



# **Law and Emergencies: A Comparative Overview**

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# **Emergency Laws and Regulations in Britain: Executive Summary**

## **Legislative Framework**

Britain does not have a formal, written constitution formulated in a single document. British constitutional sources can be found both in “regular” legislation reflecting constitutional principles and in unwritten constitutional principles reflected in case law. Accordingly, in-depth research is needed regarding the manner in which these basic principles will influence the regulation of emergencies. Moreover, Britain is also subject to the law of the European Union, which applies domestically both directly and through its absorption in British legislation (e.g. the Human Rights Act 1988). Thus, the exercise of power in an emergency should also be examined by reference to this legal framework. The principal reference to emergencies in Britain can be found in the Civil Contingencies Act 2004 (hereinafter: “the CCA” or “the Act.”) This is a generic law that regulates the institutional planning, preparation, and provision of the response to emergencies from the state level to the regional and local levels. In addition to the CCA, other laws also include references to emergencies.<sup>1</sup>

## **Entrance into a State of Emergency**

The definition of an “emergency” in the CCA relates to several situations: Situations threatening serious damage to human welfare in the United Kingdom or in a Part or region thereof. This refers to situations causing or liable to cause: loss of human life; human illness or injury; homelessness; damage to property; disruption of a supply of money, food, water, energy or fuel; disruption of a system of communication; disruption of facilities for transport; and disruption of services relating to health – all these on a scale or at an

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<sup>1</sup> See for example Flood and Water Management Act 2010; Reservoirs Act 1975; Fire and Rescue Services Act 2004; Terrorism Act 2000; Terrorism Prevention and Investigation Measures Act 2011; Terrorism Act 2006.

intensity constituting “serious damage.”

Situations threatening serious damage to the environment of the United Kingdom or of a Part or region thereof. This refers to situations causing or liable to cause contamination of land, water or air with biological, chemical or radioactive matter or the disruption or destruction of plant life or animal life.

Situations of war or terrorism threatening serious damage to the security of the United Kingdom.

The definition of an “emergency” in part 1 of the CCA (which discusses preparations for emergencies) differs from that in part 2 of the Act (which discusses the powers granted to government in an emergency). While the requirement in part 2 is that the relevant situation (damage to human welfare, the environment, or security) occur in the United Kingdom or in a Part or region thereof, part 1 of the Act refers to “a place in the United Kingdom.” The reason for this would seem to be that part 1 relates to preparations for an emergency on the local level and the obligations incumbent on institutions on the local level. Accordingly, the definition in this part is intended to delineate the range of events on account of which local authorities should make preparations and prepare for an emergency. Accordingly, with regard to part 1 of the CCA, the impact and place of occurrence of an emergency may be on a small and local scale, in an area of limited size (a “place”). Conversely, the requirement in part 2 of the Act regarding the scope of the event reflects the approach that emergency powers are intended only for serious and severe extreme events affecting broader areas beyond the local level. The CCA is not based on a declaration of a state of emergency, and in order to activate the emergency powers granted by this Act – the enactment of emergency regulations – there is no need for such a formal declaration. This contrasts with the situation prior to the nullification of the preceding law: The Emergency Powers Act 1920. Regarding war, the British government is entitled to declare war on the basis of royal prerogative (and not on the basis of law), without the need for the consent of Parliament. However, the strength of this prerogative would appear to have been eroded over time and it is now unlikely that the government would go to

war without the support of Parliament.<sup>2</sup> It should be noted that Britain has numerous highly-developed legal arrangements concerning terrorism. Among other provisions, attention can be found to international terrorism; punitive provisions relating to manifestations of support for terrorism; and means for the investigation of individuals. Over the years a large number of laws relating to terrorism and to the detention of persons suspected of terrorism have been enacted, amended, or nullified.

### **Legal Powers**

The power to issue emergency regulations is granted to the Queen, who may issue emergency regulations by means of an Order in Council. In exercising this power, the Queen must act in accordance with the recommendation of the ministers, and particularly the recommendations of the Secretary of State for the Home Department, the cabinet minister responsible for domestic security.<sup>3</sup> In addition, a senior minister of the Crown as defined in the Act may also issue emergency regulations (in the presence of the same conditions permitting the minister for domestic security to do so), if waiting for enactment by Order in Council will cause “serious delay.” In substantive terms, the Act details the conditions for establishing the need for the enactment of regulations. These conditions reflect the principle that emergency regulations are not to be issued if it is possible to cope with the emergency by means of existing legislation.<sup>4</sup> The CCA also establishes powers relating to emergency preparations. The Act establishes that certain bodies as detailed (such as local authorities, emergency services, and so forth) bear an obligation to assess risks, maintain plans designed to ensure their function in an emergency, publish relevant information, advise the public, and so forth. Regarding terrorism, as noted, numerous laws have been enacted over the years granting diverse powers for addressing terrorism. The recent Terrorism Prevention & Investigation

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<sup>2</sup> *Waging War: Parliament's role and responsibility*, 15<sup>th</sup> report of session 2005-06, Vol. 1: REPORT, paragraphs 1-2 and 98, <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/23603.htm> (last visited 12/24/2015)

<sup>3</sup> The Civil Contingencies Act 2004 (hereinafter: “the CCA”), Explanatory Notes, Note 42. <http://www.legislation.gov.uk/ukpga/2004/36/notes> (last visited 12/24/2105)

<sup>4</sup> Id. Note 46.

