each other, or one or more Scottish Category 1 responders cooperating with one or more general Category 1 responders; and
- (b) must take the form of all Scottish Category 1 responders which have functions which are exercisable in that police area co-operating together in a single group with all general Category 1 responders which have functions which are exercisable in that police area.

(3) The form of co-operation referred to in paragraph (2)(b) is referred to in these Regulations as the “Strategic Co ordinating Group”.

(4) As part of the Strategic Co ordinating Group, Scottish Category 1 responders which have functions which are exercisable in a particular police area must make arrangements to hold a meeting at least once every six months; and each Scottish Category 1 responder must, so far as reasonably practicable, attend such a meeting or arrange for it to be effectively represented at that meeting.

(5) Scottish Category 2 responders which have functions which are exercisable in a particular police area must co operate with each Scottish and general Category 1 responder which has functions which are exercisable in that area in connection with the performance by that Scottish and general Category 1 responder of its duties under section 2(1);

(6) A Scottish Category 2 responder which has functions which are exercisable in a particular police area–

- (a) must, so far as reasonably practicable, attend a meeting of the Strategic Co ordinating Group for that area or arrange to be effectively represented at that meeting, if it is asked to do so by all of those Scottish and general Category 1 responders which have functions which are exercisable in that police area; and
- (b) in the case of any other meeting of that Strategic Co ordinating Group, must consider whether it is appropriate for it to attend the meeting or to be effectively represented at the meeting.

(7) For the purposes of paragraph (6) and analogous provision in regulations made by a Minister of the Crown under Part 1, the Scottish Category 1 responders which have functions which are exercisable in a police area must—

- (a) keep each Scottish and general Category 2 responder which has functions which are exercisable in that area informed of—
 - (i) when meetings of the Strategic Co ordinating Group are to take place;
 - (ii) the location of such meetings;
 - (iii) the matters which are likely to be discussed at such meetings;
- (b) make arrangements for a Scottish or general Category 2 responder to attend any such meetings where the Scottish or general Category 2 responder wishes to do so; and
- (c) consider whether a Scottish or general Category 2 responder should be asked to attend such a meeting.

Co operation with general Category 1 responders

4. A Scottish Category 1 responder or a Scottish Category 2 responder may co operate with a general Category 1 responder in connection with the performance by that general Category 1 responder of a duty under section 2(1).

Joint discharge of functions etc.

5. Each Scottish Category 1 responder may—
- (a) make arrangements with another responder for the performance of a duty of the Scottish Category 1 responder under section 2(1) jointly with that other responder;
 - (b) make arrangements with another responder for that responder to perform such a duty on behalf of the Scottish Category 1 responder.

Identification of Category 1 responder with lead responsibility

6.—(1) If more than one Category 1 responder which has functions which are exercisable in a particular police area is subject to a particular duty under section 2(1)(a) to (f) in relation to an emergency or an emergency of a particular kind, paragraph (2) applies.

(2) Where this paragraph applies, the Scottish Category 1 responders referred to in paragraph (1) may co-operate with each other and general Category 1 responders referred to in paragraph (1) for the purpose of identifying which of them will be the Category 1 responder with lead responsibility for performing that duty in relation to that emergency or an emergency of that particular kind in that police area.

(3) If, pursuant to paragraph (2) and analogous provision in regulations made by a Minister of the Crown under Part 1, one of the Scottish or general Category 1 responders referred to in paragraph (1) is identified as being the Category 1 responder with lead responsibility for performing a duty under section 2(1)(a) to (f) in relation to an emergency or an emergency of a particular kind in a particular police area, the other Category 1 responders in that police area which are subject to that duty in relation to that emergency or an emergency of that particular kind are referred to in these regulations as “non-lead Category 1 responders”.

Role of Scottish Category 1 responder with lead responsibility

7. If, pursuant to regulation 6, a Scottish Category 1 responder has been identified as the Category 1 responder with lead responsibility in a particular police area for the performance of a particular

duty under section 2(1)(a) to (f) in relation to an emergency or an emergency of a particular kind, that Scottish Category 1 responder must—

- (a) take the lead responsibility in performing that duty in that police area in relation to that emergency or an emergency of that particular kind;
- (b) consult the Scottish and general Category 1 responders which—
 - (i) have functions which are exercisable in that police area, and
 - (ii) are non-lead Category 1 responders in relation to that duty in so far as it applies to that emergency or an emergency of that particular kind,in the course of performing that duty;
- (c) ensure that those non lead Category 1 responders are kept informed of how the Scottish Category 1 responder with the lead responsibility is performing the duty; and
- (d) co-operate with those non lead Category 1 responders (and in particular, co-operate for the purpose of ensuring so far as is reasonably practicable that those non-lead Category 1 responders approve of the way in which the Scottish Category 1 responder with lead responsibility is performing the duty).

Role of Scottish Category 1 responders which do not have lead responsibility

8.—(1) Paragraph (2) applies if a Scottish Category 1 responder has been identified as the responder with lead responsibility in a police area for the performance of a particular duty under section 2(1)(a) to (f) in relation to an emergency or an emergency of a particular kind under regulation 6 or, in the case of a general Category 1 responder, under an analogous provision in regulations made by a Minister of the Crown under Part 1.

