

EXPLANATORY MEMORANDUM & REGULATORY IMPACT ASSESSMENT FRAMEWORK

PART 1 - EXPLANATORY MEMORANDUM to the Fire and Rescue Services (Emergencies) (Wales) Order 2007

This Explanatory Memorandum has been prepared by the Social Justice and Local Government Division and is laid before the National Assembly for Wales.

(i) **Description**

This Order will improve national resilience to disruptive incidents such as terrorist attacks and serious accidents by giving fire and rescue authorities (“FRAs”) in Wales statutory functions for key types of emergencies: chemical, biological, radiological or nuclear (“CBRN”); emergencies requiring the freeing of people from collapsed structures or non-road transport wreckages (known as urban search and rescue (“USAR”) emergencies) and responding to emergencies outside the FRAs area.

(ii) **Matters of special interest to the Subordinate Legislation Committee**

FRAs currently exercise their discretionary power to make provision for emergencies or serious incidents of the descriptions set out in the draft Order using equipment and initial training provided by the New Dimension programme which forms part of the UK resilience capability.

The FRAs’ discretionary power to make provision for such incidents is derived from the Fire and Rescue Services Act 2004 (‘the Act’) which came into effect in November 2004. Section 22 of the Act gives the FRAs the power to make provision for any type of emergency likely to cause individuals to die, be injured or become seriously injured. The Order will impose a statutory requirement on FRAs to make provision for CBRN emergencies, rescue and protection of people in case of certain emergencies, and respond to emergencies outside a fire and rescue authority’s area. It will also prescribe what action is required to be taken by the FRAs for the purpose of functions conferred by Order.

(iii) **Legislative Background**

The power enabling this Instrument to be made is contained in section 9 of the Act. This section permits the Welsh Ministers to make an order to confer on FRAs functions relating to emergencies. The section also permits the Welsh Ministers to require FRAs to discharge those particular functions outside the FRA’s own area. Emergencies are defined in section 58 of the Act as an event or situation that causes or is likely to cause one or more individuals to die, be seriously injured

or become seriously ill, or serious harm to the environment including the life and health of plants and animals. The power was conferred on the National Assembly for Wales by virtue of section 62 of the Act, and is now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. This Instrument will be subject to the Negative Procedure.

(iv) **Purpose and intended effect of the legislation**

This Order imposes functions on FRAs to deal with particular emergencies in Wales. The following paragraphs give an explanation of functions that the Order provides for:-

Chemical, biological, radiological or nuclear emergency

1. The Emergencies Order would give FRAs statutory functions for “CBRN” emergencies and specifies the actions required of FRAs. The FRA must make provision in its area for the purpose of removing “CBRN” contaminants from people in the event of an emergency and contain for a reasonable period any water used ensuring that reasonable steps are taken to prevent or limit serious harm to the environment.

Rescue and protection in case of certain emergencies

2. A FRA must make provision for instances where an emergency involves;
 - a. a collapse of a building or other structure (apart from a tunnel or mine); or
 - b. an emergency involving a train, tram or aircraft where that emergency is likely to require the FRA to use its resources beyond the scope of its day to day operation.

Action required for purpose of functions conferred by Order

3. For the purpose of an emergency the FRA must;
 - a. secure the provision of necessary personnel, services and training to meet the requirements in paragraphs 1 and 2 above,
 - b. make arrangements for dealing with calls for help,
 - c. make arrangements for obtaining information needed, and
 - d. make arrangements to ensure that reasonable steps are taken to prevent or limit damage to property.

Responding to emergencies outside a fire and rescue authority's area

4. Where a FRA has specialist resources (including specialist trained personnel) to enable it to discharge its functions under this Order, and an emergency of a kind described in this Order occurs in the area of another authority, the FRA is required, if asked to do so, to use its resources in that other authority's area so far as is reasonable for the purpose of dealing with the emergency.

(v) Implementation

It is intended that this Order will be made on 7 November 2007, laid on 9 November 2007 and come into force on 3 December 2007. There are no significant implications if this date is not met save that FRAs will not have a statutory obligation to deal with emergencies in line with the New Dimension programme's rollout of specialist equipment and training to FRAs in April 2007. The England Order came into force 6 April 2007. The reason for the different dates is that the Wales Order was postponed until after the National Assembly for Wales elections.

(vi) Consultation

A consultation on the previously proposed Fire and Rescue Service (Charging and Emergencies) (Wales) Order was undertaken between 31 October 2005 and 31 December 2005. Following the consultation, it was decided to split the Order to form two separate Orders in April 2006 due to the requirement for further work to be undertaken prior to the 'Emergencies' element of the Order being implemented. Rather than delay introducing a combined Order, it was agreed to introduce two separate Orders, and the Fire and Rescue Service (Charging) (Wales) Order came into force in July 2006.