Measures Act 2011 nullified the Prevention of Terrorism Act 2005 and the power established therein to issue “control orders” enabling the imposition of obligations on a person for purposes relating to the protection of the public against terror. These obligations included: prohibition or restriction of an individual’s movement; prohibition or restriction of an individual’s property or use thereof; prohibition or restriction of an individual’s place of residence and of persons having access to his place of residence; and the imposition of an obligation on the person to report to a certain person at such place and time as established. Among other provisions, the Terrorism Prevention & Investigation Measures Act enables the Secretary of State, subject to several conditions (stipulated in section 3 of the Act), to use certain means for the prevention and investigation of terrorism as detailed in the Act by means of issuing notification thereof (TPIM Notice). In various situations the empowering legislation grants certain authorities powers for addressing extreme situations without the power to issue emergency regulations. For example, the Flood and Water Management Act empowers the Environment Agency and local flood authorities to enter land for the purpose of performing their function.

### **Rights in State of Emergency**

The CCA does not contain explicit reference to derogation of rights, with the exception of a provision in the Act that emergency regulations may not require a person, or enable a person to be required, to perform military service, or prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action. In accordance with Article 15 of the European Convention on Human Rights (ECHR), in time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation. According to the ECHR, various rights may not be derogated even in an emergency: the right to life (except in respect of deaths resulting from lawful acts of war), the prohibition against torture or slavery, and punishment otherwise than by law. Following the events of 9/11, and with the goal of addressing the threat of terrorism, Britain declared a state of emergency in

order to enable the derogation of the provisions of the ECHR (absorbed, as noted, in the Human Rights Act 1988) and to violate certain human rights.<sup>5</sup>

## **Emergency Laws and Regulations in Britain: Synopsis**

### ***Introduction***

The United Kingdom of Great Britain and Northern Ireland is a constitutional monarchy that comprises several units, although Acts of Parliament, classified as Public General Acts, apply to the entire United Kingdom. The legal system is based on Common Law. The Chief of State (as distinct from the Prime Minister, the Head of Government) is Queen Elizabeth II. Britain does not have a formal constitution contained in a single document, but an unwritten constitution consisting of laws, common law, and customs.<sup>6</sup> Britain's history of disasters is varied, including extreme situations caused of human origin (riots, demonstrations, etc.) and natural disasters (fires, floods, storms, etc., resulting, among other factors, from its location as an island). In addition, terrorist attacks have played a key role in the history of extreme situations in Britain. Over the years Britain has suffered a considerable number of terrorist attacks causing numerous fatalities, both in the context of its colonial past and with regard to the conflict in Northern Ireland.<sup>7</sup>

### **1. The Legislative Framework**

The principal reference to emergencies in Britain is found in the Civil Contingencies Act 2004 (hereinafter: the CCA). This is a generic law that regulates the institutional planning, preparation, and provision of response to emergencies from the state level to the regional and local levels.<sup>8</sup> The law also addresses the need for regional coordination, requiring the appointment of a "regional nominated coordinator" to be charged with responsibility for coordinating response efforts to an emergency on the regional level. In

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<sup>5</sup> Hodaya Kin and Daphna Bar-Porat, *Background Document: Legislative Arrangements Intended for the Struggle against the Financing of Terrorism – Comparative Law* (Knesset Research and Information Center, 2003) (Hebrew); Human Rights Watch World Report 2002. <http://www.hrw.org/legacy/wr2k2/europe21.html> (last visited 12/24/2015)

<sup>6</sup> United Kingdom, *The World FactBook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html> (last visited 12/24/2015)

<sup>7</sup> Naim Kapucu, Chapter 4, 1-2, in **Comparative Emergency Management: Understanding Disaster Policies, Organizations, and Initiatives from Around the World**, (David McEntire ed.). <http://www.training.fema.gov/EMIWeb/edu/CompEmMgmtBookProject.asp>

<sup>8</sup> Geetha Mazarelo, Emergency Legislation in the United Kingdom, *11 Eur Jl Reform* 323, 335 (2009).

addition to the CCA, "regular" laws also address emergencies,<sup>9</sup> and the legislature has also seen fit to enact specific laws relating to extreme situations, in addition to the institutional framework defined in the CCA. It seems that such specific laws address extreme conditions common in the UK (e.g. Floods), or issues regarding which "focusing events" have occurred, such as the terrorist attacks of 9/11.