(2) Where this paragraph applies, the other Scottish Category 1 responders which have functions which are exercisable in that police area and which are non-lead Category 1 responders in relation to that duty in so far as it applies to that emergency or an emergency of that particular kind—

- (a) must co operate with the Scottish or general Category 1 responder with lead responsibility for performing that duty in connection with the performance of the duty by the Scottish or general Category 1 responder with lead responsibility;
- (b) must provide any information to the Scottish or general Category 1 responder with lead responsibility for performing that duty which it considers will assist that responder in performing that duty (unless the information is sensitive information);
- (c) must assist the Scottish or general Category 1 responder with lead responsibility for performing that duty with any exercises or training that that Scottish or general Category 1 responder wishes to carry out in connection with that duty; and
- (d) need not perform that duty to the extent that to do so would unnecessarily duplicate the performance of that duty by the Scottish or general Category 1 responder which has lead responsibility for performing that duty in that police area.

Existing emergency planning duties

9. Scottish Category 1 responders need not perform a duty under section 2(1) in relation to any emergency which is—

- (a) a major accident, within the meaning of regulation 2(1) of the Control of Major Accident Hazards Regulations 1999(6), resulting from developments in the course of the operation of an establishment to which Part 2 of those Regulations applies;

(6) S.I. 1999/743; amended by the Greater London Authority Act 1999 s.328 and S.I. 2002/2469.

- (b) a major accident, within the meaning of regulation 2(1) of the Pipelines Safety Regulations 1996(7), involving a dangerous fluid (within the meaning of those Regulations) which is in, or has been conveyed in, a pipeline to which those Regulations apply; or
- (c) a radiation emergency, within the meaning of regulation 2 of the Radiation (Emergency Preparedness and Public Information) Regulations 2001(8), which results from work with ionising radiation (within the meaning of those Regulations) to which those Regulations apply.

PART 3

Duty to assess risk of emergency occurring

Kinds of emergency in relation to which risk should be assessed

10. A Scottish Category 1 responder need only perform the duty under section 2(1)(a) (duty to assess risk of emergency occurring) in relation to an emergency which affects or may affect the area in which the functions of the Scottish Category 1 responder are exercisable.

Guidance and risk assessments issued by Scottish Ministers

11.—(1) The Scottish Ministers may issue to Scottish Category 1 responders (or any class of Scottish Category 1 responders) guidance as to—

- (a) the likelihood of a particular emergency or an emergency of a particular kind occurring;
- (b) the extent to which a particular emergency or an emergency of a particular kind would or might (if it occurred) cause damage to human welfare in a place in the Scotland, the environment of a place in Scotland or the security of the United Kingdom.

(2) The Scottish Ministers may issue to Scottish Category 1 responders (or any class of Scottish Category 1 responders) an assessment of the matters specified in sub-paragraph (a) or (b) of paragraph (1).

(3) In performing its duty under section 2(1)(a), a Scottish Category 1 responder must—

- (a) take into account any guidance issued to it under paragraph (1); and
- (b) adopt any assessment issued to it under paragraph (2).

(4) Any guidance issued under paragraph (1) or assessment issued under paragraph (2) must be in writing.

Community risk register

12.—(1) As part of the Strategic Co ordinating Group, Scottish Category 1 responders which have functions which are exercisable in a particular police area must co-operate with each other and with general Category 1 responders which have functions which are exercisable in maintaining a register (“the community risk register”) of the assessment carried out by each Scottish Category 1 responder under section 2(1)(a).

(2) For the purpose of complying with paragraph (1), each Scottish Category 1 responder must, subject to paragraph (3), from time to time inform the other relevant Scottish and general Category 1 responders of the assessment carried out by it under section 2(1)(a).

(7) S.I. 1996/825; amended by the Greater London Authority Act 1999 s.328.

(8) S.I. 2001/2975; amended by S.I. 2002/2099 and S.I. 2002/2469.

(3) Paragraph (2) does not apply to the extent that an assessment carried out by a Scottish Category 1 responder contains sensitive information and the Scottish Category 1 responder has reasonable grounds to believe that informing the other relevant Scottish and general Category 1 responders of the assessment would—

- (a) in the case of sensitive information of the kind specified by paragraph (1)(a) of regulation 39, adversely affect national security;
- (b) in the case of sensitive information of the kind specified by paragraph (1)(b), (c) or (d) of regulation 39, adversely affect the confidentiality of the information.

(4) In performing its duties under section 2(1)(a) and (b), a Scottish Category 1 responder must have regard to any relevant community risk register maintained under this regulation.

PART 4

Duty to maintain plans

Risk assessment

13. In performing its duty under section 2(1)(c) and (d) (duty to plan to continue to perform functions or to respond, should an emergency occur), a Scottish Category 1 responder must have regard to any relevant assessment of risk which it has carried out under section 2(1)(a) or (b).

Arrangements to warn, inform and advise the public

14. In performing its duty under section 2(1)(d), a Scottish Category 1 responder must have regard to any relevant arrangements which it maintains under section 2(1)(g) (arrangements to warn the public, and to provide information and advice to the public, if an emergency is likely to occur or has occurred).

