

CIVIL CONTINGENCIES ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Meaning of “emergency”

13. *Subsection (1)* defines “emergency” for the purposes of Part 1. Events such as a terrorist attack, disruption of fuel supplies, contamination of land with a chemical matter and an epidemic could satisfy the definition, should they reach the required level of seriousness.
14. *Subsections (2) and (3)* specify exhaustively the kinds of event or situation which may threaten damage to human welfare or the environment. In order to satisfy the definition of “emergency”, the event or situation must also threaten *serious* damage to human welfare in, or the environment of, *a place in the United Kingdom*. This definition differs from the definition of “emergency” for the purposes of Part 2 of the Act in that, for the purposes of Part 2, the situation must threaten serious damage to human welfare in, or the environment of, the United Kingdom or in a Part or region (rather than a place in the United Kingdom).
15. *Subsection (4)* enables a Minister of the Crown (or, in Scotland, the Scottish Ministers) to provide by order that a particular event or situation (or class of event or situation) is to be treated as falling within (or outside) the definition of emergency. This subsection also enables a Minister of the Crown to amend the list of events or situations which may threaten damage to human welfare by providing that in so far as an event or situation involves or causes disruption of a specified supply, system, facility or service, it is (or is not) to be treated as threatening damage to human welfare. This power is designed to ensure that should a new supply, system, facility or service become so essential that the civil protection duties of Category 1 responders should apply in relation to disruption of that supply, system, facility or service, the Act can be amended accordingly. Any orders under subsection (4) are subject to the affirmative procedure.

Section 2: Duty to assess, plan and advise

16. *Subsection (1)* imposes a series of duties on Category 1 responders in relation to contingency planning. In broad terms, these duties require Category 1 responders to assess the risk of an emergency occurring, to maintain plans to respond to an emergency, to publish the assessments and plans in so far as this is necessary or desirable to deal with an emergency and to maintain arrangements to warn, inform and advise members of the public in the event of an emergency.
17. *Subsection (2)* provides that the duties under subsection (1) only apply in relation to an emergency if the emergency would be likely seriously to obstruct a Category 1 responder in the performance of its functions or the responder would be unable to take action in relation to the emergency without changing the deployment of its resources or acquiring additional responses. One effect of this provision is that whether the contingency planning duties of a Category 1 responder apply in relation to an emergency of a particular kind will depend upon the functions of the particular Category 1 responder and the way in which the responder exercises those functions.

18. *Subsections (3) and (4)* enable the Minister of the Crown and, in relation to certain Category 1 responders in Scotland (those listed in Part 2 of Schedule 1 – “Scottish Category 1 responders”), the Scottish Ministers, to make regulations about the extent of a duty under subsection (1) and the manner in which such a duty is to be performed.
19. *Subsection (5)* specifies particular provisions which may be included in regulations under subsection (3). The list of provisions is not exhaustive. In particular, the effect of paragraphs (a) and (b) of subsection (5) is that regulations under subsection (3) may cut back the extent of a duty imposed by subsection (1). Paragraphs (h) and (i) enable regulations to impose duties on Category 2 responders to co-operate with, or to provide information to, Category 1 responders in connection with the performance of a duty under subsection (1). Paragraph (k) enables regulations to be made which require Category 1 responders to have regard to the activities of voluntary organisations when performing their duty to maintain plans.
20. *Subsection (6)* provides that subsection (5) has effect in relation to subsection (4) (regulations made by Scottish Ministers), subject to certain modifications.

Section 3: Section 2: supplemental

21. *Subsection (1)* provides for guidance to be issued by a Minister of the Crown to Category 1 and Category 2 responders about the extent of the duties imposed under section 2(1), the manner in which such duties are to be performed and regulations made under section 2(3). *Subsection (2)* enables the Scottish Ministers to issue guidance to Scottish Category 1 responders and Scottish Category 2 responders (those persons and bodies listed in Part 4 of Schedule 1) about the extent of the duties imposed under section 2(1), the manner in which such duties are to be performed and regulations made under section 2(4).