Below is a non-comprehensive list of laws dealing with emergencies and extreme conditions in Britain:

Natural disasters	Terrorism and war	Socioeconomic emergencies
<p>Floods – the legislative framework for addressing floods is to be found in three key acts of legislation: The CCA; the Reservoirs Act 1975; and the Flood and Water Management Act 2010.<sup>10</sup> In addition, several laws concerning rehabilitation are to be found in a verity of acts. For an example, Local authorities can use powers under section 13A of the Local Government Finance Act 1992 to grant council tax discounts on properties which have been flooded.<sup>11</sup></p> <p>Fires – this issue is regulated in the Fire and Rescue Services Act 2004, whose principal purpose is "to</p>	<p>International terrorism – the Terrorism Act 2000 includes in the definition of the term "terrorism" an action committed outside the borders of the United Kingdom.</p> <p>Punitive provisions regarding manifestations of support for terrorism in accordance with the Terrorism Act 2006.</p> <p>Provisions regarding the imposition of terrorism prevention and investigation measures against an individual may be found in the Terrorism Prevention and Investigation Measures Act 2011.</p>	<p>Our research did not identify any specific attention in legislation to socioeconomic emergencies with the exception of the generic act, the CCA, which discusses this aspect.</p>

<sup>9</sup> For example, Section 9 of the Energy Act 1976 empowers the Queen to approve the execution of the powers stipulated in the Act in the presence of various alternate conditions, one of which is the presence of an actual or potential emergency affecting the supply of fuel or electricity, and on account of which, in the Queen's opinion, it is necessary that the government should temporarily have access to special powers enabling control of energy sources and access thereto.

<sup>10</sup> The National Flood Emergency Framework for England, DEFRA (2011), 22.

<sup>11</sup> Local Government Finance Act 1992.

Natural disasters	Terrorism and war	Socioeconomic emergencies
deliver a modernised Fire and Rescue Service that responds to the particular demands of the 21st Century.” <sup>12</sup>		
The CCA was enacted in 2004 following the occurrence of several incidents in Britain that could be considered “emergencies,” which were addressed by means of the existing legislation or through new ad-hoc and ex-post primary legislation. <sup>13</sup>		

<sup>12</sup> FN 3, Explanatory Notes, note 4.

<sup>13</sup> Thus, for example, Britain responded to an outbreak of foot-and-mouth disease in 2001 on the basis of existing legislation. By virtue of the powers vested in him under the Animal Health Act 1981, the Minister of Agriculture, Fisheries and Food issued an order regulating the movement of livestock, among other aspects (see Mazarelo, FN 8, 335); The Foot-and-Mouth Disease (Amendment) (England) (No. 7) Order 2001. <http://www.legislation.gov.uk/uksi/2001/1862/made> (last visited 12/24/2015)

## 2. Declaration of a State of Emergency: A Table of Analysis

Situation	Definition of an “emergency”	Who may declare and under what conditions?	How does a state of emergency end?
General (according to the generic law – the CCA)	<p>The definition of an “emergency” in the CCA relates to several situations:</p> <ul style="list-style-type: none"> <li>• Situations threatening serious damage to human welfare in the United Kingdom or in a Part<sup>14</sup> or region thereof. This refers to situations causing or liable to cause: - Loss of human life; - Human illness or injury; Homelessness; - Damage to property; - Disruption of a supply of money, food, water, energy or fuel; - Disruption of a system of communication; - Disruption of facilities for transport; - Disruption of services relating to health.</li> <li>• Situations threatening serious damage to</li> </ul>	<p>According to the CCA, there is no need for a formal declaration of a state of emergency in order to activate the powers applying in the situation defined therein (contrary to the preceding law (the Emergency Powers Act 1920)).</p>	<p>Since there is no need for the formal declaration of a state of emergency in order to exercise the powers granted by the Act, there is effectively no formal manner in which a state of emergency ends, and the matter depends in practical terms on the ongoing validity of the emergency regulations. The emergency regulations expire 30 days after the date on which they were issued, or at the end of the period specified in the regulations themselves, whichever</p>

<sup>14</sup> The CCA defines this term as follows:

“(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.”