General and specific plans

15. In performing its duties under section 2(1)(c) and (d), a Scottish Category 1 responder—
- (a) may maintain plans which relate to a particular emergency or a particular kind of emergency; and
 - (b) must maintain plans which relate to more than one emergency or more than one kind of emergency.

Multi-agency plans

- 16.—(1) Scottish Category 1 responders which have—
- (a) functions which are exercisable in relation to a particular police area, and
 - (b) a duty under section 2(1)(d) in relation to an emergency or an emergency of a particular kind,

must consider whether it would be appropriate to perform that duty in relation to that emergency or an emergency of that particular kind by way of a multi-agency plan.

(2) In paragraph (1), a “multi-agency plan” means a plan maintained by more than one Scottish Category 1 responder acting jointly.

Voluntary organisations

17.—(1) In performing its duty under section 2(1)(c) or (d) (duty to plan to continue to perform functions or to respond, should an emergency occur), a Scottish Category 1 responder must have regard to the activities of voluntary organisations which carry on activities—

- (a) in the area in which the functions of that Scottish Category 1 responder are exercisable; and
- (b) which are relevant in an emergency.

(2) For the purposes of paragraph (1), voluntary organisations carry on activities which are relevant in an emergency if they carry on activities for the purpose of—

- (a) preventing an emergency;
- (b) reducing, controlling or mitigating the effects of an emergency; or
- (c) taking other action in connection with an emergency.

(3) For the purposes of paragraph (2), it is immaterial if the voluntary organisation also carries on activities for other purposes.

Procedure for determining whether an emergency has occurred

18.—(1) Any plan maintained by a Scottish Category 1 responder by virtue of section 2(1)(c) must include a procedure for determining whether an emergency has occurred which is likely to seriously obstruct the Scottish Category 1 responder in the performance of its functions.

(2) Any plan maintained by a Scottish Category 1 responder by virtue of section 2(1)(d) must include a procedure for determining whether—

- (a) an emergency has occurred which makes it necessary or desirable for it to take action to prevent the emergency, to reduce, control or mitigate its effects or otherwise in connection with it; and
 - (b) it would be able to take that action without changing the deployment of resources or acquiring additional resources.
- (3) The procedure required under paragraph (1) or (2) must—
- (a) identify the person who should determine whether an emergency of the kind specified in paragraph (1) or (2) (as appropriate) has occurred or enable that person to be identified;
 - (b) specify the procedure which that person should adopt in taking that decision;
 - (c) specify the persons who should be consulted before such a decision is taken; and
 - (d) specify the persons who should be informed once such a decision is taken.

Training and exercises

19. Every plan maintained by a Scottish Category 1 responder by virtue of section 2(1)(c) or (d) must include arrangements for—

- (a) the carrying out of exercises for the purpose of ensuring that the plan is effective; and
- (b) the provision of training of—
 - (i) an appropriate number of suitable staff of the Scottish Category 1 responder; and
 - (ii) such other persons as that Scottish Category 1 responder considers necessary,for the purposes of ensuring that those persons can carry out plans maintained by virtue of section (2)(1)(c) or (d) effectively.

Plan revision

20. If the Scottish Ministers issue guidance or an assessment under regulation 11 to a Scottish Category 1 responder, that responder must consider whether that guidance or assessment makes it necessary or expedient to add to or modify plans maintained under section 2(1)(c) or (d).

PART 5

Publication of plans and assessments

Alarming the public unnecessarily

21. In performing its duty under section 2(1)(f) (duty to arrange for the publication of assessments and plans), a Scottish Category 1 responder must have regard to the importance of not alarming the public unnecessarily.

PART 6

Arrangements for warning and provision of information and advice to the public

Duty to have regard to emergency plans

22. In performing its duty under section 2(1)(g) (duty to maintain arrangements to warn, inform and advise the public in the event of an emergency), a Scottish Category 1 responder must have regard to any relevant plan it maintains by virtue of section 2(1)(d).

General and specific arrangements to warn etc.

23. In performing its duty under section 2(1)(g), a Scottish Category 1 responder may–
- (a) maintain arrangements which relate to any emergency; and
 - (b) maintain arrangements which relate to a particular emergency or an emergency of a particular kind.

Alarming the public unnecessarily

24. In performing its duty under section 2(1)(g), a Scottish Category 1 responder must have regard to the importance of not alarming the public unnecessarily.

Training and exercises

25. The arrangements maintained by a Scottish Category 1 responder under section 2(1)(g) must include arrangements for–

- (a) the carrying out of exercises for the purpose of ensuring that the arrangements are effective; and
- (b) the provision of training of–
 - (i) an appropriate number of suitable staff of the Scottish Category 1 responder; and
 - (ii) such other persons as that Scottish Category 1 responder considers necessary, for the purpose of ensuring that the arrangements can be implemented effectively.

Identification of Category 1 responder with lead responsibility for warning, informing and advising

26.—(1) If more than one Category 1 responder which has functions which are exercisable in a particular police area is subject to a duty under section 2(1)(g) in relation to an emergency or an emergency of a particular kind, paragraph (2) applies.

