The Checklist on Law and Disaster Preparedness and Response in the United Kingdom

Simon Whitbourn and Katja Samuel
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The report's principal author was Simon Whitbourn (Knightwood Legal, simon.whitbourn@knightwoodlegal.com). The project was coordinated, edited and co-authored by Dr Katja Samuel (Global Security and Disaster Management Limited, director@gsdm.global).

In addition, research was undertaken and written contributions were received from several academic colleagues: Dr Michael Eburn (Australian National University, michael.eburn@anu.edu.au), Professor Andrew Collins (Northumbria University, andrew.collins@northumbria.ac.uk), Dr Therese O'Donnell (Strathclyde University, therese.odonnell@strath.ac.uk), Dr Christy Shucksmith (Lincoln University, CShucksmith@lincoln.ac.uk), Dr Lucy Easthope (Lincoln University, lucyeasthope@gmail.com) and Dr Marie Aronsson-Storrier (University of Reading, e.m.l.aronssonstorrier@reading.ac.uk). In addition, research assistance was provided by Matthew Teh (Australian National University), and editorial assistance was given by Jonathan Ammoun (intern, Global Security and Disaster Management Limited).

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The views expressed in this report, and any related errors, remain those solely of the authors and other academic contributors.

14 December 2017
### Acronyms and abbreviations

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<tr>
<td>ABI</td>
<td>Association of British Insurers</td>
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<td>BRC</td>
<td>British Red Cross</td>
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<td>CCA</td>
<td>Civil Contingencies Act 2004</td>
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<td>CCS</td>
<td>Civil Contingencies Secretariat</td>
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<td>COBR</td>
<td>Cabinet Office Briefing Room</td>
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<td>COMAH</td>
<td>Control of Major Accident Hazards Regulations 2015</td>
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<td>CONOPS</td>
<td>Concept of operations</td>
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<td>CP Regulations</td>
<td>Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005</td>
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<td>CP (Scotland) Regulations</td>
<td>Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005</td>
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<td>DVI</td>
<td>Disaster Victim Identification</td>
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<td>ECHR</td>
<td>European Convention on Human Rights 1950</td>
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<td>EU</td>
<td>European Union</td>
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<td>GDPR</td>
<td>EU General Data Protection Regulation</td>
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<td>ICESCR</td>
<td>International Covenant on Social, Cultural and Economic Rights 1966</td>
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<td>IEM</td>
<td>Integrated Emergency Management</td>
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<td>IFRC</td>
<td>International Federation of Red Cross and Red Crescent Societies</td>
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<td>JESIP</td>
<td>Joint Emergency Services Interoperability Programme</td>
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<td>LGD</td>
<td>Lead Government Department</td>
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<td>LRF</td>
<td>Local Resilience Forum</td>
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<td>MACA</td>
<td>Military Aid to the Civil Authority</td>
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<td>MFCG</td>
<td>Mass Fatality Coordination Group</td>
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<td>MoD</td>
<td>Ministry of Defence</td>
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<td>NRCP</td>
<td>National Resilience Capabilities Programme</td>
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<td>NRR</td>
<td>National Risk Register</td>
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<td>NSS</td>
<td>National Security Secretariat</td>
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<td>NVASEC</td>
<td>National Voluntary Aid Society Emergency Committee</td>
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<td>REPPIR</td>
<td>Radiation (Emergency Preparedness and Public Information) Regulations</td>
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<td>RRP</td>
<td>Regional Resilience Partnership (Scotland)</td>
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<td>SAGE</td>
<td>Scientific Advisory Group for Emergencies</td>
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<td>UK</td>
<td>United Kingdom of Great Britain and Northern Ireland</td>
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<td>VSCPF</td>
<td>Voluntary Sector Civil Protection Forum</td>
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**Executive summary**

This report on domestic law and disaster preparedness and response was commissioned by the International Federation of Red Cross and Red Crescent Societies (IFRC) as part of a wider global research project. Its overall goal is to support governments in considering key elements to include in their legal framework for disaster risk management to adequately address preparedness and response. Currently, a gap exists within the set of tools developed by the IFRC’s Disaster Law Programme that address legislative considerations for disaster risk reduction and international disaster response. The planned end output will be the development of a Checklist on Law and Disaster Preparedness and Response, designed to provide concrete guidance to law and policy makers, as well as National Societies and other interested stakeholders.