Section 4: Advice and assistance to the public

22. *Subsection (1)* imposes a duty to give advice and assistance to the public in connection with the making of arrangements for the continuance of commercial activities should an emergency occur. Subsection (1) also requires advice and assistance to be provided as to the continuance of activities of voluntary organisations should an emergency occur. Only Category 1 responders which are local authorities (but not port health authorities) are subject to this duty.
23. *Subsections (2) and (3)* enable a Minister of the Crown and, in relation to local authorities in Scotland, the Scottish Ministers, to make regulations about the extent of the duty and the manner in which it is to be performed. *Subsection (4)* provides that provision of the kind which may be made by regulations under section 2(5) may be made in regulations made under subsection (2) or (3) (with the exclusion of certain provisions which are specific to regulations made under section 2). Subsection (4) also enables the regulations under subsection (2) or (3) to contain provision as to charging. *Subsection (5)* imposes limits on the amount which a local authority may be permitted to charge for advice and assistance provided pursuant to section 4. *Subsections (6) and (7)* enable a Minister of the Crown and, in relation to Scottish local authorities, the Scottish Ministers, to issue guidance about the extent of the duties imposed under subsection (1), the manner in which such duties are to be performed and regulations made under subsection (2) or (3).

Section 5: General measures

24. *Subsections (1) and (2)* enable a Minister of the Crown and, in relation to Scottish Category 1 responders, the Scottish Ministers, to require a Category 1 responder to perform a function for a purpose relating to an emergency. This provision does not permit the conferral of additional functions on a Category 1 responder although *subsections (4) and (5)* enable provision to be made as to the manner in which the responder should exercise its function.

Section 6: Disclosure of information

25. *Subsections (1) and (2)* enable a Minister of the Crown and, in relation to Scottish Category 1 responders or Scottish Category 2 responders, the Scottish Ministers, to make regulations which require or permit information sharing between Category 1 responders and Category 2 responders. Such provision may only be made in connection with a function of a responder which relates to emergencies. This reflects the fact that Category 1 and 2 responders may have functions under other legislation or legal provisions which relate to emergencies.

Section 7: Urgency

26. *Subsection (1)* enables a Minister of the Crown to do what could be done under section 5 (orders about general measures) or section 6 (regulations relating to disclosure of information) by way of direction where there is insufficient time for secondary legislation to be made. Directions must be in writing. *Subsection (4)* makes further provision as to the powers and duties of the Minister to revoke or vary directions and the duration of a direction. In particular, directions cease to have effect 21 days after they have been made.

Section 8: Urgency: Scotland

27. *Subsection (1)* enables the Scottish Ministers to do what could be done under section 5 (orders about general measures) and section 6 (regulations relating to disclosure of information) by way of direction where there is insufficient time for secondary legislation to be made. *Subsection (4)* makes further provision as to the powers and duties of the Scottish Ministers to revoke or vary directions and the duration of a direction. In particular, directions cease to have effect 21 days after they have been made.

Section 9: Monitoring by Government

28. *Subsections (1) and (2)* enable a Minister of the Crown and, in relation to Scottish Category 1 and 2 responders, the Scottish Ministers, to require a Category 1 or Category 2 responder to provide information which relates to the performance of their functions under Part 1 of the Act. It is likely that this power will be used to support the functions of making secondary legislation under Part 1 and of taking enforcement action under sections 10 and 11.

Section 10: Enforcement

29. *Subsection (1)* enables a Minister of the Crown, a Category 1 responder listed in Part 1 of Schedule 1 or a Category 2 responder listed in Part 3 of Schedule 1 to enforce duties under the Act by way of proceedings in the High Court or the Court of Session. By virtue of *subsection (2)*, the High Court or Court of Session may grant any relief or make any order that it thinks appropriate.

Section 11: Enforcement: Scotland

30. *Subsection (1)* enables the Scottish Ministers, a Scottish Category 1 responder or a Scottish Category 2 responder to enforce duties under the Act by way of proceedings in the Court of Session. By virtue of *subsection (2)*, the Court of Session may grant any relief or make any order that it thinks appropriate.

Section 12: Provision of information

31. *Section 12* specifies in more detail the kind of provision which may be included in secondary legislation made under Part 1 of the Act which relates to the provision of information.

Section 13: Amendment of lists of responders

32. *Subsection (1)* enables a Minister of the Crown to amend the lists of Category 1 and Category 2 responders in Parts 1 and 3 of Schedule 1. *Subsection (2)* enables the Scottish Ministers to amend the list of Scottish Category 1 and 2 responders in Parts 2 and 4 of Schedule 1. In connection with any such amendment, *subsection (3)* enables the Minister and the Scottish Ministers to amend any other enactment (including the Act itself). For example, should a body which has functions in Wales be added to the list of Category 1 responders, it may be appropriate to amend section 16 (which provides for the involvement of the National Assembly for Wales in action under Part 1 of the Act). A person or body may be added either generally or in relation to specified functions only.

