



Prepared by: British Red Cross

## **IFRC Review of Emergency Decrees: UNITED KINGDOM**

**THE INFORMATION CONTAINED IN THIS REVIEW IS BASED ON THE SITUATION AS AT 13 APRIL 2020**

### **Overview**

#### **Geographical scope of the review**

The purpose of this review is to analyse the existing national legislation and the new national emergency legislation introduced by the UK to address the COVID-19 pandemic. However, as both public health and emergency management are devolved functions, any review needs to include the measures taken by the Scottish, Welsh and Northern Irish devolved administrations. The legislation across all four nations is now broadly similar, as increased consistency has been achieved through the Coronavirus Act 2020, but there remain some variations in the measures in each nation.

In addition, the Crown Dependencies (Jersey, Guernsey and the Isle of Man) are not part of the UK but are self-governing dependencies: they therefore have their own legal systems and have enacted their own legislation to deal with the COVID-19 pandemic. Reference to their distinct measures are included in this review where they are known.

The United Kingdom's 14 overseas territories also have responsibility for their own legislation to deal with COVID-19, but they are not included in this review.

#### **Scope of the Review**

Unlike a number of other countries, the UK does not have the ability to declare a state of emergency or disaster in response to the COVID-19 pandemic, which then triggers or enables the mobilisation of emergency specific powers. Instead, the UK's legal response to date has come through five broad categories of measures:

1. The use of standing 'situation normal' powers which are capable of being escalated to deal with an emergency: for example, around staffing ratios in care homes or school closures;
2. Powers exercised, and regulations made, under the Public Health (Control of Diseases) Act 1984 (and devolved equivalents) which contains standing provisions inserted in 2008 enabling a response to an outbreak of infectious diseases, such as the COVID-19 pandemic. These Acts also implement the International Health Regulations 2005 across the UK;

3. The Coronavirus Act 2020 which was enacted specifically to deal with the COVID-19 pandemic;
4. The Civil Contingencies Act 2004 which sets the framework for emergency planning and response within the UK; and
5. Legislation which addresses what might be described as the consequences of the pandemic, such as changes to social security, sick pay, working time requirements, planning and the management of mental health patients and offenders.

Although all the above are emergency measures to some degree, this review's focus will be on 2 to 4 and other legislation which may impact on the role of the British Red Cross (BRC).

A list of COVID-19 legislation for England, Scotland, Wales and Northern Ireland has now been published on specific webpages on the legislation.gov.uk website:  
<https://www.legislation.gov.uk/coronavirus><sup>1</sup>

The relevant legislation for the Crown Dependencies can be found on their legislation webpages (some general, some COVID-19 specific) as follows:

Guernsey- <http://www.guernseylegalresources.gg/article/175800/2020?cur=2>

Jersey - <https://www.jerseylaw.je/Pages/default.aspx>

Isle of Man – <http://www.tynwald.org.im/links/tls/SD/Pages/2020-Emergency-Powers.aspx>

## **Legislative framework**

### **United Kingdom**

#### **Public Health (Control of Diseases) Act 1984**

Despite the enactment of the Coronavirus Act 2020, the main legislative vehicle for dealing with the COVID-19 pandemic in the UK remains the public health legislation: in England and Wales, Part 2A of the Public Health (Control of Diseases) Act 1984;<sup>2</sup> in Northern Ireland, the Public Health Act (Northern Ireland) 1967<sup>3</sup>; and, in Scotland, the Public Health etc (Scotland) Act 2008<sup>4</sup>. The Northern Irish and Scottish Acts have now been supplemented by sections 48 and 49 of, and Schedules 18 and 19 of, the Coronavirus Act.<sup>5</sup>

With the amendments made by the Coronavirus Act there is now a broadly consistent set of powers across the UK to make regulations to prevent, protect against, control or respond to the incidence or spread of infections. These include the power to make regulations:

(a) in relation to international travel, including the medical examination, detention, isolation or quarantining of individuals; the prohibition or regulation of arrivals and departures and the entry and exit of persons; and the compulsory provision of information;<sup>6</sup>

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<sup>1</sup> This URL and subsequent URLs referenced in this Review were accessed between 9 and 13 April 2020.

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1984/22/part/2A>

<sup>3</sup> <https://www.legislation.gov.uk/apni/1967/36/contents>

<sup>4</sup> <https://www.legislation.gov.uk/asp/2008/5/contents>

<sup>5</sup> <https://www.legislation.gov.uk/ukpga/2020/7/schedule/19>

<sup>6</sup> Public Health (Control of Diseases) Act 1984, s. 45B.

(b) in relation to domestic restrictions, imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises such as prohibitions or restrictions relating to the holding of events or gatherings, or the handling, transport, burial or cremation of dead bodies and human remains.<sup>7</sup>

It is under these powers that:

(1) the COVID-19 pandemic has been declared a serious and imminent threat to public health and provision was first made for screening, detention and isolation of individuals;<sup>8</sup> and

(2) the UK's lockdown measures have been introduced. These were originally announced in the Prime Minister's address to the nation on 23 March 2020.<sup>9</sup> Although in that address he said that people should stay at home from that evening and instructed the immediate closure of shops selling non-essential goods and prohibition of gatherings and social events (other than funerals) the powers under which he could do this were not enacted until the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020<sup>10</sup> ('Coronavirus Restrictions (England) Regulations') were made on 26 March (together with the Scottish,<sup>11</sup> Northern Irish<sup>12</sup> and Welsh<sup>13</sup> equivalents which, apart from some minor differences in approach and restrictions - for example, more specific restrictions on exercise in Wales - impose broadly similar measures across the UK.)