This report seeks to answer a number of pre-determined questions posed by the IFRC (Part 1). In addition to the focus on the UK, the report includes discussion of the Overseas Territories and Crown Dependencies, particularly in wake of Hurricanes Sandy and Irma during August and September 2017 which caused so much devastation to them.

This initial phase of the IFRC's project was commissioned primarily as an initial country desk based research project, reviewing existing legislation, statutory and non-statutory guidance, as well as other relevant documents, policies and practices. As such, interviews have not been held in relation to the posed questions, though the draft report was circulated to key stakeholders (see acknowledgments) for comment. Consequently, observations or suggestions are made in Part 2 - relating to identified good practice, gaps and challenges - rather than more concrete ‘recommendations’ to reflect the limitations inherent in a desk based study of this nature.

The overall conclusion of the report is that a largely coherent, comprehensive system of 'hard' and 'soft' instruments governing emergency management in the UK exists, comprising legislation (primary and secondary) and non-statutory guidance. One key issue and recurring theme identified by the report concerns the fundamental difference of approach between a common law and civil law based legal system. Whereas the latter needs to be comprehensive in terms of the existence of legal instruments and legal tools covering all possibilities, a common law system by its very nature can be supplemented by ministerial guidance and evolve through case law to close any legislative gaps and, in the instance of the UK, also look to the Royal Prerogative in certain instances. In addition, it was felt that legislation is not always the most appropriate response to identified gaps and challenges, which may be better addressed through 'softer' approaches such as guidance or relationship building.
More specifically, in furtherance of the IFRC's project objectives, the report recommends that a number of elements from the UK's emergency management framework be considered by the IFRC when preparing its global checklist:

- The adoption of the integrated emergency management (IEM) or ‘business continuity’ model as an alternative to one reliant on declarations of states of emergency. This model imposes specific duties on local responders to plan for emergencies; creates the expectation that standing or business as usual laws will provide sufficient powers to enable a response to most emergencies; but offers the fall back to make wide-ranging emergency regulations if an emergency is too severe to be handled using standing laws;

- Adopting principles of IEM, the UK framework emphasises the need for risk assessments at all levels, involving all responders. This helps ensure capability and capacity development is recognised and targeted in an appropriate and proportionate manner;

- The Civil Contingencies Act 2004 framework (1) sets out the roles and responsibilities for responders in legislation (supported by more user-friendly guidance), (2) gives greater structure and consistency to local civil protection activity, and (3) establishes a sound basis for performance management at a local level;

- To achieve the last objective, the establishment of a National Resilience Capabilities Programme (NRCP) which identifies, challenges and monitors the current levels of capability, and builds new capabilities, supported by regular national capability surveys;

- Following criticism from inquiries that the responder community was not sufficiently joined-up, (1) the creation of the Local Resilience Forum (Regional Resilience Partnership in Scotland) to enable cooperation between local responders, and (2) the imposition of statutory duties on responders to cooperate with each other, including recognition that public law duties should be imposed on private sector entities which have a key role in the critical national infrastructure;

- Recognising that information sharing is a key aspect of effective emergency planning and vital in the response and recovery phase, the creation of a statutory regime to make provision for the sharing of information between responders, including addressing how to handle sensitive material, and the production of guidance addressing misunderstandings over the law on the sharing of personal data;

- The creation of a system of peer monitoring and monitoring by Ministers which with the NRCP seeks to encourage compliance by responders.
Introduction and background

1. Introduction
This report on domestic law and disaster preparedness and response was commissioned by the International Federation of Red Cross and Red Crescent Societies (IFRC) as part of a wider global research project. It is envisaged that national reports, such as the current one, will be undertaken in at least 30 countries. Its overall goal is to support governments in considering key elements to include in their legal framework for disaster risk management to adequately address preparedness and response. Currently, a gap exists within the set of tools developed by the IFRC’s Disaster Law Programme that address legislative considerations for disaster risk reduction and international disaster response. The planned end output will be the development of a Checklist on Law and Disaster Preparedness and Response, designed to provide concrete guidance to law and policy makers, as well as National Societies and other interested stakeholders.

This report builds upon 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 (BRC). Where issues raised in relation to the IFRC checklist were addressed in that analysis - principally around the laws which facilitate international disaster relief - the detail of these have not been duplicated in this report.