Situation	Definition of an “emergency”	Who may declare and under what conditions?	How does a state of emergency end?
	<p>the environment of the United Kingdom or of a part or region thereof. This refers solely to situations causing or liable to cause contamination of land, water or air with biological, chemical or radioactive matter or the disruption or destruction of plant life or animal life.</p> <ul style="list-style-type: none"> <li>• Situations of war or terrorism threatening serious damage to the security of the United Kingdom.</li> </ul> <p>The definition of an “emergency” in part 1 of the CCA (which discusses preparations for emergencies) differs from that in part 2 of the Act (which discusses the powers granted to government in an emergency). While the requirement in part 2 is that the relevant situation (damage to human welfare, the environment, or security) occurs in the United Kingdom or in a Part or region thereof, part 1 of the Act refers to "a place in the United Kingdom."</p> <p>The reason for this would seem to be that part 1 relates to preparations for an emergency on the local level and the obligations incumbent on institutions on the local level. Accordingly, the definition in this part is intended to delineate the range of events on account of</p>		<p>is the earlier.</p> <p>The Act also establishes that the emergency regulations are to be submitted for review by Parliament as soon as possible, and that the validity of the regulations will expire seven days after they were submitted, if they were not approved by both Houses of Parliament.</p> <p>In addition, Parliament (both Houses) may pass resolutions that emergency regulation shall no longer be valid and, in this instance, the validity of the regulations expires as specified in the resolutions.</p> <p>If no time is specified, the validity of the regulations will expire on the day after the resolutions of Parliament are passed. Parliament can also decide that the regulations will be valid subject to some specific change.</p>

Situation	Definition of an “emergency”	Who may declare and under what conditions?	How does a state of emergency end?
	<p>which local authorities should make preparations and prepare for an emergency. Accordingly, with regard to part 1 of the CCA, the impact and place of occurrence of an emergency may be on a small and local scale, in an area of limited size (a “place”). Conversely, the requirement in part 2 of the Act regarding the scope of the event reflects the approach that emergency powers are intended only for serious and severe extreme events affecting broader areas beyond the local level.<sup>15</sup></p> <p>** It should be noted that the Act permits the Secretary of State to amend and change the above-mentioned list of situations, subject to several conditions.</p>		
War	<p>The British government is entitled to declare war on the basis of royal prerogative (and not on the basis of law), without the need for the consent of Parliament. However, the strength of this prerogative would appear to have been eroded over time and it is now unlikely that the government would go to war without the support of Parliament.<sup>16</sup></p>		

Statutes that come into force during emergency - our research did not identify any such laws

<sup>15</sup> Civil Contingencies Secretariat. *Civil Contingencies Act 2004: a short guide (revised)*: <http://www.trafford.gov.uk/residents/community/community-safety/emergencies/docs/civil-contingencies-act-guide.pdf> (last visited 12/24/2015)

<sup>16</sup> FN 2, Waging War.

### 3. Legal Powers

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
General	<p>Section 20 of the CCA permits the enactment of emergency regulations. The Act establishes that it is possible, within the framework of the emergency regulations, to make any provision that the person making the regulations considers is appropriate in order to prevent, control, or mitigate an aspect or effect of the emergency. Among other purposes (the list is not exclusive), the CCA permits the enactment of regulations for the purpose of:</p> <ul style="list-style-type: none"> <li>- Protecting human life, health, or safety</li> <li>- Treating human illness or injury</li> <li>- Protecting or restoring property</li> <li>- Protecting or restoring a supply of water, food, energy, or fuel, the activities of banks or other financial institutions</li> <li>- Protecting or restoring the activities of the various legislatures of the United Kingdom</li> </ul> <p>The Act further establishes, in a general manner, that it is possible in the framework of emergency regulations to establish any provision that could be made by Act of Parliament or by the exercise of Royal Prerogative, noting the areas that may be arranged in the regulations (the list is not exclusive),<sup>17</sup> including:</p>	<p>Power is granted to several bodies:</p> <ul style="list-style-type: none"> <li>- The Queen, who may issue emergency regulations through an Order in Council. In exercising this power the Queen must act in accordance with the recommendation of the ministers, and particularly the recommendations of the Secretary of State for the Home Department, the cabinet minister responsible for domestic security.<sup>19</sup></li> <li>- A "senior Minister of the Crown."<sup>20</sup></li> </ul>	<p>Regarding the Queen: The exercising of a power is possible if the Queen considers that three conditions are satisfied:<sup>21</sup></p> <ol style="list-style-type: none"> <li>1. An emergency has occurred, is occurring or is about to occur;</li> <li>2. It is necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency;</li> <li>3. The need for the provision is urgent.</li> </ol> <p>A senior minister: A senior Minister of the Crown<sup>22</sup> may issue emergency regulations if satisfied:</p> <ol style="list-style-type: none"> <li>1. That the conditions in section 21 (above) are satisfied; and</li> <li>2. It would not be possible, without serious delay,<sup>23</sup> for the Queen to issue emergency regulations by means of an Order in Council.</li> </ol> <p><u>To summarize:</u> the CCA includes three substantive conditions ("the triple lock"<sup>24</sup>) which must be satisfied in order</p>

<sup>17</sup> Ibid., note 49.