The regulations in broad terms therefore:

(1) declare an emergency period, currently beginning with the date when the regulations came into force (26 March 2020) and ending when the Secretary of State directs their end;<sup>14</sup>

(2) require the closure of listed non-essential businesses;<sup>15</sup>

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<sup>7</sup> Public Health (Control of Diseases) Act 1984, s. 45C.

<sup>8</sup> Health Protection (Coronavirus) Regulations 2020 <https://www.legislation.gov.uk/uksi/2020/129/contents> ; Health Protection (Coronavirus) (Wales) Regulations 2020, <https://www.legislation.gov.uk/wsi/2020/308/contents> ; both now replaced by the Coronavirus Act 2020, s. 51 and Sch. 21.

<sup>9</sup> PM address to the nation on coronavirus: 23 March 2020 <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020>

<sup>10</sup> Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 <https://www.legislation.gov.uk/uksi/2020/350/introduction/made>

<sup>11</sup> Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 <https://www.legislation.gov.uk/ssi/2020/103/contents> , as amended by the Health Protection (Coronavirus) (Restrictions) (Scotland) (Amendment) Regulations 2020 <https://www.legislation.gov.uk/ssi/2020/106/contents/made>

<sup>12</sup> Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 <https://www.legislation.gov.uk/nisr/2020/55/contents/made>

<sup>13</sup> Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 <https://www.legislation.gov.uk/wsi/2020/353/contents/made> , as amended by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 <https://www.legislation.gov.uk/wsi/2020/399/contents/made>

<sup>14</sup> Coronavirus Restrictions (England) Regulations, reg. 3; (Scot. reg. 2; W, reg. 3; NI, reg. 2)

<sup>15</sup> Coronavirus Restrictions (England) Regulations, regs. 4 and 5; (Scot. regs. 3 and 4; W, regs. 4 and 5; NI, regs. 3 and 4).

(3) impose restrictions on the movement of individuals by providing that no person leaves the place where they are living without reasonable excuse. The regulations then offer a non-exhaustive list of reasonable excuses;<sup>16</sup>

(4) impose restrictions on gatherings in public places of more than two people, subject to a number of exceptions;<sup>17</sup>

(5) contain provision for the enforcement of the measures contained in the regulations.<sup>18</sup>

The Coronavirus Restrictions (Wales) Regulations additionally require the closure of public paths.<sup>19</sup>

### **Coronavirus Act 2020**

The Coronavirus Act<sup>20</sup> was enacted on 25 March 2020. Many of its provisions extend across the UK, but a number – reflecting the devolution settlement – only apply to parts of the UK.<sup>21</sup> The Coronavirus (Scotland) Act 2020<sup>22</sup> has also been enacted, which contains provisions specific to Scotland.

In broad terms the Coronavirus Act, has been described as having four main effects:

(1) enhancing capacity and the flexible deployment of the health and social care workforce; for example, the emergency registration of health professionals and social workers;<sup>23</sup> establishing compensation and leave arrangements for health and social care volunteers;<sup>24</sup> the modification of the rules relating to the numbers of practitioners required to certify mental health patients;<sup>25</sup> and the relaxing of registration and pension rules to encourage the return of retired medical practitioners;<sup>26</sup>

(2) easing legislative and regulatory requirements, such as the use of technology in courts;<sup>27</sup> the postponement of elections;<sup>28</sup> and protection of tenants from eviction;<sup>29</sup>

(3) containing and slowing the virus, with new powers introduced to assess, screen, detain and isolate individuals who are potentially infectious;<sup>30</sup> and suspend port operations,<sup>31</sup>

(4) managing the deceased.<sup>32</sup>

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<sup>16</sup> Coronavirus Restrictions (England) Regulations, reg. 6; (Scot. reg. 5; W, reg. 7; NI, reg. 5).

<sup>17</sup> Coronavirus Restrictions (England) Regulations, reg. 7; (Scot. reg. 6; W, reg. 8; NI, reg. 6)

<sup>18</sup> Coronavirus Restrictions (England) Regulations, regs. 8 – 11; (Scot. regs. 7 – 9; W, regs. 10-14; NI, regs. 7-15).

<sup>19</sup> Coronavirus Restrictions (Wales) Regulations, reg. 9.

<sup>20</sup> Coronavirus Act 2020, <https://www.legislation.gov.uk/ukpga/2020/7/contents>

<sup>21</sup> Coronavirus Act, s. 100.

<sup>22</sup> <https://www.legislation.gov.uk/asp/2020/7/contents>

<sup>23</sup> Coronavirus Act, ss. 2 – 7.

<sup>24</sup> Coronavirus Act, ss. 8-9 and Sch. 7.

<sup>25</sup> Coronavirus Act, s.10 and Schs. 8 – 11.

<sup>26</sup> Coronavirus Act, ss. 45-47.

<sup>27</sup> Coronavirus Act, ss. 53-57.

<sup>28</sup> Coronavirus Act, ss. 59-70

<sup>29</sup> Coronavirus Act, s.81.

<sup>30</sup> Coronavirus Act, s.51 and Sch.21.

<sup>31</sup> Coronavirus Act, s.50.