2. Methodology
Several phases are envisaged for the IFRC's overall global project. This initial report was commissioned primarily as an initial country desk based research project, reviewing existing legislation, statutory and non-statutory guidance, as well as other relevant documents, policies and practices. As such, interviews have not been held in relation to the posed questions, though the draft report was circulated to key stakeholders (see acknowledgments) for comment. Consequently, the observations made in Part 2 are framed as ‘suggestions’ rather than more concrete ‘recommendations’ to reflect the limitations inherent in a desk based study of this nature.

Every effort was made to answer the IFRC's detailed questions comprehensively, though some aspects of the UK's emergency management system fall outside of their scope. The omission of aspects of the framework that to some practitioners might seem obvious should not be seen as a comment on their relevance, benefits or flaws, but should instead be understood as simply not falling within the pre-set parameters of this review.
The United Kingdom of Great Britain and Northern Ireland (UK) comprises the countries of England, Wales, Scotland and Northern Ireland. The UK or Westminster parliament is competent to legislate in respect of all four countries, but with certain competencies devolved to the governments of Scotland, Wales and Northern Ireland. Many aspects of emergency management, including the making of emergency regulations and some of the sector specific laws, for example the Control of Major Accident Hazards Regulations 2015 (COMAH), are reserved with responsibility resting with the UK Government. However, the devolved administrations and the public authorities operating within their jurisdictions have responsibilities relating to emergency or contingency planning, including managing the consequences of most emergencies in their respective countries, including those the causes of which fall within Reserved areas. The legislative framework reflects this split in responsibility. Where relevant and possible, divergences of approach adopted by the devolved administrations of Wales, Scotland and Northern Ireland have been identified.

In addition, especially in the wake of recent disaster events and the ensuing devastation that have occurred in the UK’s Overseas Territories attributable to hurricanes, a brief description of the relevant legislation in those Overseas Territories have been included. See Annex A.

The report is framed around the ten principal questions, with accompanying sub-questions, posed by the IFRC. It is structured to reflect the four key elements requested by the IFRC: overview of findings; the identification of good practices/models; the identification of gaps and challenges; and recommendations. In terms of structure, in order to avoid duplication and for the sake of brevity, the report has been divided into two parts: Part One discusses the key substantive findings in response to each of the ten questions; Part Two seeks to draw out from these findings key themes and issues from which good practice and any gaps or weaknesses may be identified, and from which any suggestions may be appropriate.

Due to the project's constraints, especially in terms of its overall length, it has not been possible to cover all aspects of the UK’s emergency management framework or all of the issues raised in depth. Therefore, in some instances, the text of the report has focused on where it might bring the most clarity and/or add value in terms of pursuing the IFRC’s set goals and questions.

1 In this report, the terms ‘emergencies’ and ‘emergency management’ are employed rather than ‘disasters’ and ‘disaster management’. This reflects the terminology used in UK legislation, with the definition of emergency (see sections 1(1) and 19 Civil Contingencies Act 2004 (CCA)) encompassing events that elsewhere can be described as disasters.
3. **Introduction to the structure of emergency management in the UK**

For the benefit of those less familiar with the structure and complexities of emergency management within the United Kingdom, including the role and approaches of the devolved administrations, a brief overview is given here.²

The overarching framework for civil protection or 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 a number of emergencies arising from particular hazards.

The CCA is divided into two parts: Part 1 covers local arrangements for civil protection, establishing roles and responsibilities for those organisations at the core of emergency response, including the emergency services, local authorities, utilities companies, who are referred to in the CCA as ‘responders’. These are divided into two categories: the principal 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).

Part 1 is augmented by the associated regulations - the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005³ (CP Regulations) and, in Scotland, the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 (CP (Scotland) Regulations).⁴ In addition, statutory guidance is issued - *Emergency Preparedness*,⁵ and its equivalent for Scotland, *Preparing Scotland*⁶ - to which responders must have regard.⁷ 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.

Part 2 of the CCA covers emergency powers, establishing a framework for the use of special legislative measures that may be necessary to deal with the effects of the most serious emergencies.

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In England and Wales, the main mechanism for local multi-agency cooperation is the Local Resilience Forum (LRF). These forums, based on local police areas, 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. Some co-operation and co-ordination takes place between organised groups of LRFs. In England, this brings together representatives of local response organisations, supported by resilience advisers from the Department for Communities and Local Government. These groups work together on larger-scale civil protection issues.

The CCA applies to Scotland, which has introduced its own contingency planning regulations and guidance\(^8\) but operates broadly consistent resilience arrangements, drawing on wider UK resources when appropriate. In Scotland, the equivalent of the LRF is the Regional Resilience Partnership (RRP) of which there are three.