Section 14: Scotland: consultation

33. *Subsection (1)* requires a Minister of the Crown to consult the Scottish Ministers before making regulations or an order under Part 1 of the Act in relation to person or body which has functions which are exercisable in relation to Scotland. *Subsection (2)* requires the Scottish Ministers to consult a Minister of the Crown before making regulations or an order under Part 1.

Section 15: Scotland: cross-border collaboration

34. *Subsection (1)* enables the Scottish Ministers to make regulations requiring Scottish Category 1 and 2 responders to co-operate with, and to provide information to, a Category 1 responder listed in Part 1 of Schedule 1 in connection with the duty of that Category 1 responder under section 2 or 4 of the Act. *Subsection (2)* enables the Scottish Ministers to issue guidance about such regulations. *Subsection (3)* confers an analogous power on a Minister of the Crown in relation to Category 1 and 2 responders listed in Part 1 or 3 of Schedule 1 for the purposes of requiring such responders to co-operate with, and to provide information to, a Scottish Category 1 responder in connection with the duty of that Scottish Category 1 responder under section 2 or 4 of the Act. *Subsection (4)* enables a Minister of the Crown to issue guidance on such regulations.
35. *Subsection (5)* enables the Scottish Ministers to make an order requiring a Scottish Category 1 or 2 responder to co-operate with, or to provide information to, a Category 1 responder listed in Part 1 of Schedule 1 which is subject to a duty under an order made under section 5 by a Minister of the Crown. *Subsection (6)* confers an analogous power on a Minister of the Crown to require a Category 1 or 2 responder listed in Part 1 or 3 of Schedule 1 to co-operate with, or to provide information to, a Scottish Category 1 responder which is subject to a duty under an order made under section 5 by the Scottish Ministers.
36. *Subsection (7)* provides that responders must comply with an order or regulations under section 15 and must have regard to guidance issued under section 15. *Subsection (8)* modifies provisions of Part 1 so as to ensure that relevant provisions of Part 1 apply to the regulation and order making powers conferred by section 15.

Section 16: National Assembly for Wales

37. *Subsections (1) and (2)* provide for the National Assembly for Wales to be involved where action is taken under Part 1 of the Act in relation to Wales or in relation to a body or person in relation to which the Assembly has functions. In the former case (action relating to Wales), the Assembly must be consulted. In the latter case (action relating to a body or person in relation to which the Assembly has functions – such bodies are specified in subsection (4)), the Assembly must give its consent.

Section 17: Regulations and orders

38. *Subsections (1) to (5)* set out the procedural requirements for secondary legislation made under Part 1 of the Act.

Section 19: Meaning of “emergency”

39. *Subsection (1)* defines ‘emergency’ for the purposes of Part 2. Events such as a terrorist attack, disruption of fuel supplies, contamination of land with a chemical matter and an epidemic could satisfy the definition, should they reach the required level of seriousness.
40. *Subsections (2) and (3)* specify exhaustively the kinds of event or situation which may threaten damage to human welfare or the environment. In order to satisfy the definition of “emergency”, the event or situation must threaten *serious* damage to human welfare in, or the environment of, *the United Kingdom (or a Part or region)*. This definition differs to the definition of “emergency” for the purposes of Part 1 of the Act in that, for Part 1, the situation must threaten serious damage to human welfare in, or the environment of, a place in the United Kingdom (rather than in the United Kingdom or in a Part or region).
41. *Subsection (5)* enables the Secretary of State to amend the list of events or situations which may threaten damage to human welfare by providing that in so far as an event or situation involves or causes disruption of a specified supply, system, facility or service, it is (or is not) to be treated as threatening damage to human welfare. This is designed to ensure that should a supply, system, facility or service become so essential that disruption of it would warrant the exercise of emergency powers, the Act can be amended accordingly. *Subsection (6)* provides that no such order may be made unless a draft has been laid before and approved by each House of Parliament.

“*Regions*” are those regions specified in Schedule 1 to the Regional Development Agencies Act 1998. There are 9 such regions; East Midlands, Eastern, London, North East, North West, South East, South West, West Midlands and Yorkshire and the Humber.

