



Civil Contingencies Act 2004

2004 CHAPTER 36

PART 2

EMERGENCY POWERS

19 Meaning of “emergency”

- (1) In this Part “emergency” means—
 - (a) an event or situation which threatens serious damage to human welfare in the United Kingdom or in a Part or region,
 - (b) an event or situation which threatens serious damage to the environment of the United Kingdom or of a Part or region, or
 - (c) war, or terrorism, which threatens serious damage to the security of the United Kingdom.
- (2) For the purposes of subsection (1)(a) an event or situation threatens damage to human welfare only if it involves, causes or may cause—
 - (a) loss of human life,
 - (b) human illness or injury,
 - (c) homelessness,
 - (d) damage to property,
 - (e) disruption of a supply of money, food, water, energy or fuel,
 - (f) disruption of a system of communication,
 - (g) disruption of facilities for transport, or
 - (h) disruption of services relating to health.
- (3) For the purposes of subsection (1)(b) an event or situation threatens damage to the environment only if it involves, causes or may cause—
 - (a) contamination of land, water or air with biological, chemical or radio-active matter, or
 - (b) disruption or destruction of plant life or animal life.

- (4) The Secretary of State may by order amend subsection (2) so as to provide that in so far as an event or situation involves or causes disruption of a specified supply, system, facility or service—
 - (a) it is to be treated as threatening damage to human welfare, or
 - (b) it is no longer to be treated as threatening damage to human welfare.
- (5) An order under subsection (4)—
 - (a) may make consequential amendment of this Part, and
 - (b) may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (6) The event or situation mentioned in subsection (1) may occur or be inside or outside the United Kingdom.

20 Power to make emergency regulations

- (1) Her Majesty may by Order in Council make emergency regulations if satisfied that the conditions in section 21 are satisfied.
- (2) A senior Minister of the Crown may make emergency regulations if satisfied—
 - (a) that the conditions in section 21 are satisfied, and
 - (b) that it would not be possible, without serious delay, to arrange for an Order in Council under subsection (1).
- (3) In this Part “senior Minister of the Crown” means—
 - (a) the First Lord of the Treasury (the Prime Minister),
 - (b) any of Her Majesty’s Principal Secretaries of State, and
 - (c) the Commissioners of Her Majesty’s Treasury.
- (4) In this Part “serious delay” means a delay that might—
 - (a) cause serious damage, or
 - (b) seriously obstruct the prevention, control or mitigation of serious damage.
- (5) Regulations under this section must be prefaced by a statement by the person making the regulations—
 - (a) specifying the nature of the emergency in respect of which the regulations are made, and
 - (b) declaring that the person making the regulations—
 - (i) is satisfied that the conditions in section 21 are met,
 - (ii) is satisfied that the regulations contain only provision which is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made,
 - (iii) is satisfied that the effect of the regulations is in due proportion to that aspect or effect of the emergency,
 - (iv) is satisfied that the regulations are compatible with the Convention rights (within the meaning of section 1 of the Human Rights Act 1998 (c. 42)), and
 - (v) in the case of regulations made under subsection (2), is satisfied as to the matter specified in subsection (2)(b).

21 Conditions for making emergency regulations

- (1) This section specifies the conditions mentioned in section 20.
- (2) The first condition is that an emergency has occurred, is occurring or is about to occur.
- (3) The second condition is that it is necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.
- (4) The third condition is that the need for provision referred to in subsection (3) is urgent.
- (5) For the purpose of subsection (3) provision which is the same as an enactment (“the existing legislation”) is necessary if, in particular—
 - (a) the existing legislation cannot be relied upon without the risk of serious delay,
 - (b) it is not possible without the risk of serious delay to ascertain whether the existing legislation can be relied upon, or
 - (c) the existing legislation might be insufficiently effective.
- (6) For the purpose of subsection (3) provision which could be made under an enactment other than section 20 (“the existing legislation”) is necessary if, in particular—
 - (a) the provision cannot be made under the existing legislation without the risk of serious delay,
 - (b) it is not possible without the risk of serious delay to ascertain whether the provision can be made under the existing legislation, or
 - (c) the provision might be insufficiently effective if made under the existing legislation.

