

EXPLANATORY MEMORANDUM TO
THE CIVIL CONTINGENCIES ACT 2004 (AMENDMENT OF LIST OF
RESPONDERS) ORDER 2023

2023 No. 123

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Civil Contingencies Act 2004 (“the Act”) by adding the Coal Authority and the Meteorological Office to the list of general Category 2 responders (discussed in detail in section 7 below) in Part 3 of Schedule 1 to the Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is the same as the extent.

5. European Convention on Human Rights

- 5.1 The Chancellor of the Duchy of Lancaster has made the following statement regarding Human Rights:

“In my view the provisions of the Civil Contingencies Act 2004 (Amendment of List of Responders) Order 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument has been made in exercise of the power conferred by section 13(1)(a) of the Act. It amends Schedule 1 of the Act by adding two new public bodies to the list of general Category 2 responders: the Coal Authority and the Meteorological Office (who act under the Secretary of for Business, Energy and Industrial Strategy). The Act and Regulations made under it confer various duties on Category 2 responders.

7. Policy background

What is being done and why?

- 7.1 The intention of this intervention is to improve the United Kingdom’s civil protection framework by broadening the information and data available to organisations involved in planning for emergencies, which in turn will increase preparedness.

- 7.2 The Act places legal duties on a number of these organisations, known as “responders” and listed in the Act. These duties relate primarily to the preparation for and response to emergencies. The Act defines two categories of responders, each with different duties. Category 1 responders are the main organisations involved in most emergencies at the local level: for example, “blue light services”. Category 2 responders are likely to be heavily involved in some emergencies: for example, utilities and transport companies. The duties placed on Category 2 responders relate primarily to cooperating and sharing information with other responders.
- 7.3 The Meteorological Office and the Coal Authority perform important functions in the UK’s resilience framework in preparing for, and responding to, risks associated with extreme weather events and coal mining legacy. Examples of these risks include flooding, heatwaves, subsidence and coal mine water pollution. These two organisations have significant expertise and technical knowledge in their respective fields, and provide critical support such as severe weather warnings, hazard assessments, training and response planning. This makes them uniquely qualified to provide the specialist knowledge and services that are required to address risks in their portfolio.
- 7.4 The Act, which establishes the framework for civil protection in the UK, does not identify the Meteorological Office or the Coal Authority as categorised responders. Therefore, their provision of assistance and multi-agency cooperation occurs on an informal and inconsistent basis across the UK. It also depends on categorised responders’ awareness of the expertise available within these organisations and the risks associated with severe weather and mining-related incidents.
- 7.5 The Meteorological Office and the Coal Authority are increasingly being called upon by Category 1 responders to provide information to aid in the planning for and response to emergencies. The expertise and support of these organisations is likely to become more important in future. Expected changes in the UK’s weather and climate over the next three decades will create additional weather and climate risks. For example, wetter winters will drive up the risk of flooding, drier summers increase the risks of water shortages, hotter summers come with more intense heat waves that can affect farming and human health, and higher sea levels will increase the risk of coastal erosion and coastal flooding from high tides and storm surges.
- 7.6 One of the critical objectives of the Act is to establish a consistent level of civil protection across the UK and identify the roles and responsibilities for local responders. Legislating to make these organisations Category 2 responders will fully integrate them into emergency preparedness and response structures and processes, facilitating their engagement with other categorised responders, via Local Resilience Forums (LRFs) or equivalent forums across the UK. LRFs, and their equivalents, are not legal entities but provide a forum for the effective delivery of those duties under the Act that need to be delivered by Category 1 and 2 responders in a multi-agency environment. The LRFs aim to plan and prepare for localised incidents and catastrophic emergencies and work to identify potential risks and produce emergency plans to either prevent or mitigate the impact of any incident on their local communities.
- 7.7 The categorisation of the Meteorological Office and the Coal Authority will enable these organisations to more effectively share information and engage with other responders, via LRFs or equivalent forums across the UK. This intervention brings the duties of the Meteorological Office and Coal Authority in line with the current list of

Category 2 responders, and recognises the integral role of these organisations in contributing to multi-agency preparedness.

- 7.8 The Coal Authority does not operate in Northern Ireland and therefore its categorisation would have no practical effect there. The Meteorological Office operates across the whole United Kingdom.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument contains amendments to primary legislation. No consolidation is planned.

