

**EXPLANATORY MEMORANDUM TO THE
FIRE AND RESCUE SERVICES (EMERGENCIES) (ENGLAND) ORDER 2007**

2007 No. 735

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Order gives fire and rescue authorities (FRAs) mandatory functions in connection with key types of emergencies: chemical, biological, radiological or nuclear emergencies ('CBRN emergencies') and emergencies requiring the freeing of people from collapsed structures or non-road transport wreckages (urban search and rescue, or 'USAR emergencies').

2.2 It makes it mandatory for FRAs to:

- a) make provision for decontaminating people following the release of CBRN substances;
- b) make provision for freeing people from collapsed structures and non-road transport wreckages;
- c) use, on request from an affected FRA, specialist CBRN or USAR resources outside their own areas to an extent reasonable for dealing with the CBRN or USAR emergency.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first time that the power conferred by section 9 of the Fire and Rescue Services Act 2004 has been used.

4. Legislative Background

4.1 Under the Fire and Rescue Services Act 2004, FRAs have discretionary powers to make provision for any type of emergency likely to cause individuals to die, be injured or become ill. This includes the CBRN and USAR emergencies described in the Order.

4.2 The Act also gives FRAs mandatory, rather than discretionary, functions for two types of emergencies: fires and road traffic accidents. The Secretary of State can, by order under section 9 of the Fire and Rescue Services Act 2004, give mandatory functions to FRAs in England for other types of emergencies that s/he considers necessary

4.3 This Order gives mandatory functions to FRAs in connection with CBRN and USAR emergencies, giving them a statutory footing similar to that which already exists

for firefighting and road traffic accidents. This further improves national resilience to such disruptive incidents.

5. Territorial Extent and Application

5.1 This instrument applies to FRAs in England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 FRAs currently exercise their discretionary power to make provision for CBRN and USAR emergencies using equipment and initial training provided centrally by the Government's New Dimension Programme. Government has committed over £200 million to this programme and FRAs now have an organisational capability to provide a co-ordinated national response to deal with CBRN and USAR emergencies. They are reimbursed for costs of maintaining the specialist staff training and equipment by grants made under section 31 of the Local Government Act 2003.

7.2 This is satisfactory whilst there is no reason or evidence to assume that FRAs will allow the capabilities for CBRN and USAR emergencies to degrade over time or refuse to act outside their own areas when needed.

7.3 Its disadvantage is that, even with central funding, FRAs could still decline to use the specialist CBRN and USAR resources provided by Government to aid others requiring assistance. FRAs could also decide to stop maintaining the capabilities provided by Government. In particular, authorities have an incentive due to immediate local pressures to make provision for likely local needs, rather than ensuring that collectively there is provision for less likely large-scale CBRN or USAR emergencies. This could, over time, reduce national resilience to such disruptive incidents.

7.4 Giving FRAs mandatory functions by order sends a clear signal that making provision for dealing with CBRN and USAR emergencies is a core activity in the same way as it already is for firefighting and road traffic accidents. This further improves national resilience to such disruptive incidents.

7.5 Public consultation was held from September to December 2004, including the (then) 47 FRAs in England and other key stakeholders such as the Chief Fire Officers' Association and the Fire Brigades' Union. The Government published its response and revised proposals in November 2005.

7.6 In addition to CBRN and USAR emergencies, the initial proposals included giving FRAs mandatory functions for incidents involving major flooding, tunnel collapses and major transport incidents involving vessels. Public consultation highlighted the need to look at the available FRA provision and capability for these emergencies before giving each FRA mandatory functions irrespective of their local circumstances.

7.7 As a result of consultation, this Order includes CBRN and USAR emergencies. It excludes those involving flooding, tunnel collapses and transport incidents involving vessels because:

- a) the policy is already being met (in the case of tunnel collapses) or
- b) the lead department concerned is either clarifying FRA requirements (in the case of Defra and flooding) or has subsequently established its requirements (in the case of the Department for Transport and vessels) through the Maritime and Coastguard Agency equipping 15 FRAs located at key points around the coast.

This is explained further in paragraphs 13 to 16 of the regulatory impact assessment attached to this memorandum.

