

THE CIVIL CONTINGENCIES ACT 2004 – AN OVERVIEW

History

In the United Kingdom, all Civil Protection activity at the local level was empowered by Civil Defence legislation dating from 1948. This legislation had 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 in recent years have been focused on preparing for civil emergencies such as localised flooding and major transport accidents. The provisions for Emergency Powers were based on the Emergency Powers Act 1920 which defined an emergency in terms of certain services and resources which provided the community with the essentials of life. Clearly, the 1920 Act is out of date and doesn't reflect the threats which the UK now faces (for example, the 1920 Act did not cover terrorist threats or threats to the environment).

Background

After the fuel crisis and severe flooding in the autumn and winter of 2000, the Deputy Prime Minister launched a review of current emergency planning arrangements. This included a public consultation with representatives from both public and private sectors. In addition to a formal BCI presence, a number of BCI members were involved in the process as a natural extension of their normal responsibilities. The review reinforced the Government's viewpoint that the existing legislation was out of date for modern civil protection efforts and new legislation was needed.

The development of the new legislation was initiated by a further public consultation working on a draft Bill. This exercise ran from June to September 2003, setting out the 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 resulting draft Bill was then scrutinised by a Joint Parliamentary Committee. Following amendments in the light of further consultation, and the recommendations of the Committee, the Bill was introduced to Parliament in January 2004. Whilst developing the Bill, the Cabinet Office implementation team worked in close consultation with a number of key stakeholders, including the BCI, in an open and comprehensive policy-making process.

The Bill was passed by Parliament on 17th November 2004 and received Royal Assent on 18th November to become the Civil Contingencies Act 2004 (The “Act”).

The Act comes into force in April 2005 and compliance will be enforced and audited from September 2005 onwards, allowing 6 months grace for implementation. However, the BCM promotion duty will not be enforced until 12 months later, in April 2006, when the whole of the Act will become subject to full audit and enforcement.

The Act

The Act, and its accompanying regulations and non-legislative measures, provides a single framework for civil protection in the United Kingdom, designed to meet the challenges of the twenty first century. The Act is in two parts: Part 1 deals with the local arrangements for civil protection whilst Part 2 deals with emergency powers.

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.
- War or terrorism, which threatens serious damage to security.

Part 1: Local Arrangements for Civil Protection

Part 1 of the Act establishes a framework for civil protection at the local level. This, together with accompanying guidance and regulations, gives clear expectations and responsibilities for front line responders at the local level to ensure they are prepared to deal with the full range of emergencies from localised incidents through to catastrophic emergencies. It divides local responders into two categories.

Category 1 Responders are the:

- Emergency Services, Local Authorities, the Marine and Coastguard Agency and the Environment Agency

Category 2 Responders are the:

- Utilities, Telecommunications, Harbour Authorities, Rail Operators and the Health and Safety Executive.

Amongst other duties, Category 1 responders are required to:

- Develop emergency plans
- Make Business Continuity Management arrangements
- Share information and co-operate with other responders to enhance coordination
- Provide advice and assistance to local businesses and voluntary organisations about Business Continuity Management. (Local Authorities only).

Practical details will be fleshed out in the regulations and guidance provided by the Cabinet Office, developed in consultation with experts and stakeholders. A number of BCI members have been involved in the development of this material.

Category 1 and 2 organisations are to come together to form 'Local Resilience Forums' (based on police areas) at the local level.

Although mainly concerned with civil emergencies, Part 1 will improve the UK capability to deal with the consequences of disruptions by improving the planning process at a local level, building better contacts between organisations and ensuring that whatever happens at the local level dovetails with efforts at the regional and national levels.

Part 2: Emergency Powers

Emergency Powers under the Act allow for special temporary legislation to deal with grave emergencies within the UK. They cannot be used to instigate martial law, undermine Parliament, ban political parties or anything else of that nature. The Emergency Powers legislation is only for dealing with serious emergencies that require an urgent response; it's an instrument of last resort. The previous emergency powers (under the Emergency Powers Act 1920) were only used 12 times in their eighty-four year history, the last time being in 1974. Since then a certain amount of sector specific emergency legislation has been brought in to reduce the need for emergency powers, recognising that the Emergency Powers legislation was inadequate.

However, there is still a potential need for urgent temporary statutory provision where this is the most effective way of resolving an emergency situation. The Government needs a tool to address disruptive challenges where existing legislation is insufficient.

The new Act allows for temporary special legislation aimed at dealing with a serious emergency. The Queen would normally declare when such emergency powers are necessary. The Act also allows for a senior Minister or the Prime Minister to make the regulations if Her Majesty is unable to do so.

The Act includes some built in protection against misuse; the emergency powers are only available if:

- An emergency threatening serious damage to human welfare, the environment or security has occurred, is occurring or is about to occur and
- Existing powers are insufficient and there is a need to act urgently

Any resulting emergency regulations must be proportionate to the aspect or effect of the emergency they are directed at.

Furthermore 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
- Are open to challenge in the courts

For the first time, it is now possible to use emergency powers on a regional basis so that any special temporary legislation will apply only in that part of the UK which is affected by the emergency, leaving everywhere else unaffected.

The Act also requires the appointment of a 'Regional Nominated Co-ordinator' ("Emergency Co-ordinator" in the devolved administrations i.e. Northern Ireland, Scotland and Wales). If the emergency powers are used, this individual will act as the focal point for co-ordination of response efforts at the regional or devolved administration level.

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 subsequently be published and debated in both Houses of Parliament.

Further information

The Act, and all the 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

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