<sup>32</sup> Coronavirus Act, s.58.

In addition, as described above, the Coronavirus Act fills gaps or ‘evens up’ legislative powers across the UK and introduces provisions relating to, for example, social security that have been implemented to deal with some of the employment and financial consequences of the pandemic.

### **Civil Contingencies Act 2004**

The overarching framework for civil protection and emergency management in the UK is contained in the Civil Contingencies Act 2004 (CCA) and its associated regulations and guidance. The CCA is complemented by sector specific legislation which addresses contingency planning and, to a lesser extent, the response to emergencies arising from particular hazards.

The CCA is divided into two parts:

(1) Part 1 contains the framework for emergency management, including planning and response, across the UK. It is considered in more detail under Q1. Part 1 is augmented by the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005<sup>33</sup> and, in Scotland, the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005,<sup>34</sup> (together, the ‘Contingency Planning Regulations’). In addition, statutory guidance is issued - *Emergency Preparedness*,<sup>35</sup> and its equivalent for Scotland, *Preparing Scotland*<sup>36</sup> - to which emergency responders must have regard. Together these impose duties on responders to, among other things, carry out assessments of risk, produce emergency plans and maintain arrangements to warn and inform the public.

(2) Part 2 covers emergency powers and establishes a framework for the use of special legislative measures that may be necessary to deal with the effects of the most serious emergencies. To date these have not been used to deal with the COVID-19 pandemic.

### **Crown Dependencies**

In Jersey, the COVID-19 (Enabling Provisions) (Jersey) Law 2020<sup>37</sup> enables regulations to be enacted which may make such provision as appears to be necessary or expedient as a direct or indirect result (a) of the outbreak of Covid-19 in Jersey; or (b) of the aftermath of that outbreak. Regulations have subsequently been made dealing with matters such as restrictions on movement; screening, assessments and isolation; the registration of medical practitioners; care standards and residential tenancies.<sup>38</sup>

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<sup>33</sup> Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005  
<https://www.legislation.gov.uk/ukxi/2005/2042/contents/made>

<sup>34</sup> Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005  
<https://www.legislation.gov.uk/ssi/2005/494/contents/made>

<sup>35</sup> Cabinet Office, *Emergency preparedness: guidance on part 1 of the Civil Contingencies Act 2004, its associated regulations and non-statutory arrangements* (9 January 2006, revised October 2011 and March 2012) (*Emergency Preparedness*) <https://www.gov.uk/government/publications/emergency-preparedness>

<sup>36</sup> Ready Scotland, *Preparing Scotland: Philosophy, Principles, Structure and Regulatory Duties* (June 2016)  
<https://www.gov.scot/publications/preparing-scotland-scottish-guidance-resilience/>

<sup>37</sup> <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/20.055.aspx>

<sup>38</sup> See <https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/search.aspx?k=COVID-19#>

Similar matters have been covered in Guernsey by regulations made under the Civil Contingencies (Bailiwick of Guernsey) Law 2012,<sup>39</sup> including the control of premises; isolation and screening; and social gatherings.<sup>40</sup>

In the Isle of Man, the principal enabling legislation appears to be the Emergency Powers Act 1936,<sup>41</sup> under which most of the Island's COVID-19 regulations have been made. The 1936 Act enables the Governor, by Order to make regulations while a proclamation of emergency is in place. A proclamation of a state of emergency was made on 16 March 2020.<sup>42</sup> Since then a significant number of orders have been made<sup>43</sup> which deal with the restrictions deemed necessary to address the pandemic, such as the closure of business;<sup>44</sup> and restrictions on movement.<sup>45</sup>

All the measures to date have been taken within the constraints of the Human Rights Act 1998 and the European Convention on Human Rights and there has been no derogation under article 15 (derogation in time of emergency).

The *'Analysis of Law in the United Kingdom pertaining to Cross-Border Disaster Relief'* prepared in 2010 by the British Institute of International and Comparative Law on behalf of the British Red Cross (the BRC Report), contains further analysis of the laws in the UK which may have relevance to the UK's COVID-19 measures.<sup>46</sup>

## **1. Is there coordination between state and non-state actors, e.g. through a national emergency response mechanism?**

### **Summary**

There is a standing national response mechanism which involves, in the case of the COVID-19 pandemic, central government departments, national public bodies - such as the National Health Service England and Public Health England (and their devolved equivalents) – and local authorities (councils, police etc). There is no provision either under statute or in the key national documents (see below) which expressly sees a role for non-state actors such as the BRC in the national response to the COVID-19 pandemic.

However, the UK's normal emergency planning system includes a number of non-state actors. Included among the Category 2 responders (see below) which have statutory duties under the CCA are a number of private companies or organisations, for example, transport operators and utility providers.