Section 20: Power to make emergency regulations

42. *Subsection (1)* enables Her Majesty to make emergency regulations by Order in Council if satisfied that the conditions set out in section 21 are satisfied. In exercising this power, Her Majesty would act on the advice of her Ministers, principally the Secretary of State for the Home Department as the member of the Cabinet with responsibility for domestic security and resilience.
43. *Subsection (2)* enables a senior Minister of the Crown to make emergency regulations if it would not be possible without serious delay to arrange for an Order in Council under subsection (1). “Senior Minister of the Crown” is defined by *subsection (3)* to mean the First Lord of the Treasury (the Prime Minister), any of Her Majesty’s Principal Secretaries of State and the Commissioners of Her Majesty’s Treasury (the functions of the Treasury are customarily carried out by the Commissioners). In practice, the exercise of these powers will principally be the responsibility of the Secretary of State for the Home Department as the member of the Cabinet with responsibility for domestic security and resilience, acting by collective agreement. Should the Secretary of State for the Home Department not be able to make the emergency regulations, or if the emergency is focused on a particular sector which is outside the responsibilities of that Department (for example, an emergency relating solely to animal health), it may be appropriate for the lead responsibility to pass to another Minister.
44. *Subsection (5)* provides that regulations must be prefaced with a statement that the maker of the regulations is satisfied of various matters, including that an emergency has occurred, is occurring or is about to occur. The statement must also provide that

the maker of the regulations is satisfied that the regulations are compatible with the Convention rights (within the meaning of the Human Rights Act 1998). This symbolic statement reflects in part the procedure under the existing legislation (the Emergency Powers Act 1920 and its Northern Ireland equivalent) which requires Her Majesty to proclaim that a state of emergency exists before making emergency regulations.

Section 21: conditions for making emergency regulations

45. *Section 21* sets out the conditions which Her Majesty (or a senior Minister of the Crown) must be satisfied have been met before making emergency regulations.
46. The three conditions are that an emergency has occurred, is occurring or is about to occur (*subsection (2)*); it is necessary to make provision for the purpose of dealing with the emergency (*subsection (3)*); and the need for the provision is urgent (*subsection (4)*). *Subsections (5) and (6)* specify that it is necessary to make provision which is the same as an enactment, or provision which could be made under an enactment, in particular if the existing legislation cannot be relied upon without the risk of serious delay, it is not possible without the risk of serious delay to ascertain whether the existing legislation can be relied upon or the existing legislation might be insufficiently effective. This reflects the presumption that emergency regulations will not be made where existing legislation is (or provision can be made under existing legislation which is) adequate to deal with the emergency.

Section 22: Scope of emergency regulations

47. *Subsection (1)* provides that emergency regulations may make any provision which the person making the regulations is satisfied is appropriate for the purpose of dealing with an aspect or effect of the emergency.
48. *Subsection (2)* specifies certain purposes for which provision may be included in emergency regulations. This list is not exhaustive. In broad terms, the particular purposes specified in subsection (2) reflect the definition of “emergency” in section 19. For example, an event or situation which causes or may cause serious human illness in the United Kingdom may be an emergency under section 19. Provision may be included in emergency regulations for the purpose of treating human illness (paragraph (b)). In addition, provision may be made for the purpose of protecting or restoring the activities of banks or other financial institutions (paragraph (h)), protecting or restoring activities of Parliament or any of the devolved legislatures (paragraph k)) or protecting or restoring the performance of public functions (paragraph (l)). Disruption of these activities does not necessarily constitute an emergency.
49. *Subsection (3)* specifies provisions which may be included in emergency regulations. The list is not exhaustive. In particular, emergency regulations may confer functions on a Minister of the Crown or the devolved administrations, provide for the requisition or confiscation of property (with or without compensation), create criminal offences related to the failure to comply with a provision of the regulations (or a direction or order under the regulations) and disapply or modify an enactment.
50. *Subsection (5)* provides that the maker of the emergency regulations must have regard to the importance of ensuring that Parliament, the High Court and the Court of Session are able to conduct proceedings in connection with the regulations or action taken under the regulations.

Section 23: Limitations of emergency regulations

51. *Subsections (1), (3) and (4)* impose limits on the provisions which may be included in emergency regulations. In particular, subsection (1)(b) provides that the maker of the emergency regulations must be satisfied that the effect of each provision of emergency regulations is in due proportion to the aspect or effect of the emergency which the provision is intended to prevent, control or mitigate.