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
	<ul style="list-style-type: none"> <li>• Imposing duties on, or granting powers to, government officials</li> <li>• Enabling the requisition or confiscation of property (with or without compensation)</li> <li>• Enabling the destruction of property, animal life or plant life (with or without compensation)</li> <li>• Prohibiting, or enabling the prohibition of, movement to or from a specified place</li> <li>• Requiring, or enabling the requiring of, movement to or from a specific place</li> <li>• Prohibiting, or enabling the prohibition of, other specified activities</li> <li>• Creating criminal offenses of failing to comply with an order given under the emergency regulations</li> <li>• Enabling the Defence Council to authorize the deployment of Her Majesty’s armed forces.</li> </ul>		<p>for it to be possible to issue regulations:</p> <ol style="list-style-type: none"> <li>1. The relevant situations pose the risk of serious damage (to human welfare, the environment, or security).</li> <li>2. It is essential to issue regulations rapidly in order to address the emergency (since existing legislation does not provide an adequate framework for addressing the emergency, and the urgency of the situation does not permit legislation by the usual means); and –</li> <li>3. The regulations must be proportionate relative to the aspect of the emergency they address.</li> </ol> <p>The Act details the conditions for</p>

<sup>19</sup> Footnote 11 above, para. 42.

<sup>20</sup> “(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.”

<sup>21</sup> Stipulated in section 21 of the CCA.

<sup>22</sup> “(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.”

<sup>23</sup> (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.”

<sup>24</sup> Civil Contingencies Act 2004: A Short Guide, footnote 14 above, 5.

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
	<p>The CCA requires the appointment of a Regional Nominated Coordinator who is required to coordinate the emergency response on the regional level when emergency powers are exercised.<sup>18</sup></p>		<p>establishing the necessity of regulations, which effectively reflect the principle that emergency regulations should not be issued if it is possible to address an emergency within the framework of existing legislation.<sup>25</sup> Emergency regulations are essentially means of last resort. Emergency legislation is intended to address only the most serious emergencies that require an immediate response.<sup>26</sup> If specific legislation exists that can address the emergency, it should be managed within this framework. In addition to these conditions, the section also establishes several additional procedural conditions. For example, prior to issuing regulations, the empowered body must declare that it considers that the conditions stipulated in the Act are satisfied; that the regulations are compatible with the rights in the Human Rights Act 1998, as defined in section 1 of the European Convention on Human Rights; and so forth.</p>

<sup>18</sup> Ibid., 5.

<sup>25</sup> Civil Contingencies Act 2004, Explanatory Notes, footnote 6 above, note 46.

<sup>26</sup> Civil Contingencies Act 2004: a short guide, footnote 14 above, 4.

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
War	<p>In the aftermath of the two World Wars, Britain enacted numerous laws (many of which have since been nullified) granting sweeping powers to the government in wartime. Among other provisions, these laws permitted the delegation of extensive powers to the King permitting him to issue regulations.<sup>27</sup> In 1914, for example, the Defence of the Realm Act 1914 (DORA) was enacted, granting the executive the power to make regulations for public safety and for the defense of the realm. This granted the government extensive control over the national economy.</p> <p>The regulations also enabled the government:</p> <ul style="list-style-type: none"> <li>To detain people without trial due to “hostile origin or association”</li> <li>To prohibit the holding of gatherings</li> <li>To evacuate areas</li> <li>To impose a curfew</li> <li>To effectively restrict freedom of expression and freedom of the press.</li> </ul> <p>During the Second World War, the British Parliament enacted the Emergency Powers (Defense) Act 1939, which granted similar powers to those granted by DORA: the making of regulations for public security, defense of the realm, maintaining public order, the efficient management of the war, and ensuring the maintenance of services vital for community life.</p> <p>The regulations came into force automatically and could change or nullify existing legislation. However, either House of Parliament could nullify a regulation within 28 days from the date of its issuing.<sup>28</sup></p>		

<sup>27</sup> FN 8, Mazarelo, 329-30.

<sup>28</sup> Brian McGiverin, Note: In the Face of Danger: A Comparative Analysis of the Use of Emergency Powers in the United States and the United Kingdom in the 20th Century, *18 Ind. Int'l & Comp. L. Rev.* 223, 261-266 (2008).