(2) Where this paragraph applies, the Scottish Category 1 responders referred to in paragraph (1) must co-operate with each other and any general Category responders referred to in paragraph (1) for the purpose of identifying which of them will be the Category 1 responder with lead responsibility for warning the public and for providing information and advice to the public if an emergency or an emergency of a particular kind is likely to occur or has occurred in that police area.

(3) In performing their duty under paragraph (2), Scottish Category 1 responders—

- (a) may identify a particular Category 1 responder as the Category 1 responder with lead responsibility for warning the public and providing information and advice to the public in relation to an emergency or an emergency of a particular kind before that emergency or an emergency of that kind is likely to occur or has occurred;
- (b) may adopt a procedure by virtue of which the Category 1 responder with lead responsibility for warning the public and providing information and advice to the public may be identified when an emergency, or an emergency of a particular kind, is likely to occur or has occurred; and
- (c) may adopt a procedure by virtue of which the identity of the Category 1 responder with lead responsibility for warning the public and providing information and advice to the public (whether identified by virtue of arrangements of the kind specified in sub paragraph (a) or (b)) may be changed when an emergency is likely to occur or has occurred.

Arrangements to be maintained by Scottish Category 1 responder with lead responsibility

27.—(1) The arrangements maintained under section 2(1)(g) by a Scottish Category 1 responder which is, pursuant to regulation 26 or any analogous provision of regulations made by the Minister of the Crown under Part 1, identified as the Category 1 responder with lead responsibility for warning the public and providing advice and information to the public in a particular police area if an emergency or an emergency of a particular kind is likely to occur or has occurred, must ensure so far as reasonably practicable that if such an emergency is likely to occur or occurs that Scottish Category 1 responder—

- (a) is able to contact the other Scottish and general Category 1 responders which have functions which are exercisable in that police area and which are subject to a duty under section 2(1)(g) in relation to that emergency or an emergency of that particular kind;
- (b) informs those Scottish and general Category 1 responders of the actions it is taking, and action that it proposes to take, to warn the public and to provide information and advice to the public;
- (c) is able to collaborate with those responders in warning the public and providing information and advice to the public.

(2) Paragraph (1) also applies to a Scottish Category 1 responder which is likely to be identified as the Category 1 responder with lead responsibility for warning the public and providing advice and information to the public in a particular police area if an emergency or an emergency of a particular kind is likely to occur or has occurred by virtue of procedures adopted pursuant to regulation 26(2) and (3)(b) or (c).

Arrangements to be maintained by other Scottish Category 1 responders

28. The arrangements maintained by a Scottish Category 1 responder under section 2(1)(g) in relation to an emergency or an emergency of a particular kind in relation to which it is not the Category 1 responder with lead responsibility for warning the public and providing advice and information to the public must provide for that Scottish Category 1 responder–

- (a) to consult the Scottish or general Category 1 responder with lead responsibility for warning the public and providing advice and information to the public in that police area in relation to that emergency or an emergency of that particular kind on a regular basis; and
- (b) to inform the Scottish or general Category 1 responder referred to in paragraph (a) of the actions that it is taking and action that it proposes to take to warn the public, and to provide information and advice to the public.

Advice etc. provided by other responders and other bodies

29.—(1) In performing its duty under section 2(1)(g), Scottish Category 1 responders–

- (a) must have regard to the arrangements maintained by each of the following persons to warn the public, and to provide information and advice to the public, if an emergency is likely to occur or has occurred–
 - (i) other Category 1 responders;
 - (ii) Category 2 responders;
 - (iii) the Meteorological Office;
 - (iv) Scottish Ministers;
 - (v) the Secretary of State;
 - (vi) the Food Standards Agency; and
- (b) need not maintain arrangements to warn the public, and to provide information and advice to the public which would unnecessarily duplicate the warning, information and advice provided by those persons under those arrangements.

(2) For the purposes of paragraph (1), it is immaterial whether the person specified in paragraph (1)(a) maintains the arrangements by virtue of section 2(1)(g), a duty under another enactment or otherwise.

PART 7

Advice and assistance to business and voluntary organisations

Interpretation of Part 7

30. In this Part of the Regulations–

- (a) “relevant responder” means a body which is listed in paragraph 13 of Schedule 1 (local authorities);
- (b) “advice and assistance to business” means advice and assistance to the public in connection with the making of arrangements for the continuance of the commercial activities by the public in the event of an emergency; and any reference to “a business” means a member of the public who carries on commercial activities; and
- (c) “advice and assistance to voluntary organisations” means advice and assistance to voluntary organisations in connection with the making of arrangements by voluntary organisations for the continuance of their activities in the event of an emergency.

Transitional provision

31. Until 15th May 2006, these Regulations shall have effect as if—

- (a) each reference to performing a duty under section 4(1) were a reference to exercising a power under section 4(1);
- (b) each reference to the duty under section 4(1) were a reference to the power under section 4(1); and
- (c) in regulation 33(3)(a), for “must” there were substituted “may”.

Risk assessment

32. In performing its duty under section 4(1) (duty to give advice and assistance to business and voluntary organisations), a relevant responder must take into account any relevant community risk register maintained by virtue of regulation 12.

Extent of the duty under section 4(1) in relation to business

33.—(1) This regulation applies to the duty of a relevant responder under section 4(1) in so far as it relates to advice and assistance to business.