A further six week consultation on the Fire and Rescue Service (Emergencies) (Wales) Order 2007 was undertaken in July 2007. Please refer to the RIA consultation paragraph in Part 2 for further information.

(vii) Regulatory Impact Assessment – see Part 2

(viii) Compliance

The proposed legislation will (as far as is applicable) have due regard to the principle of equality of opportunity for all people (Government of Wales Act 2006) and the information in this Memorandum has been cleared with the Legal Services Department.

(ix) **Contact details**

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PART 2- REGULATORY IMPACT ASSESMENT to the Fire and Rescue Services (Emergencies) (Wales) Order 2007

(i) Options

Option 1: Do Nothing

The Welsh Assembly Government is providing specialist equipment and initial training to FRAs providing them with the ability to deal with “CBRN” and “USAR” emergencies. However, currently the FRAs are not obliged to deal with such emergencies. If a FRA opts to deal with such an emergency it would do so by exercising the discretionary existing power of FRAs under section 11 of the Act. This section states that a FRA may respond to an event or situation if that event or situation is likely to cause one or more individual to die, be injured or become ill, or harm to the environment. The Civil Contingencies Act 2004 requires FRAs to address risks in their areas together with other local responders such as the police and ambulance service and ensure that local FRAs maintain the capabilities for “CBRN” and “USAR” emergencies enabling a response both within and outside their own local areas.

Option 2: Make the Legislation

An Emergencies Order would oblige FRAs to make provision for certain types of emergencies. Those emergencies are set out in articles 2 and 3 of the Order and are also detailed in paragraph (iv) of the Explanatory Memorandum in Part 1 of this document. In order to satisfy the requirement to make provision for those types of emergencies, the FRA would have to (i) secure the provision of personnel, services and training as may be necessary, (ii) make arrangements for dealing with calls for help, (iii) make arrangements for obtaining necessary information, and (iv) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken

The advantage of this option is that by making such emergencies statutory functions “CBRN” and “USAR” emergencies will become core activities for FRAs. The FRA will also be obliged, if asked to do so, to use its specialist resources to respond to the type of emergencies specified in the order which occur outside of the FRAs area. This gives weight to the need for FRAs to maintain the capabilities for such types of emergencies in the long term. This would further improve national resilience to such disruptive incidents. The effect of the Emergencies Order would be to decrease the risk of FRAs not maintaining the capabilities for the types of emergencies specified in this Order, or of not deploying them outside of their own areas.

(ii) **Benefits**

This Order will improve national resilience to disruptive incidents such as terrorist attacks and serious accidents by giving FRAs in Wales statutory functions for key types of emergencies e.g. “CBRN” and “USAR”.

(iii) **Costs**

The Welsh Assembly Government currently provides FRAs with resources to deal with “CBRN” and “USAR” emergencies in Wales by procuring and delivering the specialist equipment and initial training to FRAs. To date the Welsh Assembly Government has funded £2.6m on resilience equipment and £1.8m on crewing and competence training, with a further £300k invested to develop a Wales training site for USAR training.

There is an expectation by the FRAs that new and large budget commitments, such as New Dimension equipment, would be recognised by the Assembly Government over the next three years with additional funding allocations from the Assembly Government.

All members of the public and the economy as a whole will 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 enable all parts of the economy to return to their normal functioning capacity more quickly. 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 New Dimension Programme.

(iv) **Competition Assessment**

N/A

(v) **Consultation**

With Stakeholders

The draft consultation document, under the previous heading ‘Fire and Rescue Services (Charging and Emergencies) (Wales) Order 2005’ was sent to the FRAs in Wales, Chief Executives of Local Authorities (“LAs”), Heads of Community Fire Safety, Fire Brigades Union (“FBU”), the Welsh Local Government Association the Retained Firefighters Union, the Fire Industry Confederation, the Association of Chief Police Officers, the Royal National Lifeboat Institution and a number of other relevant organisations between 31 October 2005 and 31 December 2005. The reason for the delay in making the order is detailed in the ‘subject committee’ paragraph below. A list of consultees is attached at Annex A.

Four responses were received from the three FRAs and Rhondda Cynon Taf County Borough Council. The majority of responses included giving FRAs mandatory functions in connection with open inland water, rescue at height, confined spaces, mud and landslides, tunnels and major flooding. Responses also included the need for the Assembly Government to consider additional funding to enable FRAs to discharge the new burdens.