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
Terrorism	<p>Legislation in Britain relating to terrorism dates back to as early as 1939, when Britain faced attacks by the Irish Republican Army (IRA). Britain imposed legislation for the prevention of terrorism in Northern Ireland. The Northern Ireland Parliament was suspended and in 1974 the British Parliament enacted the Northern Ireland (Emergency Provisions) Act 1973, which enabled the government to undertake detentions, introduced a judicial system without juries, and imposed special rules concerning evidence (the admission of evidence secured by means of “intensive interrogations,” the violation of the right to remain silent, and so forth).<sup>29</sup></p> <p>Following a terrorist attack on a pub in Birmingham causing numerous fatalities and injuries, a new anti-terrorism law was enacted in 1974: The Prevention of Terrorism (Temporary Provisions) Act 1974. This law was essentially similar to the 1973 law, but also included provisions enabling the government to outlaw organizations that appeared to be associated with, promoting or encouraging acts of terrorism in the United Kingdom or acts connected to Northern Ireland.<sup>30</sup></p> <p>In addition, the act established:</p> <p>A penalty of up to five years’ imprisonment for membership of a group as stated</p> <p>Punitive provisions regarding the manifestation of support for an outlawed organization or a criminal organization of three persons or more, in the knowledge that the meeting was for the purpose of supporting or advancing the organization’s activities or that a member of an organization as stated would participate in the meeting.<sup>31</sup></p> <p>In 2000 the 1974 law was replaced by the Terrorism Act 2000, which extended the definition of the term “terrorism” to include references to international (in addition to “domestic”) terrorism.<sup>32</sup> For the first time, the Act also granted powers of detainment and search to any uniformed policeperson (this power was amended several times in later legislation).<sup>33</sup></p> <p>However, legislation relating to terrorism was soon updated once again following the events of 9/11, this time in the form of the Anti-terrorism, Crime and Security Act 2001.<sup>34</sup></p>		

<sup>29</sup> Id. 266-71.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Clive Walker, Neighbor Terrorism and the All-Risks Policing of Terrorism, *3 J. Nat’l Security L. & Pol’y*, 121, 135 (2009).

<sup>34</sup> FN 28, McGiverin, 268-73.

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
	<p>The main innovation in this law was the provisions (in section 23) permitting the indefinite detention of persons who are not British subjects (suspected of committing international terror as defined in the Act). After the court ruled that this section of the law failed to meet the requirement of proportionality, it was nullified and replaced with the Prevention of Terrorism Act 2005, which replaced the power of detention with “control orders” against persons suspected of terrorism.<sup>35</sup> Prior to their nullification as detailed below, the “control orders” imposed obligations on a person for purposes relating to the protection of the public against terrorism, including, among other provisions:</p> <ul style="list-style-type: none"> <li>A prohibition or restriction on a person’s movements</li> <li>A prohibition or restriction on a person’s possession or use of specified articles or substances</li> <li>A prohibition or restriction on a person’s place of residence or on the persons to whom he gives access to his place of residence</li> <li>A requirement to report to a specified person at specified times and places</li> </ul> <p>In 2006 the Terrorism Act 2006 was enacted. Among other provisions, this law established that expressions that could be understood as encouraging or providing incentive to commit acts of terrorism would constitute a criminal offense. More recently, the Terrorism Prevention &amp; Investigation Measures 2011 Act was enacted, nullifying the Prevention of Terrorism Act 2005 and the power therein to issue “control orders.” Among other provisions, and if several conditions are satisfied (see below), this law permits the Secretary of State to use certain means for the investigation and prevention of terrorism by issuing a notice thereof (“TPIM Notice.”) These means are defined in the law as “requirements, restrictions and other provisions which may be made in relation to an individual by virtue of Schedule 1” to the act. The means included in Schedule 1 include:</p> <ul style="list-style-type: none"> <li>Restrictions regarding an individual’s place of residence</li> <li>Restrictions regarding an individual’s movement</li> <li>Restrictions regarding access to financial services</li> <li>Restrictions regarding property (including transfer and requirements of disclosure)</li> <li>Restrictions on an individual’s ability to communicate or associate with others</li> <li>Restrictions of an individual’s work or studies</li> <li>Imposition of requirements on an individual to report to a particular police station at certain times</li> </ul>		

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<sup>35</sup> Id. McGiverin.

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
	<p>Imposition of an obligation on an individual to cooperate with various arrangements facilitating the monitoring of his actions</p> <p>In order to exercise this power, the following (cumulative) conditions must be satisfied, as stated in section 3 of the act:</p> <ol style="list-style-type: none"> <li>1. The Secretary of State reasonably considers that the individual is, or has been, involved in terrorism-related activity (“the ‘relevant activity.’”)</li> <li>2. Some or all of the relevant activity is new terrorism-related activity, as defined in the Act.<sup>36</sup></li> <li>3. The Secretary of State reasonably considers that it is necessary to impose terrorism prevention and investigation means on the individual, for purposes related with protecting the public from a risk of terrorism.</li> <li>4. The Secretary of State reasonably considers that it is necessary to impose the terrorism prevention and investigation measures specified in the TPIM on the individual, for purposes related with the prevention or restriction of the individual’s involvement in terrorism-related activity;</li> <li>5. The court has given the Secretary of State permission (under section 6 of the act) or “the Secretary of State reasonably considers that the urgency of the case requires terrorism prevention and investigation measures to be imposed without obtaining such permission.”</li> </ol>		

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<sup>36</sup> “(6) In this section “new terrorism-related activity” means –

- (a) if no TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring at any time (whether before or after the coming into force of this Act);
- (b) if only one TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring after that notice came into force; or
- (c) if two or more TPIM notices relating to the individual have been in force, terrorism-related activity occurring after such a notice came into force most recently.