(2) A relevant responder need only give advice and assistance to those businesses which carry on commercial activity in the area in which the functions of the relevant responder are exercisable.

(3) In the course of performing that duty, a relevant responder—

- (a) must provide advice and assistance to businesses at large;
- (b) may provide advice and assistance to individual businesses; and
- (c) may provide advice and assistance to businesses in connection with—
 - (i) identifying a business continuity consultant who provides advice and assistance to business in the area in which the functions of the relevant responder are exercisable; and
 - (ii) obtaining advice and assistance from such a business continuity consultant.

(4) In paragraph (3), “business continuity consultant” means a person who—

- (a) is competent to provide advice and assistance to business; and
- (b) has experience of so doing.

Extent of the duty under section 4(1) in relation to voluntary organisations

34.—(1) This regulation applies to the duty of a relevant responder under section 4(1) in so far as it relates to advice and assistance provided to voluntary organisations.

(2) A relevant responder need only provide advice and assistance to those voluntary organisations which it considers appropriate.

(3) A relevant responder may determine the manner in which advice and assistance under section 4(1) is provided to voluntary organisations, and may in particular—

- (a) provide advice and assistance to voluntary organisations at large;
- (b) provide advice and assistance to an individual voluntary organisation; and
- (c) may provide advice and assistance to voluntary organisations in connection with—
 - (i) identifying a business continuity consultant who provides advice and assistance to business in the area in which the functions of the relevant responder are exercisable; and

- (ii) obtaining advice and assistance from such a business continuity consultant.
- (4) In paragraph (3), “business continuity consultant” means a person who—
 - (a) is competent to provide advice and assistance to voluntary organisations; and
 - (b) has experience of so doing.
- (5) In determining whether a voluntary organisation is appropriate for the purposes of paragraph (2), a Scottish Category 1 responder must consider—
 - (a) whether the organisation carries on activities in the area in which the functions of the relevant responder are exercisable;
 - (b) the nature and extent of activities carried on by the organisation, and in particular the extent to which the organisation carries on activities which contribute to—
 - (i) the prevention of an emergency occurring;
 - (ii) the reduction, control or mitigation of the effects of an emergency;
 - (iii) otherwise taking action in connection with an emergency;
 - (iv) social welfare;
 - (c) the number of staff employed by the organisation;
 - (d) the turnover of the organisation; and
 - (e) the nature of the organisation, and in particular whether the nature of the organisation is such that the advice and assistance provided by the relevant responder is likely to improve the ability of the organisation to continue to carry on its activities in the event of an emergency.

Co-operation, relevant responder with lead responsibility etc.

35.—(1) Relevant responders which have functions which are exercisable in a particular police area must co operate with each other in connection with the performance of their duties under section 4(1).

(2) The other responders which have functions which are exercisable in that police area must co operate with those relevant responder in connection with the performance by that relevant responder of its duties under section 4(1).

(3) A relevant responder may—

- (a) perform its duty under section 4(1) jointly with another responder; or
- (b) make arrangements with another responder for that responder to perform such a duty on behalf of the relevant responder.

(4) Regulations 6, 7 and 8 apply to relevant responders for the purpose of performing the duty under section 4(1) as if—

- (a) each reference to a Category 1 responder or a general Category 1 responder were a reference to a relevant responder; and
- (b) each reference to a duty under section 2(1)(a) to (f) were a reference to the duty under section 4(1) in relation to an emergency or an emergency of a particular kind.

Cross border co-operation with relevant responders in England and Wales

36. A Scottish Category 1 responder or a Scottish Category 2 responder may co-operate with a body which is listed in paragraph 1 or 2 of Schedule 1 (local authority in England and Wales) in connection with the performance by that body of the duty under section 4(1).

Activities of other responders

37.—(1) In performing its duty under section 4(1), a relevant responder—

- (a) must have regard to any advice and assistance to business or advice and assistance to voluntary organisations provided by other responders which have functions which are exercisable in the area in which the functions of the relevant responders are exercisable; and
- (b) need not perform that duty to the extent that to do so would unnecessarily duplicate that advice and assistance.

(2) For the purposes of paragraph (1), it is immaterial whether the advice and assistance provided by another responder is provided by virtue of section 4(1), a duty under another enactment or otherwise.

Charging

38. Relevant responders may charge for any advice or assistance (including advice and assistance which it is required to provide under regulation 33(3)(a)) provided on request under section 4(1) but that charge must not exceed the aggregate of—

- (a) the direct costs of providing the advice or assistance; and
- (b) a reasonable share of any costs indirectly related to the provision of the advice or assistance.

PART 8**Information****Sensitive information**

39.—(1) In these Regulations, “sensitive information” means information which is not reasonably accessible to the public and which is—

- (a) information the disclosure of which to the public would, or would be likely to, adversely affect national security;
- (b) information the disclosure of which to the public would, or would be likely to, adversely affect public safety;
- (c) information, disclosure of which to the public would or would be likely to prejudice the commercial interests of the person to whom that information relates; or
- (d) information which is personal data, within the meaning of section 1(1) of the Data Protection Act 1998⁽⁹⁾ if the condition in paragraph (2) or (3) is satisfied.