22 Scope of emergency regulations

- (1) Emergency regulations may make any provision which the person making the regulations is satisfied is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made.
- (2) In particular, emergency regulations may make any provision which the person making the regulations is satisfied is appropriate for the purpose of—
 - (a) protecting human life, health or safety,
 - (b) treating human illness or injury,
 - (c) protecting or restoring property,
 - (d) protecting or restoring a supply of money, food, water, energy or fuel,
 - (e) protecting or restoring a system of communication,
 - (f) protecting or restoring facilities for transport,
 - (g) protecting or restoring the provision of services relating to health,
 - (h) protecting or restoring the activities of banks or other financial institutions,
 - (i) preventing, containing or reducing the contamination of land, water or air,
 - (j) preventing, reducing or mitigating the effects of disruption or destruction of plant life or animal life,
 - (k) protecting or restoring activities of Parliament, of the Scottish Parliament, of the Northern Ireland Assembly or of the National Assembly for Wales, or
 - (l) protecting or restoring the performance of public functions.

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- (3) Emergency regulations may make provision of any kind that could be made by Act of Parliament or by the exercise of the Royal Prerogative; in particular, regulations may—
- (a) confer a function on a Minister of the Crown, on the Scottish Ministers, on the National Assembly for Wales, on a Northern Ireland department, on a coordinator appointed under section 24 or on any other specified person (and a function conferred may, in particular, be—
 - (i) a power, or duty, to exercise a discretion;
 - (ii) a power to give directions or orders, whether written or oral;
 - (b) provide for or enable the requisition or confiscation of property (with or without compensation);
 - (c) provide for or enable the destruction of property, animal life or plant life (with or without compensation);
 - (d) prohibit, or enable the prohibition of, movement to or from a specified place;
 - (e) require, or enable the requirement of, movement to or from a specified place;
 - (f) prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times;
 - (g) prohibit, or enable the prohibition of, travel at specified times;
 - (h) prohibit, or enable the prohibition of, other specified activities;
 - (i) create an offence of—
 - (i) failing to comply with a provision of the regulations;
 - (ii) failing to comply with a direction or order given or made under the regulations;
 - (iii) obstructing a person in the performance of a function under or by virtue of the regulations;
 - (j) disapply or modify an enactment or a provision made under or by virtue of an enactment;
 - (k) require a person or body to act in performance of a function (whether the function is conferred by the regulations or otherwise and whether or not the regulations also make provision for remuneration or compensation);
 - (l) enable the Defence Council to authorise the deployment of Her Majesty’s armed forces;
 - (m) make provision (which may include conferring powers in relation to property) for facilitating any deployment of Her Majesty’s armed forces;
 - (n) confer jurisdiction on a court or tribunal (which may include a tribunal established by the regulations);
 - (o) make provision which has effect in relation to, or to anything done in—
 - (i) an area of the territorial sea,
 - (ii) an area within British fishery limits, or
 - (iii) an area of the continental shelf;
 - (p) make provision which applies generally or only in specified circumstances or for a specified purpose;
 - (q) make different provision for different circumstances or purposes.
- (4) In subsection (3) “specified” means specified by, or to be specified in accordance with, the regulations.

- (5) A person making 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—
- (a) the regulations, or
 - (b) action taken under the regulations.

23 Limitations of emergency regulations

- (1) Emergency regulations may make provision only if and in so far as the person making the regulations is satisfied—
- (a) that the provision is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made, and
 - (b) that the effect of the provision is in due proportion to that aspect or effect of the emergency.
- (2) Emergency regulations must specify the Parts of the United Kingdom or regions in relation to which the regulations have effect.
- (3) Emergency regulations may not—
- (a) require a person, or enable a person to be required, to provide military service, or
 - (b) prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action.
- (4) Emergency regulations may not—
- (a) create an offence other than one of the kind described in section 22(3)(i),
 - (b) create an offence other than one which is triable only before a magistrates' court or, in Scotland, before a sheriff under summary procedure,
 - (c) create an offence which is punishable—
 - (i) with imprisonment for a period exceeding three months, or
 - (ii) with a fine exceeding level 5 on the standard scale, or
 - (d) alter procedure in relation to criminal proceedings.
- (5) Emergency regulations may not amend—
- (a) this Part of this Act, or
 - (b) the Human Rights Act 1998 (c. 42).