7.8 FRAs are aware of the mandatory functions being placed on them through dialogue with the Chief Fire Officers' Association and the Fire & Rescue Services' Practitioners' Forum. In October 2006, a Fire & Rescue Service Circular was issued giving guidance to FRAs on how they might meet the requirements of the (then) draft Order. An updated version has subsequently been issued and is available on the website of the Department for Communities and Local Government at www.communities.gov.uk.

8. Impact

8.1 A regulatory impact assessment is attached to this memorandum.

9. Contact

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REGULATORY IMPACT ASSESSMENT (RIA)

Title of Proposal

1. Fire and Rescue Services (Emergencies) (England) Order 2007

Purpose and Intended Effect of Measure

Objective

2. To improve national resilience to disruptive incidents such as terrorist attacks and serious accidents by giving fire and rescue authorities (FRAs) in England mandatory functions in connection with key types of emergencies: chemical, biological, radiological or nuclear emergencies ('CBRN emergencies') and emergencies requiring the freeing of people from collapsed structures or non-road transport wreckage (urban search and rescue, or 'USAR emergencies').

Background

3. FRAs currently exercise their discretionary power to make provision for types of serious incidents (including the 'emergencies' described in the draft Order) using equipment and initial training provided centrally by the Government's New Dimension Programme¹. FRAs are reimbursed for costs of maintaining the specialist staff training and equipment, currently by means of grants made under section 31 of the Local Government Act 2003.
4. The FRAs' discretionary power to make provision for such incidents is derived from the Fire and Rescue Services Act 2004. This came into effect from October 2004 (in England) and November 2004 (in Wales). The Act gives FRAs the power to make provision for any type of emergency likely to cause individuals to die, be injured or become ill.
5. The Act also gives FRAs mandatory, rather than discretionary, functions in connection with fires and road traffic accidents. For other types of emergencies that s/he considers necessary, the Secretary of State can, by order under section 9 of the Fire and Rescue Services Act 2004, give mandatory functions to FRAs in England (an 'Emergencies Order'). The National Assembly for Wales can do the same for FRAs in Wales and plans to do so later in 2007.
6. The Scottish Executive has given mandatory functions to FRAs in Scotland in connection with key types of emergencies by making the Fire (Additional Function) (Scotland) Order 2005 under section 11 of the Fire (Scotland) Act 2005. Northern Ireland's Department of Health, Social Services and Public Safety is expecting to consult on similar proposals in 2007.

¹ Government has committed over £200 million to the New Dimension Programme. It is equipping and training fire and rescue services, giving them an organisational capability to provide a co-ordinated national response to a range of catastrophic incidents such as terrorist attacks.

Rationale for government intervention

7. The process of rolling out specialist equipment and training to FRAs, paid for by the Government's New Dimension programme, will be complete in 2007. This gives FRAs capabilities to deal with CBRN emergencies and USAR emergencies using the discretionary powers available under the Fire and Rescue Services Act 2004. There are two areas of potential concern:
 - i. Should an incident occur, there is no assurance that an FRA which has specialised equipment will actually respond outside its own area (for example, it may withhold equipment because of concerns over a second incident in its area);
 - ii. The equipment hosted by any particular FRA is expressly part of a wider national response capability rather than being sized to fit local needs. Hence over the longer term, despite receiving funds in recognition of the extra costs of hosting New Dimension capability, an FRA might let the capability degrade due to day-to-day budget pressures from other activities (e.g. fires or road traffic accidents) which are mandatory.
8. Broadly, there are two approaches to these issues. The first is to recognise that in major incidents FRAs have generally worked closely together and there is no specific concern that this is likely to change. A good example of such co-operation was during the large fire at the Buncefield oil depot in Hertfordshire in December 2005. This used high volume pumps provided to FRAs by the Government's New Dimension programme from across the country. Currently, there is no evidence that FRAs would allow the capabilities to degrade in the long term, so long as funding continued. The duties on local responders under the Civil Contingencies Act 2004 to prepare for risks, including national-scale disasters, already mean that FRAs will maintain the necessary capability across their regions by working together through Regional Resilience Forums. These considerations would argue that there would be no reason for a change to current legislation.
9. The second view is that a duty on FRAs hosting specialist equipment to respond to CBRN and USAR emergencies outside their own areas is necessary to underpin that response and ensure it takes place. Although the possibility of a hosting FRA choosing not to respond may seem remote, the incidents which the New Dimension programme addresses are by their nature unusual. Over the longer term, specific mandatory functions would aid the sustainability of the capabilities, because FRAs would give a mandatory, statutory 'core' function more weight than a discretionary one. This would increase national resilience to disruptive incidents.