(2) The condition in this paragraph is—

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public would contravene—
 - (i) any of the data protection principles; or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress);
- or

(9) 1998 c. 29.

(b) in any other case, that the disclosure of the information to a member of the public would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held by public authorities) were disregarded.

(3) The condition in this paragraph is that by virtue of any provision of Part IV of that Act the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(4) In determining for the purposes of paragraph (2) whether anything done before 24th October 2007 would contravene the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 are to be disregarded.

Sensitive information – certificates in relation to national security

40.—(1) A certificate signed by a member of the Scottish Executive certifying that disclosure of information to the public would adversely affect national security is conclusive evidence of that fact.

(2) A certificate under paragraph (1) may be given in relation to specific information or to information of a specified kind and may be expressed to have prospective effect.

(3) A document purporting to be a certificate under paragraph (1) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(4) A document which purports to be certified by or on behalf of a member of the Scottish Executive as a true copy of a certificate issued by a member of the Scottish Executive under paragraph (1) shall in any legal proceedings be sufficient evidence (or in England and Wales evidence) of that certificate.

Information sharing – making a request for information

41.—(1) Paragraph (4) applies to a Category 1 responder or a Category 2 responder (referred to in this Part of the Regulations as the “requesting responder”) to the extent that it is satisfied that the conditions in paragraphs (2) and (3) are satisfied.

(2) The condition in this paragraph is that the requesting responder reasonably requires information which is held by a Scottish Category 1 responder or a Scottish Category 2 responder—

- (a) in connection with the performance of a duty under section 2(1)(a) to (d) or section 4(1); or
- (b) in connection with the performance of another function which relates to an emergency.

(3) The condition in this paragraph is that the requesting responder is satisfied that—

- (a) the information is not held by the requesting responder; and
- (b) it is not reasonable to seek to obtain the information by other means.

(4) To the extent that this paragraph applies, the requesting responder may make a request for the information to a Scottish Category 1 responder or a Scottish Category 2 responder (referred to in this Part of the Regulations as “the receiving responder”).

Information sharing – procedure for making a request

42.—(1) In this Part of the Regulations, a reference to a “request for information” is a reference to such a request which—

- (a) is in writing;
- (b) states the name of the requesting responder and an address for correspondence;
- (c) describes the information requested; and
- (d) states the reason why the requesting responder requires the information in connection with the performance of a duty under section 2(1)(a) to (d) or section 4(1) or in connection with the performance of another function which relates to an emergency (as the case may be).

(2) For the purposes of paragraph (1), a request is to be treated as made in writing where the text of the request—

- (a) is transmitted by electronic means;
- (b) is received in legible form; and
- (c) is capable of being used for subsequent reference.

Information sharing – obligation to provide information

43.—(1) Subject to paragraphs (2) and (4), the receiving responder must comply with a request for information.

(2) To the extent that the receiving responder is satisfied that—

- (a) the request for information relates to sensitive information of the kind specified by paragraph (1)(a) of regulation 39 and disclosure to the requesting responder would, or would be likely to, adversely affect national security;
- (b) the request for information relates to sensitive information of the kind specified by paragraph (1)(b), (c) or (d) of regulation 39 and disclosure to the requesting responder would, or would be likely to, adversely affect the confidentiality of the information,

the receiving responder must not comply with the request for information.

(3) If a receiving responder refuses to comply with a request in the circumstances specified in paragraph (2)(b), it must give reasons.

(4) To the extent that the receiving responder is satisfied that a request for information relates to sensitive information which has been directly or indirectly supplied to the receiving responder by a body which deals with security matters, the receiving responder must not comply with the request unless that body has given its consent to the provision of the information to the requesting responder; such consent may contain conditions.

Information sharing – response to request

44. The receiving responder must respond to the request for information—

- (a) before the end of such reasonable period as may be specified by the requesting responder; and
- (b) at such place as may be reasonably specified by that responder.

Disclosure or publication of sensitive information

45.—(1) Except where required to do so under another provision of these Regulations, a general responder must not publish or disclose to any person sensitive information which—

- (a) it has received under or by virtue of a provision of these Regulations; or
- (b) it has received under or by virtue of a provision in regulations made by a Minister of the Crown under Part 1,

unless paragraph (2) or (6) applies.

(2) This paragraph applies, subject to paragraph (3), if consent for the publication or disclosure has been given by—

- (a) in relation to sensitive information of the kind specified by paragraph (1)(a) or (b) of regulation 39 the originator of the information or (if different) a member of the Scottish Executive;
- (b) in relation to sensitive information of the kind specified by paragraph (1)(c) or (d) of regulation 39, the person to whom the information relates.

(3) Paragraph (2) does not apply to information of the kind specified by paragraph (1)(a) of regulation 39 if a member of the Scottish Executive has issued a certificate in writing indicating that publication or disclosure of the information would adversely affect national security.

(4) Consent under paragraph (2) may—

- (a) identify the information to which it applies by means of a general description;
- (b) be expressed to have prospective effect; and
- (c) may include conditions.

(5) In paragraph (2), “originator of the information” means—

- (a) if the information has been directly or indirectly supplied to the responder by a body which deals with security matters, that body;
- (b) if sub paragraph (a) does not apply, the information takes the form of a document and that document has been created by a public authority, that public authority;
- (c) otherwise, the person who supplied the information to the responder.

