

Civil Contingencies Secretariat

Civil Contingencies Act 2004: a short guide

Background

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

The Government carried out a public consultation exercise from June to September 2003 on a draft Bill setting out proposals for a new framework for civil protection work at the local level and a new framework for the use of special legislative measures. The draft Bill then underwent pre-legislative scrutiny by a Joint Parliamentary Committee. Following amendments in the light of consultation, and the recommendations of the Committee, the Bill was introduced to Parliament on 7 January 2004. Its development was informed from the start by close consultation with key stakeholders in what was an open and inclusive policy-making process.

The Bill received Royal Assent on 18 November 2004. It should henceforth be known as the Civil Contingencies Act 2004 (the "Act").

Overview of the Act

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 The overall objective for both parts of the Act is to modernise outdated legislation.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

Definition of Emergency

Civil Protection activity at the local level previously took place under Civil Defence legislation dating from 1948. This legislation defined the events local responders should prepare for in terms of "hostile attack" from a foreign power. With the ending of the Cold War such a threat evaporated and local efforts have been focused on preparing for civil emergencies such as localised flooding and major transport accidents. Emergency Powers legislation is older still. The Emergency Powers Act 1920 defines an emergency in terms of interference with specified services and resources which will deprive the community of the essentials of life. A great deal has changed since 1920. The list of services and resources in the 1920 Act was out of date. In addition, the focus of the 1920 Act on essential services and resources failed to reflect the kinds of emergency which the UK now faces (for example, the 1920 Act did not clearly cover terrorist threats or threats to the environment).

In modernising both local civil protection activities, and the powers the Government may need in order to deal with the most serious disruptive challenges, it was necessary to introduce a new updated definition of an emergency. The Act focuses on three types of threat -

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

This does not mean that the definition of “emergency” is the same in both Parts. In Part 1, the threat must pose a threat of serious damage to human welfare or the environment of a “place” in the United Kingdom. This reflects the fact that Part 1 is designed to deal with preparations by local responders for localised emergencies. In Part 2, the threat must pose a threat of serious damage to human welfare or the environment of one of the English Regions, or one of the other constituent parts of the UK (Scotland, Wales or Northern Ireland). This higher threshold reflects the fact that Part 2 is designed for use in very serious emergencies which affect a larger geographical area.

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

Part 1: local arrangements for civil protection

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

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

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

Those to be covered by the duties at present are:

Local Authorities

- All principal local authorities

Government agencies

- Environment Agency
- Scottish Environment Protection Agency

Emergency Services

- Police Forces
- British Transport

Police

- Police Service of Northern Ireland
- Fire Authorities
- Ambulance Services

NHS Bodies

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

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

Utilities

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

Transport

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

Government

- Health and Safety Executive

Health

- The Common Services Agency (in Scotland)

The Act enables the Minister to alter the membership of both Categories of responder in

order to ensure flexibility and to take account of future developments.

The detail of what this means in practical terms will be fleshed out in regulations and guidance. It is intended that Category 1 and 2 organisations come together to form ‘Local Resilience Forums’ (based on police areas) which will help co-ordination and co-operation between responders at the local level.

While it is primarily focused at civil emergencies, Part 1 will improve the UK’s ability to deal with the consequences of a wide range of disruptions by improving the planning process at a local level, building better contacts between organisations and ensuring what goes on at the local level dovetails with efforts at the regional and national levels.

Part 2: emergency powers

In the UK emergency powers allow the making of special temporary legislation to deal with the most serious of emergencies. They are not a means for instigating martial law, for undermining Parliament, banning political parties or anything else of that nature. An essential point to note is that Emergency Powers legislation is a mechanism for dealing with only the most serious of emergencies that require an urgent response, an instrument of last resort. The previous emergency powers legislation (the Emergency Powers Act 1920) was used twelve times in its eighty-four year history, the last time being in 1974. In the years since, a considerable amount of sector specific emergency legislation has been introduced which reduced the need to resort to emergency powers, in part because of a recognition that Emergency Powers legislation was inadequate.

Nevertheless, there is still a need for a latent capacity to rapidly make new temporary statutory provision where this is the most effective way of enabling the resolution of an emergency situation. The Government needs a tool that can be deployed to address all forms of disruptive challenge where existing legislation is insufficient.