Consultation

Within government

10. All 23 members of the Domestic Affairs Cabinet Committee were consulted to approve publication of the government response document following public consultation on the initial proposals.

Public consultation

11. Public consultation was held from September to December 2004, including the (then) 47 FRAs in England and other key stakeholders such as the Chief Fire Officers' Association and the Fire Brigades' Union. After the receipt of comments from 52 organisations, the Government published its response and revised proposals in November 2005.
12. As well as the CBRN emergencies and USAR emergencies included in the Emergencies Order, the initial proposals included giving FRAs mandatory functions in connection with major flooding, tunnel collapses and major transport incidents involving vessels. The public consultation highlighted the need to look at the existing provision and capability available for these types of emergencies before giving each FRA mandatory functions irrespective of their local circumstances.
13. In the case of transport incidents involving vessels, the policy is being met by the Government's Sea of Change programme led by the Department for Transport's Marine & Coastguard Agency (MCA). This has established an MCA-led structure by equipping and training strategically located fire and rescue services around the coast (8 in England, 15 in total for the UK) designed to respond to maritime incidents. This enables the MCA to request a response from suitably trained services for incidents up to 250 miles from the UK coastline. The capability can also be used for non-maritime incidents. Hence FRAs will retain their existing power to make provision for such incidents in conjunction with the MCA. This will be monitored, with an option of FRAs being given mandatory functions in connection with such incidents in future through some separate Emergencies Order.
14. In the case of tunnel collapses, the specialist USAR equipment provided to FRAs by the New Dimension programme for use in collapsed structure situations can be used in confined spaces which include some tunnel incidents. In the occasional situations where an FRA's equipment is inadequate then it is more appropriate to call upon others, including specialist agencies, with relevant expertise and equipment. Tunnel rescue is already reinforced by two existing legal components:
 - a) The Civil Contingencies Act 2004, by its placing a duty on local responders such as FRAs to plan and prepare for likely disruptive incidents. Capabilities planning guidance makes clear that planning assumptions include incidents involving tunnels.
 - b) The Fire and Rescue Services Act 2004, by giving FRAs the power to respond to emergencies such as tunnel incidents using the New Dimension USAR equipment provided - and being able to call on others, including specialist agencies where these would be better placed to deal with the emergency.

15. In the case of major flooding, Defra (as lead department for flooding) is examining the existing flood response capability and what may be necessary to improve existing provision. Hence giving every FRA a mandatory duty to make provision would be premature at this stage. The option of requiring FRAs to make provision for major flooding in some future Emergencies Order is still available. FRAs will retain the power to make the provision they deem necessary according to their local circumstances. Government has also provided high volume pumps (HVPs) specifically to help deal with such incidents. The locations of these were determined after a risk assessment.
16. Hence as a result of consultation, flooding, tunnel collapses and transport incidents involving vessels are not included in this Emergencies Order.

Options

17. Two options have been identified:
 - A) Do nothing & use existing FRA powers
 - B) Make an Emergencies Order

Option A - Do nothing & use existing FRA powers

18. This option describes the existing situation whereby Government is providing specialist equipment and initial training to FRAs, providing them with new capabilities to deal with CBRN and USAR emergencies.
19. Coupled with the Government's provision of specialist equipment and initial training, FRAs receive grants made under s31 of the Local Government Act 2003 to maintain the capabilities provided. In the longer term, such funding would typically be mainstreamed through inclusion within local authority Revenue Support Grant.
20. This option uses the existing power of FRAs under the Fire and Rescue Services Act 2004 (FRS Act) coupled with existing FRA duties provided by the Civil Contingencies Act 2004 (CCA).
21. The FRS Act enables FRAs to make provision to maintain the capabilities for CBRN and USAR emergencies provided by Government. FRA maintenance of these capabilities is dependent on continued Government funding which will continue whilst the need for them is required.
22. The CCA requires FRAs to address risks in their areas together with other local responders, such as the police and ambulance service. These risks are derived, in part, from the Government's national planning assumptions and include CBRN and USAR incidents. The Regional Resilience Forums provide a framework where local responders in the region can consider whether they are able to deal with the risks derived from national planning assumptions, as they are required to do by the CCA. So in effect, the CCA should ensure that local FRAs maintain the capabilities for CBRN and USAR emergencies provided by Government, enabling a response both within and outside their own local areas.