24 Regional and Emergency Coordinators

- (1) Emergency regulations must require a senior Minister of the Crown to appoint—
- (a) for each Part of the United Kingdom, other than England, in relation to which the regulations have effect, a person to be known as the Emergency Coordinator for that Part, and
 - (b) for each region in relation to which the regulations have effect, a person to be known as the Regional Nominated Coordinator for that region.
- (2) Provision made in accordance with subsection (1) may, in particular, include provision about the coordinator's—
- (a) terms of appointment,

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- (b) conditions of service (including remuneration), and
 - (c) functions.
- (3) The principal purpose of the appointment shall be to facilitate coordination of activities under the emergency regulations (whether only in the Part or region for which the appointment is made or partly there and partly elsewhere).
- (4) In exercising his functions a coordinator shall—
 - (a) comply with a direction of a senior Minister of the Crown, and
 - (b) have regard to guidance issued by a senior Minister of the Crown.
- (5) A coordinator shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

25 Establishment of tribunal

- (1) Emergency regulations which establish a tribunal may not be made unless a senior Minister of the Crown has consulted the Council on Tribunals.
- (2) But—
 - (a) a senior Minister of the Crown may disapply subsection (1) if necessary by reason of urgency,
 - (b) subsection (1) shall not apply where the Council on Tribunals have consented to the establishment of the Tribunal, and
 - (c) a failure to satisfy subsection (1) shall not affect the validity of regulations.
- (3) Where the Council on Tribunals are consulted by a senior Minister of the Crown under subsection (1)—
 - (a) the Council shall make a report to the Minister, and
 - (b) the Minister shall not make the emergency regulations to which the consultation relates before receiving the Council's report.
- (4) But—
 - (a) a senior Minister of the Crown may disapply subsection (3)(b) if necessary by reason of urgency, and
 - (b) a failure to comply with subsection (3)(b) shall not affect the validity of regulations.
- (5) Where a senior Minister of the Crown receives a report under subsection (3)(a) he shall lay before Parliament as soon as is reasonably practicable after the making of the regulations to which the report relates—
 - (a) a copy of the report,
 - (b) a statement of the extent to which the regulations give effect to any recommendations in the report, and
 - (c) an explanation for any departure from recommendations in the report.
- (6) Where a senior Minister of the Crown makes emergency regulations without consulting the Council on Tribunals (in reliance on subsection (2)(a))—
 - (a) he shall consult the Council about the regulations as soon as reasonably practicable after they are made,
 - (b) the Council shall make a report to the Minister, and
 - (c) subsection (5) shall apply (with any necessary modifications).

26 Duration

- (1) Emergency regulations shall lapse—
 - (a) at the end of the period of 30 days beginning with the date on which they are made, or
 - (b) at such earlier time as may be specified in the regulations.
- (2) Subsection (1)—
 - (a) shall not prevent the making of new regulations, and
 - (b) shall not affect anything done by virtue of the regulations before they lapse.

27 Parliamentary scrutiny

- (1) Where emergency regulations are made—
 - (a) a senior Minister of the Crown shall as soon as is reasonably practicable lay the regulations before Parliament, and
 - (b) the regulations shall lapse at the end of the period of seven days beginning with the date of laying unless during that period each House of Parliament passes a resolution approving them.
- (2) If each House of Parliament passes a resolution that emergency regulations shall cease to have effect, the regulations shall cease to have effect—
 - (a) at such time, after the passing of the resolutions, as may be specified in them, or
 - (b) if no time is specified in the resolutions, at the beginning of the day after that on which the resolutions are passed (or, if they are passed on different days, at the beginning of the day after that on which the second resolution is passed).
- (3) If each House of Parliament passes a resolution that emergency regulations shall have effect with a specified amendment, the regulations shall have effect as amended, with effect from—
 - (a) such time, after the passing of the resolutions, as may be specified in them, or
 - (b) if no time is specified in the resolutions, the beginning of the day after that on which the resolutions are passed (or, if they are passed on different days, the beginning of the day after that on which the second resolution is passed).
- (4) Nothing in this section—
 - (a) shall prevent the making of new regulations, or
 - (b) shall affect anything done by virtue of regulations before they lapse, cease to have effect or are amended under this section.