In addition, a further consultation was undertaken for the Fire and Rescue Services (Emergency) (Wales) Order 2007 in June 2007. The Assembly Government received two responses from Mid and West Wales FRA and South Wales FRA. The responses included clarification on where responsibility will lie for emergencies involving marine vessels on inland waterways, mine or tunnel collapses and responding to emergencies outside a FRAs area and additional funding for new duties. The Assembly Government responded as follows:-

Inland waterways – FRAs have for many years responded to these incidents. FRAs can still respond to open inland water incidents under sections 11 and 12 of the FRS Act 2004 and the Assembly Government would expect this activity to be assessed as part of the FRA's Risk Reduction Plan

Mine or Tunnel Collapse - Working mines are covered by other legislation such as the Mines and Quarries Act 1957. The Mines Rescue Service provides emergency rescue cover for them. FRAs may have the ability to respond to emergencies under the FRS Act 2004 and can use USAR resources in doing so. Other organisations such as pot-holing teams may also provide rescue capability in mines and tunnel collapses. It is therefore up to local responders to assess the risks in their area and the capability of local organisations to respond to that risk and plan accordingly. This may, or may not include the FRS. Tunnel and rescue is also reinforced by the Civil Contingencies Act 2004 by its placing a duty on local responders such as FRAs to plan and prepare for likely disruptive incidents. In addition, the FRS Act 2004 gives FRAs the power to respond to emergencies for tunnel and mine 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.

Major flooding – High Volume Pumps and Personal Protective Equipment are provided as a means of the FRS dealing with major flooding as part of a co-ordinated response with many other agencies. The option of requiring FRAs to make provision for major flooding in a future Order is still available. FRAs will retain the power to make the provision they deem necessary according to their local circumstances.

Additional funding for “new burdens” – FRAs are being equipped and personnel are being trained under the New Dimension Programme for the new core functions in the Order as well as major flooding and

other incidents not included in the Order. FRSs are given additional resource funding according to the New Burdens Principle.

With Subject Committee

This Order was first notified as Fire and Rescue Services Act 2004 various pieces of secondary legislation relating to the functions of Fire and Rescue Services in Wales to the Social Justice and Regeneration Committee on 6 July 2005 (SJR 11-05) (p5) (Annex 1) via the list of forthcoming legislation. The title of the Order was subsequently changed to Fire and Rescue Services (Charging and Emergencies) (Wales) Order 2005 to reflect plans, at that time, to combine the charging and emergency elements in the one Order. The consultation raised a number of issues regarding emergencies, which required further consideration, such as the issue of “new burdens” on the FRS, such as “CBRN” and “USAR”, and to coincide with the final rollout of New Dimension equipment to ensure that FRSs were fully equipped and trained to deal with these new core functions. It was decided to separate the two elements into two separate Orders and the Fire and Rescue Services (Charging) (Wales) Order came into effect in July 2006.

The Social Justice and Regeneration Committee did not identify this Order for detailed scrutiny. The Fire and Rescue Services (Emergencies) (Wales) Order 2007 was first notified to the Social Justice and Regeneration Committee on May 2006 SJR (2) 07-06 (p.4) Annex 1.

(vi) **Post implementation review**

There is no intention to review the services in the Order in the short term. Any proposals to introduce additional functions will be subject to full consultation as and when they arise, and would be introduced by a separate order.

(vii) **Summary**

This Order will improve national resilience to disruptive incidents such as terrorist attacks and serious accidents by giving FRAs in Wales statutory functions for key types of emergencies: chemical, biological, radiological or nuclear emergencies; emergencies requiring the freeing of people from collapsed structures or non-road transport wreckage and respond to emergencies outside a FRAs area.

Annex A

'Charging and Emergencies' and 'Emergencies' Distribution List

Chief Fire Officers
Fire Service Chairs
Chief Executives of LAs
Heads of Community Fire Safety
Federation of Small Businesses in Wales
Wales Audit Office
CBI Cymru Wales, Confederation of British Industry
Environment Agency Wales
Welsh Local Government Association
Association of British Insurers
FBU
Retained Firefighters Union
Rospa Wales
Fire Industry Confederation
Institution of Fire Engineers
Health and Safety Executive
Fire Service College
Public Health Protection Division
Chief Executive of Transport Wales
Office of the Deputy Prime minister
Scottish Executive
The Department of Health, Social Services and Public Safety
Mountain Rescue Council
Maritime and Coastguard Agency
Association of Train Operating Companies
Ministry of Defence
Civil Aviation Authority
Rail Accident Integration Branch
Royal National Lifeboat Institution
Association of Chief Police Officers
Association of Principle Fire Officers