23. The advantages of this option are that it requires no secondary legislation and is in line with a 'light touch' approach. It avoids placing mandatory duties on FRAs where there is no reason or evidence to assume that they will allow the capabilities for CBRN and USAR emergencies to degrade over time or refuse to act outside their own areas when needed.
24. The disadvantage of this option is that relying on FRAs' discretionary powers, even where they receive central funding, means that they could still decline to use the specialist resources to aid other authorities, or in future decide to stop maintaining the capabilities provided by Government. In particular, authorities have an incentive due to immediate local pressures to make provision for likely local needs, rather than ensuring that collectively there is provision for very unlikely large-scale incidents. This could, over time, reduce national resilience to such disruptive incidents.

Option B - Make an Emergencies Order

25. This option describes the situation whereby an Emergencies Order is made and comes into effect once the new capabilities for CBRN and USAR emergencies provided by Government are fully operational.
26. An Emergencies Order would give FRAs mandatory functions, as opposed to discretionary ones, in connection with the types of emergencies it specifies i.e. CBRN and USAR emergencies.
27. The advantages of this option are that mandatory functions send a clear signal that CBRN and USAR emergencies are core activities for fire and rescue services, underpinning their response using specialist resources to incidents outside their own individual areas and giving weight to the need to maintain the capabilities for such types of emergencies in the long term.
28. The disadvantage of this option is that it could appear heavy-handed, reducing local discretion for FRAs to decide the types of emergencies for which they consider it appropriate to make provision according to their individual circumstances.
29. In summary an Emergencies Order, by giving FRAs mandatory functions in connection with CBRN and USAR emergencies, would improve national resilience to these disruptive incidents. It decreases the risk of FRAs not making provision for CBRN and USAR emergencies, or of not deploying the associated resources outside of their own areas, at the expense of increased restriction on their freedom.

Alternative options considered

30. One other option was to make an Emergencies Order giving FRAs mandatory functions for key types of emergencies without central government procuring specialist equipment and initial training for FRAs. It would then have been the responsibility of local FRAs to secure new capabilities for CBRN and USAR emergencies within their individual areas.
31. This option, whilst maximising local FRA autonomy, was regarded as unfeasible. This is because the capabilities are likely to be deployed across FRA boundaries and so the central procurement and delivery of uniform specialist equipment and initial training was seen as the most effective and quickest way of delivering a common capability for CBRN and USAR emergencies to FRAs.

Costs and Benefits

Sectors and groups affected

32. The public sector is the sector affected by the costs of the proposal: Central Government provides FRAs with capabilities to deal with CBRN and USAR emergencies by procuring and delivering the specialist equipment and initial training to FRAs; local FRAs maintain the capabilities thereafter. The initial costs will be met through general taxation; the care and maintenance costs will be supported by Government so, ultimately, will also be met by the general taxpayer.
33. All members of the public and the economy as a whole benefit from FRAs having capabilities to deal with CBRN or USAR emergencies: In the event of such disruptive incidents occurring, the ready deployment of the capabilities should reduce the number of seriously injured persons or deaths. This should also enable all parts of the economy to return to their normal functioning capacity more quickly.
34. There are no costs to businesses from this proposal. Indirectly, business will benefit from the greater resilience to CBRN and USAR emergencies provided through the Government's New Dimension programme.

Race equality assessment

35. The proposal has neither a beneficial nor adverse impact on race equality. A full race equality assessment is not considered necessary for this proposal.

Health impact assessment

36. The proposal has an indirect beneficial impact on health: FRA maintenance of capabilities for CBRN and USAR emergencies should, following their deployment, reduce the number of serious injuries and deaths in the event of such incidents occurring. A full health impact assessment is not considered necessary for this proposal.