Non-state actors such as humanitarian organisations including the BRC are not included as Category 2 responders, and so do not have any statutory duties. However the Contingency Planning

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<sup>39</sup> <http://www.guernseylegalresources.gg/article/104118/Civil-Contingencies-Bailiwick-of-Guernsey-Law-2012>

<sup>40</sup> See <http://www.guernseylegalresources.gg/article/6404/Advanced-Search?q=Coronavirus+&go=Search>

<sup>41</sup> [https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1936/1936-0001/EmergencyPowersAct1936\\_1.pdf?zoom\\_highlight=Emergency+Powers+Act#search=%22Emergency%20Powers%20Act%22](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1936/1936-0001/EmergencyPowersAct1936_1.pdf?zoom_highlight=Emergency+Powers+Act#search=%22Emergency%20Powers%20Act%22)

<sup>42</sup> <http://www.tynwald.org.im/links/tls/SD/2020/2020-SD-0162.pdf>

<sup>43</sup> See <http://www.tynwald.org.im/links/tls/SD/Pages/2020-Emergency-Powers.aspx>

<sup>44</sup> Emergency Powers (Coronavirus) (Closure of Businesses and Other Premises) Regulations 2020: <http://www.tynwald.org.im/links/tls/SD/2020/2020-SD-0200.pdf>

<sup>45</sup> Emergency Powers (Prohibitions on Movement) Regulations 2020; <http://www.tynwald.org.im/links/tls/SD/2020/2020-SD-0201.pdf>

<sup>46</sup> <https://www.ifrc.org/Global/Publications/IDRL/country%20studies/idrl-uk-cross-border-analysis-0810.pdf>

Regulations require Category 1 responders to have regard to the activities carried out by voluntary organisations which are relevant to emergencies<sup>47</sup> and in *Emergency Preparedness* there is express guidance on the role of the voluntary and other sectors in emergency planning, including engaging voluntary sector groups by appointing their representatives to local resilience forums (LRFs) or, in Scotland, regional Resilience Partnerships (RRPs).<sup>48</sup> It is understood that BRC representatives have been appointed to each LRF and RRP.

As the LRF or RRP becomes, during an emergency, the body responsible for coordinating response at a local level, the BRC may as a member of the LRF or RRP have a role in the coordination of the response, although the lead will normally be taken by the statutory Category 1 responders.

### **Detail of the UK's response mechanism**

The UK's response to the COVID-19 pandemic has, to date, relied on the normal arrangements for emergency planning and response across the UK. This comprises:

- (1) a national level of planning and response which is not set out in any legislation, but is rather contained in a series of Government documents; and
- (2) a local level based around the concept of the LRF and RRP, which is contained in and governed by Part 1 of the CCA. The underlying principle is that those involved in coordinating emergency planning will also become the principal coordinators of a response when an emergency occurs.

At the national level, the UK Government has developed:

- (1) An (unpublished) *National Risk Assessment* (NRA) which identifies the highest potential risks which is then used to inform the *National Risk Register* (NRR);
- (2) The NRR which provides an updated government assessment of the likelihood and potential impact of a range of different civil emergency risks and informs emergency planning across the UK. The NRR has generally been published every two years, although the last available version was published in 2017.<sup>49</sup> The 2017 NRA, along with previous editions, identifies 'pandemic influenza' as the risk having the highest likelihood of occurring and the most severe impact. For each risk, a Lead Government Department (LGD) is identified and is responsible for the day-to-day policy oversight, coordination, support and overall management of the central Government response to an emergency. For pandemics, the lead government department is the Department of Health and Social Care ('DHSC'). In Northern Ireland, Scotland and Wales, if the matter is devolved (e.g. as with Health), the devolved administration performs the LGD function.
- (3) The *Central Government's Concept of Operations*,<sup>50</sup> which sets out the arrangements for coordinating the response to and recovery from emergencies within the UK. This appears to have been last updated in April 2013.<sup>51</sup>

The *Central Government's Concept of Operations* refers to the role of the Cabinet Office Briefing Rooms ('COBR') arrangements and committees (COBR is the UK Government's emergency crisis

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<sup>47</sup> Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, reg. 23

<sup>48</sup> Emergency Preparedness, Chapter 14.

<sup>49</sup> <https://www.gov.uk/government/publications/national-risk-register-of-civil-emergencies-2017-edition>

<sup>50</sup> <https://www.gov.uk/government/publications/the-central-government-s-concept-of-operations>

<sup>51</sup> <https://www.gov.uk/government/publications/the-central-government-s-concept-of-operations>

response structure convened to handle and coordinate central government activity and the national level response during a serious emergency). This has been supplemented by four new ministerial level implementation committees covering the following areas: healthcare, the general public sector, economy and business, and international.<sup>52</sup>

The above central government documents address all risks. More specifically in terms of the preparation for and response to a pandemic, there was a *UK Influenza Preparedness Strategy*<sup>53</sup> and a *Pandemic Influenza Response Plan*.<sup>54</sup> The latter describes the Government's strategic approach for responding to an influenza pandemic. It provides background information and guidance to public and private organisations developing response plans. The titles of both indicate that the focus was on pandemic influenza, possibly as a consequence of both being created in response to recommendations of the Hine Review into the 2009 Swine Flu Pandemic.<sup>55</sup> They also appear not to have been updated since 2011 and 2014 respectively.

In response to the COVID-19 pandemic, the Government produced a specific *Coronavirus Action Plan*. The Plan was published on 3 March 2020 and has not been updated so some of its contents may have been superseded by subsequent Government action and decisions. The Plan describes what was known about the virus on 3 March; how the Government had planned for an infectious disease outbreak; the actions taken to the beginning of March; and the Government plans for future action, depending on the course the outbreak took. The Action Plan confirmed that, at the national level, the DHSC was the lead UK Government department with responsibility for the pandemic on a national level. The four UK Chief Medical Officers provide public health advice to the government throughout the UK, and the Scientific Advisory Group for Emergencies provides expert scientific and technical advice to support governmental decision-making and co-ordinates scientific advice to COBR. The tri-partite partnership of DHSC, Public Health England and NHS England is tasked with providing strategic oversight and direction for the health and adult social care response to an influenza pandemic (and similar partnerships apply between the equivalent bodies in the devolved administrations). The Department for Education leads on the children's social care response.