28 Parliamentary scrutiny: prorogation and adjournment

- (1) If when emergency regulations are made under section 20 Parliament stands prorogued to a day after the end of the period of five days beginning with the date on which the regulations are made, Her Majesty shall by proclamation under the Meeting of Parliament Act 1797 (c. 127) require Parliament to meet on a specified day within that period.
- (2) If when emergency regulations are made under section 20 the House of Commons stands adjourned to a day after the end of the period of five days beginning with the

date on which the regulations are made, the Speaker shall arrange for the House to meet on a day during that period.

- (3) If when emergency regulations are made under section 20 the House of Lords stands adjourned to a day after the end of the period of five days beginning with the date on which the regulations are made, the Lord Chancellor shall arrange for the House to meet on a day during that period.
- (4) In subsections (2) and (3) a reference to the Lord Chancellor or the Speaker includes a reference to a person authorised by Standing Orders of the House of Lords or of the House of Commons to act in place of the Lord Chancellor or the Speaker in respect of the recall of the House during adjournment.

29 Consultation with devolved administrations

- (1) Emergency regulations which relate wholly or partly to Scotland may not be made unless a senior Minister of the Crown has consulted the Scottish Ministers.
- (2) Emergency regulations which relate wholly or partly to Northern Ireland may not be made unless a senior Minister of the Crown has consulted the First Minister and deputy First Minister.
- (3) Emergency regulations which relate wholly or partly to Wales may not be made unless a senior Minister of the Crown has consulted the National Assembly for Wales.
- (4) But—
 - (a) a senior Minister of the Crown may disapply a requirement to consult if he thinks it necessary by reason of urgency, and
 - (b) a failure to satisfy a requirement to consult shall not affect the validity of regulations.

30 Procedure

- (1) Emergency regulations shall be made by statutory instrument (whether or not made by Order in Council).
- (2) Emergency regulations shall be treated for the purposes of the Human Rights Act 1998 (c. 42) as subordinate legislation and not primary legislation (whether or not they amend primary legislation).

31 Interpretation

- (1) In this Part—
 - “British fishery limits” has the meaning given by the Fishery Limits Act 1976 (c. 86),
 - “the continental shelf” means any area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29),
 - “emergency” has the meaning given by section 19,
 - “enactment” includes—
 - (a) an Act of the Scottish Parliament,
 - (b) Northern Ireland legislation, and

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(c) an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation (as well as an instrument made under an Act),

“function” means any power or duty whether conferred by virtue of an enactment or otherwise,

“Part” in relation to the United Kingdom has the meaning given by subsection (2),

“public functions” means—

- (a) functions conferred or imposed by or by virtue of an enactment,
- (b) functions of Ministers of the Crown (or their departments),
- (c) functions of persons holding office under the Crown,
- (d) functions of the Scottish Ministers,
- (e) functions of the Northern Ireland Ministers or of the Northern Ireland departments, and
- (f) functions of the National Assembly for Wales,

“region” has the meaning given by subsection (2),

“senior Minister of the Crown” has the meaning given by section 20(3),

“serious delay” has the meaning given by section 20(4),

“territorial sea” means the territorial sea adjacent to, or to any Part of, the United Kingdom, construed in accordance with section 1 of the Territorial Sea Act 1987 (c. 49),

“terrorism” has the meaning given by section 1 of the Terrorism Act 2000 (c. 11), and

“war” includes armed conflict.

(2) In this Part—

- (a) “Part” in relation to the United Kingdom means—
 - (i) England,
 - (ii) Northern Ireland,
 - (iii) Scotland, and
 - (iv) Wales,
- (b) “region” means a region for the purposes of the Regional Development Agencies Act 1998 (c. 45), and
- (c) a reference to a Part or region of the United Kingdom includes a reference to—
 - (i) any part of the territorial sea that is adjacent to that Part or region,
 - (ii) any part of the area within British fishery limits that is adjacent to the Part or region, and
 - (iii) any part of the continental shelf that is adjacent to the Part or region.

(3) The following shall have effect for the purpose of subsection (2)—

- (a) an Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas),
- (b) an Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 47) (apportionment of sea areas), and
- (c) an order under section 155(2) of the Government of Wales Act 1998 (c. 38) (apportionment of sea areas);

but only if or in so far as it is expressed to apply for general or residual purposes of any of those Acts or for the purposes of this section.