(6) This paragraph applies if—

- (a) the information is sensitive information of the kind specified by paragraph (1)(c) or (d) of regulation 39;
- (b) the information is not sensitive information of the kind specified by paragraph (1)(a) or (b) of regulation 39;
- (c) the responder is satisfied that the public interest in publishing or disclosing the information outweighs the legitimate interests of the person to whom that information relates; and
- (d) the responder has informed the person to whom the sensitive information relates of its intention to publish or disclose the information and its reasons for being satisfied of the matter specified in sub paragraph (c).

Use of sensitive information

46.—(1) Subject to paragraph (2), sensitive information which a general responder has received—

- (a) under or by virtue of a provision of these Regulations; or
- (b) under or by virtue of a provision in regulations made by a Minister of the Crown under Part 1,

may only be used by that responder for the purpose of performing the function for which, or in connection with which, the information was requested.

(2) Sensitive information may be used for purposes other than those specified in paragraph (1) if consent for such use is given by—

- (a) in relation to sensitive information of the kind specified by paragraph (1)(a) or (b) of regulation 39, the originator or (if different) a member of the Scottish Executive; or
- (b) in relation to sensitive information of the kind specified by paragraph (1)(c) or (d) of regulation 39, the person to whom the information relates.

(3) Consent under paragraph (2) may—

- (a) identify the information to which it applies by means of a general description;
- (b) be expressed to have prospective effect; and
- (c) may include conditions.

(4) In paragraph (2), “originator of the information” means—

- (a) if the information has been directly or indirectly supplied to the responder by a body which deals with security matters, that body;

- (b) if sub paragraph (a) does not apply, the information takes the form of a document and that document has been created by a public authority, that public authority;
 - (c) otherwise, the person who supplied the information to the responder.
- (5) In this regulation, “use” does not include publication or disclosure.

Security of sensitive information

- 47.—(1) This regulation applies to sensitive information—
- (a) received by a Scottish Category 1 responder under or by virtue of any provision of these Regulations;
 - (b) received under or by virtue of any regulations made by a Minister of the Crown under section 6(1) or 15(3); or
 - (c) has been created by a responder in discharging its duties under the Act, these Regulations or regulations made by a Minister of the Crown.
- (2) Each Scottish responder must have in place arrangements for ensuring that the confidentiality of sensitive information to which this regulation applies is not adversely affected.
- (3) The arrangements specified by paragraph (2) must include arrangements for ensuring that—
- (a) sensitive information is clearly identifiable as such;
 - (b) only those persons who—
 - (i) are involved in the performance of a duty under section 2(1) or 4(1) or other function that relates to an emergency, and
 - (ii) as a result, need to have access to sensitive information, have access to sensitive information;
 - (c) sensitive information is stored in a secure manner; and
 - (d) sensitive information is transferred (including transferral by electronic means) in a secure manner.

St Andrew’s House, Edinburgh
6th October 2005

HUGH HENRY
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the extent of the duties imposed on certain bodies (referred to as “Scottish Category 1 responders”) listed in Part 2 of Schedule 1 to the Civil Contingencies Act 2004 (“the Act”) under sections 2 and 4 of that Act (duties to assess, and plan for emergencies and duties to provide advice and assistance to business) and the manner in which those duties are to be performed.

Part 2 of these Regulations makes general provisions about the extent and performance of those duties. Regulation 3 requires Scottish Category 1 responders which have functions which are exercisable in a particular area to co-operate with each other. This form of co operation is referred to as the Strategic Co ordinating Group. In addition, bodies listed in Part 4 of Schedule 1 to the Act (referred to as “Scottish Category 2 responders”) may ask to be, or be asked, to participate in the Strategic Co ordinating Group. Regulation 4 enables Scottish Category 1 and Scottish Category 2 responders to co operate with general Category 1 responders (those bodies listed in Part 1 of Schedule 1 to the Act). Regulation 5 enables responders to make arrangements with each other for the discharge of the duties of Scottish Category 1 responders under section 2 of the Act jointly or for one responder to perform those duties on behalf of another. Regulations 6 to 8 enable Category 1 responders to identify one Category 1 responder as having the lead responsibility for performing certain functions under section 2 of the Act in a particular police area. Regulation 9 provides that the duties under section 2 of the Act do not apply to certain emergencies. These are emergencies in relation to which existing legislation already makes provision which is analogous to the Act.

Part 3 of these Regulations relates to the duty of Scottish Category 1 responders under section 2(1)(a) and (b) of the Act to assess the risk of an emergency occurring. Regulation 10 specifies that the duty only applies in relation to an emergency which affects or may affect the geographical area in which the functions of the Scottish Category 1 responder are exercisable. Regulation 11 enables Scottish Ministers to issue guidance as to the risk of a particular emergency occurring or impact that it would have or an assessment of a particular emergency occurring or the impact of such an emergency. Regulation 12 requires Scottish Category 1 responders, as part of the Strategic Co ordinating Group to collaborate with each other in maintaining a register (referred to as the “community risk register”) of the assessment carried out by each of them under section 2.