In relation to multi-agency working, the Action Plan recognises that social care is provided by a diverse range of local authority, private and third sector bodies and notes the importance of social care provisions across all sectors in contingency planning.

Below the national level, in England and Wales, the main mechanism for local multi-agency cooperation are the LRFs or RRP which comprise organisations at the core of emergency response, including the emergency services, local authorities, utilities companies, all of whom are referred to in the CCA as 'responders'.<sup>56</sup> These responders are divided into two categories: the principal

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<sup>52</sup> UK Government, *New government structures to coordinate response to coronavirus*, 17 March 2020, <https://www.gov.uk/government/news/new-government-structures-to-coordinate-response-to-coronavirus>  
<sup>53</sup> <https://www.gov.uk/government/publications/responding-to-a-uk-flu-pandemic>

<sup>54</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/344695/PI\\_Response\\_Plan\\_13\\_Aug.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344695/PI_Response_Plan_13_Aug.pdf) ; and for Scotland, see also <https://www.gov.scot/publications/pandemic-flu-scottish-framework-responding-influenza-pandemic/pages/2/>

<sup>55</sup> *The 2009 Influenza Pandemic- An independent review of the UK response to the 2009 influenza pandemic* (July 2010) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61252/the2009influenzapandemic-review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61252/the2009influenzapandemic-review.pdf)

<sup>56</sup> For a range of practical and constitutional reasons it was considered inappropriate to use the CCA to place statutory duties on organisations delivering transferred functions in Northern Ireland. There is, though, an expectation that Northern Ireland should have a similar level of protection for its citizens as is experienced elsewhere. It has therefore adopted a Civil Contingencies Framework which takes the principles contained in



responders (local authorities, police, fire, etc) known as Category 1 responders; and Category 2 responders (such as utility and telecoms companies and transport infrastructure operators). The LRFs and RRP are a means to bring together all the responders that have a duty to co-operate under the CCA along with others who would be involved in responding to an emergency. The requirements placed on responders to cooperate and share information are contained in the Contingency Planning Regulations 2005. In addition, statutory guidance is issued - *Emergency Preparedness*,<sup>57</sup> and its equivalent for Scotland, *Preparing Scotland*<sup>58</sup> - to which responders must have regard. Together these impose duties on responders, to among other things, carry out assessments of risk, produce emergency plans and maintain arrangements to warn and inform the public.

Slightly confusingly, there is then what is described as 'non-statutory guidance' – *Emergency Response and Recovery*<sup>59</sup> (in Scotland, *Responding to Emergencies and Recovering from Emergencies*<sup>60</sup>) - which describes the multi-agency framework for responding to and recovering from civil emergencies in the UK.

The UK government's approach to emergency response and recovery is normally founded on the principle of subsidiarity with a bottom-up approach in which operations are managed and decisions are made at the lowest appropriate level. The role of central government and the devolved administrations is then to support and supplement the efforts of local responders through the provision of resources and co-ordination. The central and sub-national tiers will only become involved in emergency response and recovery efforts where it is necessary or helpful to do so.

However, *Emergency Response and Recovery* recognises that the scale or complexity of an emergency may be such that some degree of central government support or co-ordination becomes necessary which will be provided by:

- (1) providing strategic directions based on:
  - (a) a Common Recognised Information Picture (CRIP);
  - (b) intelligence assessments and Joint Terrorism Analysis Centre (JTAC) threat levels in relation to terrorist threats where relevant;
  - (c) advice from the local Strategic Co-ordinating Groups or other key stakeholders invited to attend Cabinet Office Briefing Rooms;
  - (d) advice on the wider impact and longer-term recovery; and
  - (e) scientific advice provided by, or on behalf of, the Lead Government Department;
- (2) deciding on the adequacy of existing legislation and the use of emergency powers at UK or sub-UK basis;

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the CCA, as well as the principles which apply to UK-wide civil contingencies activities and applies them in Northern Ireland.

<sup>57</sup> Cabinet Office, *Emergency preparedness: guidance on part 1 of the Civil Contingencies Act 2004, its associated regulations and non-statutory arrangements*; <https://www.gov.uk/government/publications/emergency-preparedness> .

<sup>58</sup> Ready Scotland, *Preparing Scotland: Philosophy, Principles, Structure and Regulatory Duties* (June 2016); <https://www.gov.scot/publications/preparing-scotland-scottish-guidance-resilience/>

<sup>59</sup> For England and Wales see, Cabinet Office, *Emergency Response and Recovery - Non-statutory guidance accompanying the Civil Contingencies Act 2004* (Updated 2013) (Emergency Response and Recovery); <https://www.gov.uk/government/publications/emergency-response-and-recovery>

<sup>60</sup> For Scotland see, Ready Scotland, *Preparing Scotland: Responding to Emergencies* (October 2017); and Ready Scotland, *Preparing Scotland: Recovering from Emergencies in Scotland* (May 2017). <https://www.readyscotland.org/media/1497/preparing-scotland-responding-to-emergencies.pdf> and <https://www.readyscotland.org/media/1418/preparing-scotland-recovering-from-emergencies-published-version-september-2017.pdf>