10. Consultation outcome

- 10.1 The Resilience Strategy launched a public Call for Evidence (CfE) on 13 July 2021 which ran until 27 September 2021¹. The CfE included a specific section relating to the Civil Contingencies Act 2004 in order to support the 2022 Post-Implementation Review (PIR) of the Act.
- 10.2 This gave stakeholders, academics, businesses and other interested parties, including the general public, the opportunity to submit their views on how the Act was working at present and where there was scope for improvement.
- 10.3 214 responses were received on the specific section of the CfE relating to the Act. All of these were reviewed and the evidence was used to inform the final recommendations. Responses were received from a wide range of organisations across the UK including representatives of 33 out of the 38 LRFs in England, local authorities, emergency services (including the National Police Chiefs Council and National Fire Chiefs Council), charities, academia and business (including utilities and transport). The CfE asked stakeholders whether they thought there were gaps in critical representation of responder organisations included in the Act and 69% of those who answered the question felt that there were gaps. The Meteorological Office and the Coal Authority were referenced by multiple respondents as representing a potential gap in responder organisations.
- 10.4 The Department for Levelling Up, Housing and Communities (DLUHC) also led a series of in-depth workshops with representatives from LRFs across England. This ‘Big Resilience Conversation’ aimed to give local responders the opportunity to directly contribute to the evidence base which supported decision making on the PIR of the Act. There were also 11 detailed interviews with LRF chairs to understand more about the barriers to effective collaboration and senior leadership at the local level. Further engagement was also carried out with existing Category 2 responders and Local Government representatives. This evidence collection informed the process of determining what changes to the legislation were needed.
- 10.5 Following the consideration of this combined evidence, the 2022 PIR concluded that given the important functions that the Meteorological Office and the Coal Authority perform in our national resilience framework it would be beneficial to categorise the

¹ <https://www.gov.uk/government/consultations/national-resilience-strategy-call-for-evidence>

agencies under the Act to fully integrate them into emergency preparedness and response structures and processes.

- 10.6 Since the publication of the 2022 PIR of the Civil Contingencies Act², the Cabinet Office has continued to engage with local partners and specifically conducted further consultation with the Meteorological Office and the Coal Authority who, as the result of this Statutory Instrument, will be subject to duties under the Act. Both organisations are supportive of their inclusion as Category 2 responders under the Act.
- 10.7 The Cabinet Office also carried out continuous engagement with the Scottish Government, Welsh Government and Northern Irish Executive through the review process and in the subsequent work to bring forward this legislation. All Devolved Administrations were supportive of the inclusion of these agencies as categorised responders for the whole United Kingdom.

11. Guidance

- 11.1 The Act and Regulations made under it are supported by statutory and non-statutory guidance, which describe how responders can comply with the legislation, identifies good practice and provides associated useful information³. This will not be immediately updated as a result of the laying of this instrument as the guidance is applicable to the new Category 2 responders. However, in the 2022 PIR, the Cabinet Office committed to updating the statutory guidance that accompanies the Act. That update will reflect the additional organisations categorised as a result of this instrument.

12. Impact

- 12.1 The impact on business, charities, voluntary bodies and/or the public sector is that the two public bodies which will be listed as Category 2 responders will then become subject to various legal duties, and existing responders will become subject to various legal duties in relation to them, under the Act and Regulations made under it. These duties relate primarily to activities conducted to prepare for emergencies. This intervention will make the Meteorological Office and the Coal Authority Category 2 responders under the Act. This will mean that:
- a) The Meteorological Office and the Coal Authority will have a duty to cooperate and share information with Category 1 and other Category 2 responders;
 - b) Category 1 and other Category 2 responders will have a duty to cooperate and share information with the Meteorological Office and the Coal Authority;
 - c) The Meteorological Office and the Coal Authority will attend local resilience forum meetings across the UK as required; and
 - d) The Meteorological Office and the Coal Authority will have to comply with a request to disclose information from Category 1 and other Category 2 responders, and vice versa.
- 12.2 The legal framework underpinning the system of Category 1 and 2 responders is well-established, and the Coal Authority and Meteorological Office are to some extent

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1076209/cca-pir-2022.pdf

³ <https://www.gov.uk/government/publications/emergency-preparedness>

already participating in it on a voluntary basis. In consultation with the Meteorological Office and the Coal Authority, both organisations have confirmed that these new statutory duties will not have an impact on their budgets. Both organisations already conduct resilience activities and have resourced teams, within their current budgets, which focus on cooperating with other responders.

- 12.3 As such, a full impact assessment has not been prepared for this instrument. A de minimis assessment has been prepared.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 A statutory review requirement is included in the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, which is a key part of the legal framework underpinning the system of Category 1 and 2 responders. Insofar as necessary, the categorisation of the Coal Authority and Meteorological Office will form part of the next statutory review.

15. Contact

- 15.1 Mandy Mackenzie at the Cabinet Office Telephone: +44500 975565 or email: mandy.mackenzie@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Zonia Cavanagh, Deputy Director, Resilience Directorate, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Chancellor of the Duchy of Lancaster of the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.