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
Floods	<p>The Reservoirs Act imposes responsibility for the security of reservoirs on the owners and requires that they appoint a qualified civil engineer to:</p> <ul style="list-style-type: none"> <li>- Supervise the reservoirs (“supervising engineer”)</li> <li>- Undertake periodic inspections (“inspecting engineer”)</li> <li>- To design and construct new reservoirs or repair/alter existing reservoirs (“construction engineer.”)</li> </ul> <p>As part of the changes introduced by the Flood and Water Management Act, the Environment Agency was charged with classifying reservoirs according to a safety criterion – whether they pose a danger to human life or whether they meet the requisite standards, so that the danger is not substantial.<sup>37</sup> Among other provisions, the Flood and Water Management Act:</p> <ul style="list-style-type: none"> <li>• Empowers the Environment Agency and “lead local flood authorities” to demand information from any individual concerning the authority’s functions regarding attention to the danger of coastal erosion and floods.</li> <li>• Grants the power to enter land.</li> </ul>		
Fire	<p>Regarding emergency powers, the Fire and Rescue Services Act establishes that an employee of a fire and rescue authority, as defined in the Act, who is authorized in writing, may do anything he believes to be necessary –</p> <ul style="list-style-type: none"> <li>If he believes a fire to have broken out or to be about to break out, for the purpose of extinguishing the fire or protecting life or property;</li> <li>If he believes a road traffic accident to have occurred, for the purpose of rescuing people or protecting them from serious harm;</li> <li>If he believes an emergency of another kind to have occurred, for carrying out any function conferred on the fire and rescue authority in relation to the emergency.</li> </ul>	<p>The said powers are granted to the fire and rescue authority and to the employees thereof.</p> <p>Fire and rescue authorities are defined in the Act according to the region (in Wales, for example, the county council is the fire and rescue authority for that council).</p>	<p>The powers are vested regarding persons and property as detailed above.</p>

<sup>37</sup> FN 10, The National Flood Emergency Framework, 22-26.

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
	<p>To prevent or limit damage to property resulting from action taken in accordance with the above-mentioned alternatives.</p> <p>The powers granted to an employee as stated include:</p> <p>Entering premises, by force if necessary, without the consent of the owner or occupier of the premises</p> <p>Moving or breaking into a vehicle without the consent of its owner</p> <p>Closing a highway</p> <p>Stopping and regulating traffic</p> <p>Restricting the access of persons to premises or places</p> <p>Regarding fires: The act permits the fire and rescue authority to establish provisions for purposes including:</p> <p>Extinguishing fires in its area</p> <p>Protecting life and property in the event of fires</p> <p>In particular, the Act enables the authority:</p> <p>To secure the provision of personnel, services, and equipment as required</p> <p>To secure the provision of training for personnel</p> <p>To make arrangements for dealing with calls for help and for summoning personnel</p> <p>To make arrangements for obtaining information needed for the above-mentioned purposes</p> <p>To make arrangements for ensuring that reasonable steps are taken to protect property.</p> <p>Similar powers are granted to the fire and rescue authority regarding road accidents. The Act permits a fire and rescue authority to establish provisions for purposes including rescuing people and protecting them from serious harm in the event of road traffic accidents.</p>		

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
	<p>The Act further establishes that the Secretary of State may “by order” confer powers on a fire and rescue authority “relating to emergencies, other than fires and road traffic accidents in relation to which the authority has functions” under the provisions mentioned above.</p> <p>An order as stated may, among other functions, require the fire and rescue authority –</p> <ul style="list-style-type: none"> <li>To secure the provision of personnel, services, and equipment</li> <li>To secure the provision of training for personnel</li> <li>To make arrangements for dealing with calls for help and for summoning personnel</li> <li>To make arrangements for obtaining information needed for the exercising of the power</li> <li>- To take reasonable steps to prevent or limit damage to property resulting from the exercising of the power.</li> </ul>		

Conditions to be met when exercising the power were not found in our research

\* Part 1 of the CCA also establishes powers relating to contingency planning. The Act establishes that certain bodies (local authorities, emergency services, and so forth, as detailed in parts 1 and 2 of Schedule 1 to the Act) bear a duty to assess risks, maintain plans for the purpose of ensuring that these bodies can function if an emergency occurs, publish relevant information, advise the public, and so forth. The Act also empowers a minister of the Crown to order certain bodies (stipulated in part 1 of Schedule 1 to the Act) to perform a particular function; this order may, among other provisions, require or prohibit the body (or person) to cooperate or to refrain from cooperating, to provide relevant information, and to consult with anybody.

