



Civil Contingencies Act 2004: a short guide (revised)



Background

Following the fuel crisis and the severe flooding in the autumn and winter of 2000 and the outbreak of Foot and Mouth Disease in 2001, 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.

Following public consultation on a draft Bill from June to September 2003 and pre-legislative scrutiny by a Joint Parliamentary Committee, the Civil Contingencies 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 and henceforth became known as the Civil Contingencies Act 2004 (the "Act").

This guide gives a brief overview of the main provisions of 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 capable of meeting the challenges of the twenty-first century.

The Act is separated into two substantive parts:

- Part 1: focuses on local arrangements for civil protection, establishing a statutory framework of roles and responsibilities for local responders.
- Part 2: focuses on emergency powers, establishing a modern framework for the use of special legislative measures that might be necessary to deal with the effects of the most serious emergencies.

Key to modernising existing legislation is updating 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 the legislation, it was necessary to introduce a new updated definition of an emergency which focuses on the risks we face in the 21st century. The definition of emergency in the Act focuses on the consequences of emergencies. It defines an emergency as:

- 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.

For Part 1 of the Act the definition sets out the range of possible incidents for which local responders must prepare when fulfilling their 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.

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.

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. Local responders are the building block of resilience in the UK, and the Act will enhance existing arrangements by:

- Establishing a clear set of roles and responsibilities for local responders;
- Giving greater structure and consistency to local civil protection activity; and
- Establishing a sound basis for performance management at a local level.

The Act divides local responders into two categories depending on the extent of their involvement in civil protection work, and places a proportionate set of duties on each.

Category 1 responders are those organisations at the core of emergency response (e.g. emergency services, local authorities). Category 1 responders are subject to the full set of civil protection duties. They are required to:

- Assess the risk of emergencies occurring and use this to inform contingency 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).

The definition of emergency in the Act defines the sorts of events or situations that Category 1 responders should be preparing for. Section 2 of the Act additionally establishes a threshold that events or situations would need to meet to constitute an emergency, and thus to trigger the duties in Part 1 of the Act. This provides that Category 1 responders' duties under the Act only apply to events or situations which require the use of assets beyond the scope of normal operations and require a special deployment.

Category 2 organisations (e.g. Health and Safety Executive, transport and utility companies) are "co-operating bodies" who while less likely to be involved in the heart of planning work, will be heavily involved in incidents that affect their sector. Category 2 responders have a lesser set of duties – co-operating and sharing relevant information with other Category 1 and 2 responders.

The detail of what this means in practical terms is fleshed out in the Contingency Planning Regulations 2005 and statutory guidance *Emergency Preparedness* which can be found at <http://www.ukresilience.info/ccact>. Category 1 and 2 responders are also required to come together to form 'Local Resilience Forums' (based on police force areas outside London) which will help co-ordination and co-operation between responders at the local level.

A full list of Category 1 and 2 responders can be found at Annex A. 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 bulk of the duties in Part 1 of the Act came fully into force on 14 November 2005, with the duty on local authorities to give business continuity advice being implemented on 15 May 2006.

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). If emergency powers are used, he/she 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.

Part 2 of the Act was brought into force on 10 December 2004.

Devolution

The Act applies to the whole of the UK and reflects the various devolution settlements:

Part 1

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 (e.g. Maritime and Coastguard Agency, Police Service of Northern Ireland). In addition, the Northern Ireland Administration has developed the Northern Ireland Civil Contingencies Framework, which will ensure that responders falling within transferred competence act in line with the duties set out in the Act. The Framework is available at <http://cepu.nics.gov.uk/pubs/NI%20CCF.pdf>

Part 2

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 setting out in more detail how these arrangements will work in practice have been agreed with the Welsh Assembly Government and with Scottish Ministers, while that with the Northern Ireland Administration will be finalised shortly. The signed concordats can be viewed on the devolved administrations' websites as well as on the UKResilience site at http://www.ukresilience.info/ccact/0602scots_concordat.pdf
http://www.ukresilience.info/ccact/wales_concordat.pdf



Further information

The Act, and 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 or call us on 020 7276 5053.

ANNEX A

CIVIL CONTINGENCIES ACT 2004: LIST OF RESPONDERS

Schedule 1 of the Civil Contingencies Act lists the responders subject to its provisions. As described in Annex 1A, the Act splits local responders into two categories and imposes a different set of requirements on each category. Category 1 and 2 responders in England and Wales are listed below.

Section 13 of the Act enables Ministers to amend the list of responders with the agreement of Parliament.

Category 1 responders (“core responders”)

Emergencies services

- Police forces
- British Transport Police
- Fire authorities
- Ambulance services
- Maritime and Coastguard Agency

Local authorities

- All principal local authorities (i.e. metropolitan districts, shire counties, shire districts, shire unitaries)
- Port Health Authorities

Health bodies

- Primary Care Trusts
- Acute Trusts
- Foundation Trusts
- Local Health Boards (in Wales)
- Any Welsh NHS Trust which provides public health services
- Health Protection Agency

Government agencies

- Environment Agency



-
- Scottish Environment Agency

Category 2 responders (“co-operating responders”)

Utilities

- Electricity distributors and transmitters
- Gas distributors
- Water and sewerage undertakers
- Telephone service providers (fixed and mobile)

Transport

- Network Rail
- Train Operating Companies (passenger and freight)
- London Underground
- Transport for London
- Airport operators
- Harbour authorities
- Highways Agency

Health bodies

- Strategic Health Authorities

Government agencies

- Health and Safety Executive