- (3) authorising military assistance;
- (4) mobilising and/or releasing national assets and resources to support response and recovery efforts as appropriate;
- (5) determining national protective security and other counter-measures;
- (6) determining the public information strategy and co-ordinating public advice, in consultation with Strategic Co-ordinating Groups (where appropriate), the devolved administrations (where appropriate) and other key stakeholders;
- (7) managing the international/diplomatic aspects of the incident;
- (8) determining the likely development of the emergency and providing early strategic direction of preparations for the recovery phase to ensure coherent management without conflicting with immediate response, including the role of the sub-national tier;
- (9) sharing information with the devolved administrations on the evolving situation;
- (10) advising on the relative priority to be attached to multi-site or multiple incidents and the allocation of national resources, consulting the devolved administrations where appropriate; and
- (11) brokering mutual aid, where necessary.

All the above coordination principally concerns the coordination of central government, devolved administrations and those organisations, mainly public authorities but some private companies such as transport companies and utilities, which are categorised as Category 1 or Category 2 responders. There is no express reference to the BRC.

### **Crown Dependencies**

It is understood that the Crown Dependencies may feed into the national response mechanism through their sponsor department in Whitehall, understood to be the Ministry of Justice.

Otherwise, the local arrangements differ between dependencies.

In Guernsey there is a Civil Contingencies Authority which is a committee of the States or government. This Authority can require bodies, including voluntary organisations such as the Red Cross, to participate in emergency planning and potentially to participate in any response.<sup>61</sup>

In Jersey, there is a States of Jersey Emergencies Council and an Emergency Planning Board operating under the Emergency Powers and Planning (Jersey) Law 1990,<sup>62</sup> although it is not clear if the Red Cross have a role on either of these.

In the Isle of Man, the island's Major Incident Response Plan sets out the arrangements for response to an emergency.<sup>63</sup> A number of voluntary organisations, although not the Red Cross, are mentioned

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<sup>61</sup> Civil Contingencies (Bailiwick of Guernsey) Law 2012.

<sup>62</sup> <https://www.jerseylaw.je/laws/revised/Pages/23.100.aspx>

<sup>63</sup> <https://www.gov.im/media/1348816/major-incident-response-plan-november-2019.pdf>

in this document along with their roles. Although it is noted that the RC is expressly defined as an “emergency or necessary voluntary service” for the purpose of COVID-19.<sup>64</sup>

**2. Is there mention of the role of Red Cross (RC) or humanitarian actors? In what areas/sectors? What responsibilities are ascribed to RC?**

Apart from the involvement of the BRC as a member of the LRFs or RRP, there is no express reference to the RC or other humanitarian organisations in the UK’s emergency measures.

**3. Are there exceptions to travel restrictions that will facilitate the movement of RC/humanitarian relief teams and/or aid across borders? What (if any) quarantine requirements or other conditions are attached?**

The UK has not, as yet, put in place additional restrictions on entry into the UK; its borders remain open subject to normal laws. (For a consideration of these see *the BRC Report* which is believed still to reflect current laws in this area).

The Coronavirus Act contains power to assess, screen and detain or isolate individuals which could apply to arrivals from outside the UK. But it is understood that these powers have not, to date, been used to check arriving passengers.

The Crown Dependencies, however, have taken a more rigorous approach.

The Isle of Man prohibited entry to the Island from 27 March 2020.<sup>65</sup> There are exemptions if a person can be certified as being vital to the Island’s critical national infrastructure or is a medical expert or professional whose skills are essential to the Island’s medical infrastructure and the health of its community.<sup>66</sup> Port operations may be suspended;<sup>67</sup> although it has been reported that freight and supplies carrying essential food and medicine will continue to come to the island.<sup>68</sup> Arrivals may be subject to screening, isolation etc.<sup>69</sup>

Guernsey appears not to have closed its ports but requires all persons arriving in the Bailiwick from anywhere in the world to self-isolate for 14 days and to be subject to assessment, screening etc.<sup>70</sup>

In Jersey, all travellers arriving on the island from 22 March 2020 must self-isolate for a period of 14 days regardless of whether they are displaying coronavirus symptoms. This explicitly includes healthcare workers.<sup>71</sup> The only exceptions to Jersey’s mandatory quarantine period are non-

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<sup>64</sup> Emergency Powers (Prohibitions on Movement) Regulations 2020 (IOM), reg. 5(1) (a) <http://www.tynwald.org.im/links/tls/SD/2020/2020-SD-0201.pdf> .

<sup>65</sup> Emergency Powers (Coronavirus) (Entry Restrictions) Regulations 2020 (IoM), reg.5. <http://www.tynwald.org.im/links/tls/SD/2020/2020-SD-0199.pdf> .

<sup>66</sup> Ibid, reg.6.

<sup>67</sup> Emergency Powers (Coronavirus) (Port Operations) Regulations 2020. <http://www.tynwald.org.im/links/tls/SD/2020/2020-SD-0176.pdf>

<sup>68</sup> BBC News, Coronavirus: Isle of Man to close borders in bid 'to preserve life', 25 March 2020, <https://www.bbc.co.uk/news/world-europe-isle-of-man-52038411> .