## 4. Rights in Emergencies

The CCA does not contain explicit reference to the violation of human rights applying in “regular” times, with the exception of a reference in the Act to the fact that emergency regulations may not require a person, or enable a person to be required, to perform military service, or prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action. It should be noted that attention to rights in emergencies can be found on the international level.

In accordance with Article 15 of the European Convention on Human Rights (ECHR), in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations.

However, in accordance with the ECHR, various rights may not be violated even in an emergency:

The right to life (except in respect of deaths resulting from lawful acts of war);

The prohibition against torture and the prohibition against slavery;

The prohibition against punishment otherwise than by law.

It should be recalled that following the events of 9/11, and with the goal of addressing the threat of terrorism, Britain declared a state of emergency in order to enable the derogation of the provisions of the ECHR (absorbed as noted in the Human Rights Act 1988) and to derogate certain human rights.<sup>38</sup> As noted above, following the events of 9/11 the Anti-terrorism, Crime and Security Act 2001 was enacted. This Act empowered the government to detain foreigners (not subjects) by virtue of part 4 of the Act without the need for trial<sup>39</sup> and indefinitely. The court established that this part of the act was contrary to the Human Rights Act 1988,<sup>40</sup> and in 2005 the Prevention of Terrorism Act 2005 (PTA) was enacted, nullifying and replacing the relevant provisions in the ATCSA.

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<sup>38</sup> FN 5, Kin and Bar-Porat (2003); Human Rights Watch World Report 2002, available at: <http://www.hrw.org/legacy/wr2k2/europe21.html>

<sup>39</sup> FN 8, Mazarelo, 333.

<sup>40</sup> Id.

## 5. Regulation

The following are regulation arrangements found during the research process, which examined secondary sources (such as articles). The list is not exhaustive and merely offers some preliminary examples:

- Insurance against floods: The government recently decided to introduce a new arrangement in the United Kingdom that has not yet come into force [the existing arrangement having expired] with the (private) insurance market concerning the coverage of flood damage. According to the arrangement, known as “Flood Re,” a fixed levy will be imposed on every household in order to finance the fund, while houses at risk will pay premiums according to their value. The new plan will not provide insurance for the entire population (for example, properties built before 2009 will not be covered), in contrast to the situation until now.<sup>41</sup>

Before the previous arrangement expired and was replaced by the above-mentioned new arrangement, a “gentlemen’s agreement” was introduced in the UK regarding insurance against floods. The parties to the agreement are the government, on the one hand, and the private insurance market, on the other. In the framework of the agreement, the two sides shared the burden among themselves: the government was responsible for providing means of protection against flooding, while the insurers were responsible for compensating property owners for flood damage.

The “gentlemen’s agreement” promised to provide universal insurance for the entire population. However, private insurers could still refuse to insure a property that is persistently prone to flooding. Moreover, there was no written agreement with the government regarding the insurers’ ability to refuse to grant insurance or to collect high premiums reflecting the risk in insuring properties as stated. Furthermore, the “gentlemen’s agreement” effectively constitutes compulsory insurance (and was deposited in a common fund with insurances against other risks). Potential home buyers could not obtain a mortgage unless they secured comprehensive insurance against floods and other natural disasters.<sup>42</sup>

- Regulation through information: Part 1 of the CCA requires “category 1 responders” (local authorities, emergency services, various health services, etc., as detailed in sections 1-2 of Schedule 1 to the Act) to make various arrangements to warn the public and provide it with information and advice. The Act also establishes that the authorities must ensure the publication of emergency plans and risk assessments.

However, the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 restricts the content of the Act to a certain degree. For example, the regulations establish that in publishing information, the importance of maintaining public

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<sup>41</sup> Alistair Gray, June 27, 2013, *Financial Times* Ministers agree UK flood insurance deal, (), 183, 192-202.

<http://www.ft.com/cms/s/0/6fc3f8dc-df15-11e2-881f-00144feab7de.html#axzz2hlyqX4gQ> (last visited 12/24/2015)

<sup>42</sup> Aparna Kirknel Majmudar, The National Flood Insurance Program: Maintaining Its Head above Water, *U. Miami Int'l. & Comp. L. Rev.* 16 192-202 (2009).

calm should be taken into account (i.e. the importance of not unnecessarily alarming the public).

- Criminal liability: As noted in the section on powers, the regulations may create an offence of failure to comply with a provision of the regulations; failure to comply with a direction or order made or given by virtue of the regulations and obstruction of a person in the performance of a function by virtue of or under the regulations (subject to several restrictions imposed by the Act, such as the gravity of the penalty that may be determined and so forth).
- Mechanism for compensating terrorism victims: It should be noted that by virtue of the Criminal Injuries Compensation Act 1995, Britain effectively maintains a permanent compensation fund for victims of terrorism.