52. *Subsection (2)* provides that emergency regulations must specify the Parts of the United Kingdom or regions in relation to which the regulations have effect. Regulations may have effect only in a limited area. This provision, taken in conjunction with subsection (1)(b) (emergency regulations may make provision only if and in so far as the effect of the provision is in due proportion to an aspect or effect of the emergency) means that the emergency regulations will have effect in a Part of the United Kingdom or a region only if the maker of the emergency regulations is satisfied that it is in due proportion to an aspect or effect of the emergency to do so.
53. *Subsection (5)* provides that emergency regulations may not amend Part 2 of the Act or the Human Rights Act 1998. (Other enactments may only be amended to the extent that the requirements of section 22 and 23 are satisfied. In light of these provisions, and the other provisions of the Act, Parliamentary Counsel have advised that the effect of the normal principles of the construction of delegated powers is that substantive amendments could not be made by emergency regulations to provisions of an enactment which are of constitutional significance.)

Section 24: Regional and Emergency Coordinators

54. *Subsection (1)* requires emergency regulations to require a senior Minister of the Crown to appoint a Regional Nominated Coordinator for each of the regions in England in relation to which the regulations make provision. An Emergency Coordinator must be appointed for each Part of the United Kingdom (other than England) in relation to which the regulations make provision.
55. *Subsection (3)* provides that the principal purpose of the appointment shall be to facilitate coordination of activities under the emergency regulations. Section 22(3)(a) provides that emergency regulations may also confer a function on the coordinator. *Subsection (4)* enables a senior Minister of the Crown to issue directions and guidance to the coordinator.

Section 25: Establishment of Tribunal

56. *Subsection (1)* provides that emergency regulations which establish a tribunal may not be made unless a senior Minister of the Crown has consulted the Council on Tribunals. *Subsection (2)* makes provision for urgent cases or where the Council has consented to the establishment of the Tribunal. *Subsection (3)* requires the Council to make a report to the Minister and provides that such regulations may not be made before the report is received. *Subsection (4)* provides that regulations may be made before the report from the Council has been received in urgent cases. *Subsection (5)* requires the Minister to lay a copy of the Council's report before Parliament, together with a statement explaining the extent to which the regulations have given effect to the recommendations of the Council and why any departure from any recommendation in the report has been made.

Section 26: Duration

57. *Subsection (1)* provides that emergency regulations lapse 30 days after the date on which they are made unless the regulations themselves provide for lapse at an earlier date. This does not prevent new regulations being made.

Section 27: Parliamentary scrutiny

58. *Subsection (1)* provides that emergency regulations must be laid before Parliament as soon as reasonably practicable and lapse at the end of seven days thereafter unless each House of Parliament passes a resolution approving them.
59. *Subsections (2) and (3)* enable Parliament, by resolution of both Houses, to provide that the emergency regulations shall cease to have effect or have effect subject to an amendment. Provision is made as to when any such resolution will take effect.

Section 28: Parliamentary scrutiny: prorogation and adjournment

60. *Section 28* provides that if Parliament stands prorogued or either House stands adjourned, Parliament shall be summoned by way of proclamation or arrangements shall be made for the House to meet.

Section 29: Consultation with the devolved administrations

61. *Subsections (1) to (3)* require a senior Minister of the Crown to consult the relevant devolved administration before emergency regulations are made which relate to Scotland, Wales or Northern Ireland. *Subsection (4)* provides that such consultation is not required if it is necessary by reason of urgency to make regulations before consultation has taken place.

Section 32 and Schedules 2 and 3: Minor and consequential amendments and repeals

62. *Section 32* introduces Schedules 2 and 3 to the Act.
63. *Schedule 2* to the Act contains repeals and amendments which are consequential on the Act, including the repeal of the Civil Defence Act 1948, the Civil Defence Act (Northern Ireland) 1950 and the Civil Defence in Peacetime Act 1986. The amendments include renaming metropolitan county fire and civil defence authorities as metropolitan county fire and rescue authorities. *Schedule 2* also contains repeals and amendments which are consequential on Part 2 of the Act, including the repeal of the Emergency Powers Act 1920 and the Emergency Powers Act (Northern Ireland) 1926. In addition, *Schedule 2* contains a minor amendment to the Energy Act 1976. This amendment clarifies the territorial application of that Act.
64. *Schedule 3* to the Act deals with repeals and revocations of legislation.