<sup>69</sup> Emergency Powers (Potentially Infectious Persons) Regulations 2020: <http://www.tynwald.org.im/links/tls/SD/2020/2020-SD-0171.pdf>

<sup>70</sup> the Emergency Powers (Coronavirus) (Bailiwick of Guernsey) Regulations, 2020 <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=124030&p=0> ; and States of Guernsey Public Health, COVID-19 Critical travel and compassionate and medical travel, <https://www.gov.gg/covid19travel>

<sup>71</sup> Jersey Government, Travel advice for coronavirus (COVID-19), 22 March 2020, <https://www.gov.je/Health/Coronavirus/Pages/CoronavirusTravelAdvice.aspx>

healthcare, essential workers, if they are not showing symptoms. Examples of non-healthcare, essential workers are: flight staff and ship staff, transport staff bringing in essential goods, social work and social care work, infrastructure maintenance, or in essential supplies, such as fuel and medicines.<sup>72</sup>

**4. Are there exceptions to quarantines, curfews and other restrictions on movement that allow RC/humanitarian organizations access to vulnerable populations (including for psychosocial or non-medical aid)?**

Yes. In the UK, the standard restriction is that an individual may not leave the place where they live without a reasonable excuse. The various regulations then list what may be seen as a reasonable excuse. Despite some uninformed press comment and action by police officers, the list is not exhaustive: a person can show a reasonable excuse even if it is not one listed in the regulations.

However, the list of excuses includes leaving the home to provide care or assistance, including relevant personal care to a vulnerable person, or to provide emergency assistance; to donate blood; or to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living.<sup>73</sup>

This should therefore provide an exception enabling RC and other humanitarian organisations to access vulnerable populations or, if the listed excuses are not sufficient, accessing vulnerable populations may be justified as a reasonable excuse in any event. Similar provisions and excuses or defences can be found in the equivalent regulations in Scotland, Wales and Northern Ireland.

Similar restrictions on movement apply in the Isle of Man but, perhaps uniquely, the Red Cross and other voluntary services are expressly defined as emergency or necessary voluntary services. A person is permitted to leave their home to provide or participate in the provision of an emergency or necessary voluntary service.<sup>74</sup>

In Jersey the exceptions may not be so favourable. They apply to a person who is in a public place for the purpose of that person's work, when it is not reasonably possible for that person to work from the place where that person is living; or if they are required to go to, or remain in, a public place to fulfil a legal obligation. Work though is defined to include work involved in the provision of voluntary or charitable services.<sup>75</sup>

Finally, in Guernsey it is not clear if restrictions on movement have been imposed by laws. It appears though that from 25 March 2020 for an initial period of 14 days, all islanders were asked to remain at home, all non-essential shops and community spaces were closed and gatherings of two or more people in public were banned.<sup>76</sup> Exceptions to these strict measures apply to both essential workers and businesses.

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<sup>72</sup> Jersey Government, Travel advice for coronavirus (COVID-19), 22 March 2020, <https://www.gov.je/Health/Coronavirus/Pages/CoronavirusTravelAdvice.aspx> .

<sup>73</sup> Coronavirus Restrictions (England) Regulations, reg. 6

<sup>74</sup> Emergency Powers (Prohibitions on Movement) Regulations 2020 (IOM), reg. 5(1) (a) <http://www.tynwald.org.im/links/tls/SD/2020/2020-SD-0201.pdf> .

<sup>75</sup> COVID-19 (Restricted Movement) (Jersey) Order 2020, reg. 2

<sup>76</sup> States of Guernsey Government, COVID-19 Coronavirus – Latest News, <https://www.gov.gg/coronavirus>.

**5. Have any special legal facilities or exemptions been put in place for the importation of medical aid or other relief items or personnel (International Disaster Response Law)? What (if any) quarantine requirements or other conditions are attached?**

Yes. The Government has announced that a new process has been introduced for prioritising checks on medical equipment to ensure it reaches the NHS more quickly. “The process should ensure critical shipments are flagged to Border Force in advance by the NHS so that officers can stand ready to process them as soon as possible. Border Force officers then process the shipments quickly, whilst continuing to conduct thorough security checks.”<sup>77</sup>

The Treasury has also announced that it was “waiving import taxes on medical equipment crucial to the fight against coronavirus.”<sup>78</sup> The Treasury claims that the EU’s disaster relief regulation could be used in relation to COVID-19, to allow certain items that are needed to deal with COVID-19 to be imported free of VAT and customs duties.

Otherwise, the normal rules under the EU Customs Code<sup>79</sup> will continue to apply.

Personnel appear still to be subject to the normal immigration rules, a potential obstacle raised in the BRC Report.<sup>80</sup>

**6. Is the RC (or humanitarian organizations) categorized as 'essential' or 'emergency' services, for the purposes of exemptions to restrictions on business operations and opening hours?**

Not expressly. However, businesses which may remain open include medical or health services, including services relating to mental health.

The RC is expressly categorised as a “necessary voluntary service” on the Isle of Man.

RC personnel may also be classed as ‘key workers.’ This, though, is of limited application, being a term to date used when determining which children may continue to attend schools, the children of ‘key workers’ being permitted to attend. The list of ‘key workers’ includes doctors, nurses, midwives, paramedics, social workers, care workers, and other frontline health and social care staff including volunteers; the support and specialist staff required to maintain the UK’s health and social care sector; those working as part of the health and social care supply chain, including producers and distributors of medicines and medical and personal protective equipment.<sup>81</sup>

**7. What other measures are provided in the emergency decrees? (for governmental actors, for communities, for health workers, etc).**

Most measures are covered in the overview and the questions above.