Part 4 of these Regulations relates to the duty of Scottish Category 1 responders under section 2(1)(c) and (d) of the Act to maintain plans. Regulation 13 requires Scottish Category 1 responders to have regard to any assessment of risk carried out by it by virtue of section 2(1)(a) or (b) of the Act. Regulation 14 requires a Scottish Category 1 responder to have regard to arrangements to warn the public and provide advice and information to the public when performing its duty under section 2(1)(d). Regulation 15 provides that, in performing that duty, Scottish Category 1 responders must maintain plans which relate to any emergency to which those duties apply and may maintain specific plans to deal with particular emergencies. Regulation 16 requires responders to consider whether it would be appropriate to perform its functions under section 2(1)(d) by way of a plan maintained by more than one Scottish Category 1 responder (a “multi agency plan”). Regulation 17 requires Scottish Category 1 responders to have regard to the activities carried out by certain voluntary organisations. Regulation 18 requires Scottish Category 1 responders to include in the plans maintained by virtue of section 2(1)(c) and (d) of the Act a procedure for determining whether an emergency has occurred. Regulation 19 requires those plans to include arrangements for exercises and training. Regulation 20 requires Scottish Category 1 responders to consider whether such plans must be revised when Scottish Ministers issue guidance or an assessment under regulation 11.

Part 5 of these Regulations relates to the duty of Scottish Category 1 responders under section 2(1)(f) of the Act to publish in part the assessments made and plans maintained under section 2(1)(a) to (d) of the Act. Regulation 21 requires Scottish Category 1 responders to have regard to the importance of not alarming the public unnecessarily.

Part 6 of these Regulations relates to the duty of Scottish Category 1 responders under section 2(1)(g) of the Act to maintain arrangements to warn and provide advice to the public in the event of an emergency. Regulation 22 provides that Scottish Category 1 responders must have regard to the plans it maintains by virtue of section 2(1)(c) and (d). Regulation 23 provides that Scottish Category 1 responders may maintain general arrangements to warn and provide advice to the public or specific arrangements. Regulation 24 requires Scottish Category 1 responders to have regard to the importance of not alarming the public unnecessarily. Regulation 25 requires Scottish Category 1 responders to exercise their arrangements and to train their staff in operating those arrangements. Regulation 26 to 28 require Scottish Category 1 responders to identify or have arrangements to identify the Category 1 responder with lead responsibility for warning, informing and advising the public. Regulation 29 requires responders to have regard to the warnings, information and advice provided to the public and by other Scottish responders and other bodies and provides that Category 1 responders need not duplicate that effort.

Part 7 of these Regulations relates to the duty of responders who are local authorities (referred to as “relevant responders”) under section 4(1) of the Act to give advice and assistance to the public in connection with the making of arrangements for the continuance of commercial activities by the public or the carrying on by voluntary organisations of their activities in the event of an emergency. Regulation 30 defines “relevant responder”. Regulation 31 is a transitional provision which has the effect that a relevant responder will have a power rather than a duty to provide advice to businesses under regulation 33(3)(a) until 15th May 2006. Regulation 32 requires relevant responders to take into account any relevant community risk register maintained under regulation 12. Regulation 33 specifies the scope of the duty in relation to business. It provides that the duty only applies to businesses which carry on commercial activity in the area in which the functions of the responder are exercisable. It also provides that relevant responders must provide advice and assistance to business at large, and may in addition provide advice and assistance to individual business or refer them to a business continuity consultant or obtain advice and assistance for them from a business continuity consultant. Regulation 34 specifies the scope of the duty in relation to voluntary organisations. It provides that relevant responders must determine which voluntary organisations should receive advice and assistance, having had regard to the factors listed in this regulation. Regulation 35 requires relevant responders which have functions which are exercisable in a police area to co operate with each other. Relevant responders may make arrangements with each other for the discharge of their duties under section 4 of the Act jointly or for one relevant responder to perform those duties on behalf of another. Regulation 36 relates to cross border co operation between local authorities in England and Wales and Scottish Category 1 and 2 responders. Regulation 37 requires relevant responders to have regard to the advice and assistance provided of this kind by other responders and provides that relevant responders need not unnecessarily duplicate that advice or assistance. Regulation 38 enables relevant responders to charge for any advice or assistance provided on request. Such charge may not exceed the costs of the provision of that advice or assistance (taking into account the indirect costs).

Part 8 relates to information. Regulation 39 defines “sensitive information”. Regulation 40 makes provision for circumstances where a certificate in relation to national security has been issued by a member of the Scottish Executive. Regulation 41 enables Category 1 or 2 responders to require any other responder to provide information which it reasonably requires in connection with the performance of its functions under section 2(1)(a) to (d) of the Act. Regulation 42 defines a procedure by which information can be requested. Regulation 43 places an obligation on the receiving responder to reply with a request for information if conditions are met. A responder must refuse to comply with such a requirement in certain circumstances. Regulation 44 provides when and where such information is to be provided. Regulation 45 provides that Category 1 responders

must not publish or disclose to the public sensitive information obtained or created by virtue of the Act or these Regulations unless certain conditions are satisfied. Regulation 46 limits the use that can be made of sensitive information which has been obtained under these Regulations. Regulation 47 imposes requirements on responders as to storage and handling of sensitive information obtained under these Regulations.