The Act repeals the existing legislation (the Emergency Powers Act 1920 and its Northern Ireland counterpart, the Emergency Powers Act (Northern Ireland) 1926), and the emergency powers provisions of the Act extend to the whole of the UK. It sets out a new definition of what constitutes an emergency appropriate to the times in which we live and incorporating new risks and threats which were not so relevant in 1920, including terrorist attacks, contamination of land following a biological or chemical terrorist attack and loss of communications systems on which we now depend.

As with the 1920 Act, the Act allows the making of temporary special legislation aimed at dealing with a serious emergency that fits within the definition. The Queen, as Head of State, will formally indicate that emergency powers are necessary as part of the Order in Council that makes the regulations themselves. For the first time a fallback option has been included to cover the possibility that emergency powers will be needed, where the Queen is, for whatever reason, unable to act. The Act therefore allows for a senior Minister or the Prime Minister to make the regulations in the unlikely event that Her Majesty is not able to do so.

The Act introduces a range of other new features, mostly designed to ensure emergency powers cannot be misused and can be used in a more targeted and proportionate manner. The centre piece of these is the “triple lock”, which ensures emergency powers will only be available if:

- an emergency that threatens serious damage to human welfare, the environment or security has occurred, is occurring or is about to occur;

- it is necessary to make provision urgently in order to resolve the emergency as existing powers are insufficient and it is not possible to bring forward a Bill in the usual way because of the need to act urgently; and
- emergency regulations must be proportionate to the aspect or effect of the emergency they are directed at.

In addition emergency regulations:

- cannot prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action;
- cannot instigate any form of military conscription;
- cannot alter any aspect of criminal procedures;
- cannot create any new offence other than breach of the regulations themselves;
- must be compatible with the Human Rights Act and EU law; and
- are open to challenge in the courts

For the first time it is possible to use emergency powers on a regional and/or devolved administration basis. This ensures any special temporary legislation will apply only in the part of the UK affected by the emergency, leaving those elsewhere unaffected.

The Act also requires the appointment of a 'Regional Nominated Co-ordinator' ("Emergency Co-ordinator" in the devolved administrations). This individual will be a highly trained crisismanager

with expert knowledge of the particular type of emergency in question who, if emergency powers are used, will act as the focal point for co-ordination of response efforts at the regional or devolved administration level.

As with the existing legislation, emergency regulations must be presented to Parliament for its approval as soon as practicable after being made. Parliament may amend the regulations and must approve them within seven days of laying. If Parliamentary approval is not forthcoming, the regulations cease to have effect. The maker of emergency regulations would be subject to an obligation to protect and restore the ability of Parliament to scrutinise emergency regulations, and the ability of the Courts to entertain challenges. The Government has given a commitment to ask a senior Privy Councillor to conduct an inquiry within one year of any use of emergency powers. The report would be published and debated in both Houses of Parliament.

Devolution

The Act applies to the whole of the UK and reflects the various devolution settlements. Civil protection is largely devolved to Scotland. However, the Scottish Parliament consented to Part 1 of the Act being extended to Scotland. In light of this, the powers conferred on Ministers under Part 1 of the Act (power to make regulations and guidance etc.) are, in relation to devolved matters in Scotland, exercisable by Scottish Ministers. The Scottish Ministers and UK Ministers must consult each other when exercising their legislative powers under Part 1. In Wales, UK Ministers will make legislation and issue guidance in relation to responders in Wales. However, the Act requires the UK Ministers to obtain the consent of the Assembly before taking action in relation to a responder in Wales which falls within devolved competence. In Northern Ireland different administrative arrangements at the local level make it impossible for Part 1 to apply to Northern Ireland in the same way as it applies in the rest of the UK. It does apply to certain bodies in Northern Ireland who exercise non-devolved functions. In addition, Northern Ireland Ministers will ensure

devolved organisations act in line with the duties set out in the Bill.

Emergency powers are a reserved matter. However, Part 2 ensures the devolved administrations will be consulted, if emergency powers are to be used in their territory, wherever possible. It allows emergency powers to be used in Scotland, Wales or Northern Ireland alone for the first time, though the use of emergency powers remains with Westminster.

Concordats will be drawn up with each of the devolved administrations setting out in more detail how these arrangements will work in practice in relation to both Parts of the Act.

These will be published in due course.

Further information

The Act, and all accompanying documents, can be found at

<http://www.ukresilience.info/ccact/index.htm>.

If you would like to know more about any specific aspect of the Act, you can email the Act Implementation Team at ccact@cabinet-office.x.gsi.gov.uk.