Perhaps most of note to the RC are:

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<sup>77</sup> <https://www.gov.uk/government/news/border-force-prioritising-checks-on-medical-equipment>

<sup>78</sup> <https://www.gov.uk/government/news/chancellor-waives-duties-and-vat-on-vital-medical-imports>

<sup>79</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1586767600180&uri=CELEX:32013R0952>

<sup>80</sup> BRC Report, p. 51.

<sup>81</sup> <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>

(a) provision in the Coronavirus Act providing for the temporary registration of healthcare professionals<sup>82</sup> and of social workers,<sup>83</sup> which are intended to allow former nurses, social workers and other health care professionals, such as paramedics and radiographers, to return to their respective professions and for the early registration of final year students studying for those professions;

(b) exclusion of certain services, in particular health services, from competition laws, for example the Competition Act 1996 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020;<sup>84</sup>

(c) consequential measures designed to ensure the impact of COVID-19 pandemic is minimised and does not have unintended consequences, for example, measures to: extend time limits for matters such as fingerprint and DNA retention;<sup>85</sup> enable new restricted temporary release from prison or young offenders' institutions;<sup>86</sup> and amend working time regulations to remove the bar on workers carrying forward untaken leave.<sup>87</sup>

## **8. Have restrictions been adopted or put in place that ban the export of protective medical equipment?**

No UK specific measures have been put in place but in accordance with Commission Implementing Regulation (EU) 2020/402 of 14 March 2020 ('the EU PPE Regulation'),<sup>88</sup> the following protective equipment cannot be exported outside the EU without prior authorisation:

Protective spectacles and visors

Face masks

Mouth-nose-protection equipment

Protective garments

Gloves.<sup>89</sup>

Exports to Norway, Iceland, Liechtenstein, Switzerland, as well as the overseas countries and territories<sup>90</sup> and the Faroe Islands, Andorra, San Marino and the Vatican City are exempt from the restrictions.

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<sup>82</sup> Coronavirus Act, Schedules 1-4.

<sup>83</sup> Coronavirus Act, Schedules 5-6.

<sup>84</sup> <https://www.legislation.gov.uk/ukxi/2020/368/contents/made>

<sup>85</sup> Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) Regulations 2020 <https://www.legislation.gov.uk/ukxi/2020/391/regulation/1/made>

<sup>86</sup> Offender Management Act 2007 (Coronavirus) (Approved Premises) (Amendment) Regulations 2020 <https://www.legislation.gov.uk/ukxi/2020/401/regulation/1/made>

<sup>87</sup> Working Time (Coronavirus) (Amendment) Regulations 2020 <https://www.legislation.gov.uk/ukxi/2020/365/regulation/1/made>

<sup>88</sup> Commission Implementing Regulation (EU) 2020/402 of 14 March 2020 making the exportation of certain products subject to the production of an export authorisation as amended by Commission Implementing Regulation (EU) 2020/426 of 19 March 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1586767284659&uri=CELEX:02020R0402-20200321>

<sup>89</sup> UK Guidance on the application of the Regulation, *Personal protective equipment (PPE): export control process*, can be found at: <https://www.gov.uk/government/publications/personal-protective-equipment-ppe-export-control-process/personal-protective-equipment-ppe-export-control-process>

<sup>90</sup> The list can be found at <https://www.gov.uk/government/publications/personal-protective-equipment-ppe-export-control-process/personal-protective-equipment-ppe-export-control-process#other-territories>

Authorisation has to be requested from the Member State in which the exporter is established. In deciding whether to grant an export authorisation, Member States shall take into account “all relevant considerations including, where appropriate, whether the export serves, inter alia:

- a) to fulfil supply obligations under a joint procurement procedure in accordance with Article 5 of Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health;
- b) to support concerted support actions coordinated by the Integrated Political Crisis Response Mechanism, the European Commission or other Union institutions;
- c) to respond to the requests of assistance addressed to and handled by the Union Civil Protection Mechanism, by third countries or international organisations and to enable the provisions of emergency supplies in the context of humanitarian aid;
- d) to support the statutory activities of support companies [believed to refer to aid organisations] abroad that enjoy protection under the Geneva Convention, and in so far as they do not impair the ability to work as a national support company;<sup>91</sup>
- e) to support the activities of the World Health Organisation’s Global Outbreak Alert & Response Network;
- f) to supply foreign operations of EU Member States including, military operations, international police missions and/or civilian international peacekeeping missions;
- g) for the supply of EU and Member State delegations abroad.”

This EU PPE Regulation has an initial, limited duration of six weeks from 14 March 2020.

**Simon Whitbourn**  
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**13 April 2020**

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<sup>91</sup> Consideration (d) is a direct quote from the English version of the Regulation which refers to “support companies” and simply “the Geneva Convention”. The French version reads “les activités statutaires menées à l'étranger par **des organismes d'aide** qui bénéficient d'une protection au titre de la convention de Genève” and the German version specifies the “Genfer Flüchtlingskonvention.” Although the “Geneva Convention” is the term used in most languages, the German version suggests that this should refer to protection under the 1951 Geneva **Refugee** Convention. It is suggested that the urgency of the drafting may have caused this imprecision, but unless and until clarified it is suggested that this should be given the widest possible interpretation and apply to aid organisations that may operate and/or be protected under the 1949 or 1951 Geneva Conventions. The UK Guidance offers no further clarification.