Rural considerations

37. The proposal has neither a beneficial nor adverse impact on rural areas. A full rural impact assessment is not considered necessary for this proposal.

Benefits

Option A - Do nothing & use existing FRA powers

Option B - Make an Emergencies Order

38. For both options A and B there are no direct social, environmental or economic benefits.
39. For both options A and B there are indirect benefits. The deployment of FRA maintained capabilities to deal with CBRN and USAR emergencies should mean that there would be fewer injuries and deaths, enabling the general economy to return to its normal functioning capacity more quickly.

Option B - Make an Emergencies Order

40. For option B, mandatory FRA functions for CBRN and USAR emergencies should further ensure the provision of the capabilities and their deployment outside individual FRA areas. This would better secure the indirect benefits described above and further improve national resilience to disruptive incidents.

Costs

Option A - Do nothing & use existing FRA powers

Option B - Make an Emergencies Order

41. For both options A and B, there are no social or environmental costs arising from this option.
42. For both options A and B, the costs for FRAs of making provision for CBRN and USAR emergencies will be met either through continued use of direct grants to local authorities under section 31 of the Local Government Act 2003 or, when this becomes possible, by the addition of funds within the revenue support grant. As the delivery of capabilities to FRAs will be complete in 2007, there will be no initial set-up or delivery costs for FRAs. Hence the cost base will remain stable from spring 2007 and for each year thereafter. The estimated cost breakdown is therefore as follows:

FRAs' FIRE & RESCUE SERVICE STAFF²

	<i>CBRN</i> <i>£M pa</i>	<i>USAR</i> <i>£M pa</i>
Staff Crewing	0 ³	14.00 ⁴
Staff Training	3.45	1.97
sub-totals⁵	3.45	15.97
Total		19.42

² Estimates are correct as at February 2007

³ The Local Government Association and Chief Fire Officers Association have agreed that this will be crewed from existing resources

⁴ This figure arises from a calculation based on the number of crew per team and the pay rates and non-pay costs for the different grades within the team, taking account of the most recent pay deal

⁵ The Emergencies Order makes no demands on FRAs regarding equipment; Government has secured this separately and is establishing long term management structures together with the Local Government Association, Chief Fire Officers Association and FRAs.

Small Firms' Impact Test (SFIT)

43. An SFIT is unnecessary as the proposal only affects the public sector (FRAs).

Competition Assessment

44. A competition assessment is unnecessary as the proposal only affects the public sector (FRAs).

Enforcement, Sanctions and Monitoring

45. The monitoring and review of FRA performance in relation to maintaining the capabilities for CBRN and USAR emergencies will be introduced in the Comprehensive Performance Assessment (CPA) process undertaken by the Audit Commission.

Implementation and Delivery Plan

46. Government is currently giving FRAs a capability to deal with CBRN and USAR emergencies by delivering specialist equipment and initial training to FRAs (options A and B). These capabilities are planned to be fully operational in 2007.
47. Government plans to make an Emergencies Order in the first quarter of 2007, to take effect in spring 2007. This would give FRAs mandatory functions relating to CBRN and USAR emergencies (option B).

Post-Implementation Review

48. In addition to the CPA process described in paragraph 45, the Government's New Dimension programme is exploring ways to ensure that the national resilience capability remains inter-operable between fire and rescue services and in line with agreed national targets. Such targets will be reviewed on an annual basis by the Department and the Chief Fire Officers' Association.

Summary and Recommendation

Option	Total cost per annum	Total benefit per annum
A - Do nothing & use existing FRA powers	- £19.42M	- Direct: £0 - Indirect: Likelihood of fewer deaths and corresponding lesser economic impact
B - Make an Emergencies Order	- £19.42M	- Direct: £0 - Indirect: Likelihood of fewer deaths and corresponding lesser economic impact

49. Option B is the recommended option. It would make it mandatory for FRAs to make provision for CBRN and USAR emergencies, deploying the associated capabilities on request outside individual FRA areas to an extent reasonable to deal with the emergency. This would further improve national resilience to such disruptive incidents.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed Phil Woolas

Date 6th March 2007

Phil Woolas

Minister for Local Government and Community Cohesion

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