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 the CCA, as well as the principles which apply to UK-wide civil contingencies activities and applies them in Northern Ireland.\(^9\)

In addition, at the national level the UK Government has developed:

- The Government’s Concept of Operations, which sets out the flexible arrangements for coordinating the response to and recovery from emergencies within the UK.
- Contingency plans for responding to the highest priority risks identified in the National Risk Assessment.
- A National Resilience Capabilities Programme (NRCP), which aims to build a range of capabilities for emergencies.
- A Strategic National Framework on Community Resilience, which explores the role and resilience of individuals, businesses and communities.

Based on the National Risk Assessment mentioned above, the UK produces and publishes on a biennial basis a National Risk Register (NRR) for Civil Emergencies\(^10\) which identifies priority emergency risks. The latest version was published in September 2017. The

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\(^8\) The CP (Scotland) Regulations (n4); and Preparing Scotland: Responding to Emergencies (October 2017); and Preparing Scotland: Recovering from Emergencies in Scotland (May 2017).

\(^9\) Office of the First Minister and Deputy First Minister, The Northern Ireland Civil Contingencies Framework (revised September 2011).

NRR produces an assessment of the risks facing the UK that could cause a civil emergency during the next five years. The seriousness of any risk depends on two things: (a) how likely it is that the risk will occur; and (b) the expected impacts were it to happen. In making risk assessments, a number of factors are considered, including new or improved scientific modelling and the changing world context.¹¹

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. In Northern Ireland, Scotland and Wales, if the matter is devolved (e.g. as with Health), the devolved administration performs the LGD function.

¹¹ Ibid. For a summary of current identified risk, see Matrix A 'Hazards, disease, accidents and societal factors', and Matrix B 'Malicious attack risks', pp. 9-10. The UK Government also publishes terrorism threat levels which indicate the likelihood of a terrorist attack in the UK.
PART 1: FINDINGS

1. State of emergency and/or state of disaster

The United Kingdom’s approach to dealing with serious emergencies can best be described as one of ‘business continuity’ which works on the basis that standing laws and situation normal processes scaled up as required by the emergency should be sufficient to respond to most emergencies. Consequently, the UK can no longer be said to have a system which relies on a formal declaration of a state of emergency before action can be triggered.12

As was noted previously (Section 1.3), the primary legislation setting out the framework for responding to serious emergencies is the CCA, complemented by legislation designed to deal with specific types of emergency such as public health, fuel and electricity, energy and terrorism.13 For emergencies generally, the CCA framework works on the basis that standing or ‘situation normal’ laws (either legislation, the common law or under the Royal Prerogative) should contain sufficient powers to enable the government and public authorities to deal with most emergencies.

In extreme cases where an emergency becomes so serious that new legislation is required to prevent, control or mitigate the emergency, Part 2 of the CCA enables the government to introduce emergency regulations.14 Such emergency regulations may make any provision that could be made by an Act of Parliament or by the exercise of the Royal Prerogative,15 and which is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made.16 The UK Government makes clear that ‘[t]he use of emergency powers is a last resort option and planning arrangements at the local level should not assume that emergency

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12 In the UK’s overseas territories, however, governors of territories may respond to a disaster by making a Proclamation of Emergency where a state of public emergency has occurred, is occurring or about to occur- see Annex A.
14 This contrasts with the system in place before 2004 under the Emergency Powers Act 1920, ss. 1(1) and 2(2), where, by proclamation, the Sovereign could declare that a state of emergency existed and regulations could be made conferring on the executive such powers and duties as it deemed necessary. It should also be noted that at local level following an incident, there will be declarations of ‘major incidents’ in accordance with local emergency plans to help establish local resources and trigger the appropriate command and control arrangements. These are distinct from declarations of a state of emergency, even if they may sometimes be confused by the media.
15 CCA, s.22(3).
16 CCA, ss.20-22.
powers will be made available.\textsuperscript{17} No regulations have ever been made in the UK in respect of natural disasters and none at all have been made since the CCA was enacted.\textsuperscript{18}

Express limitations on the powers that may be granted are set out in the CCA.\textsuperscript{19} A number of other safeguards are in place also, such as provision for Parliamentary scrutiny, albeit after the regulations have been made.\textsuperscript{20}

The CCA follows an all risk approach. In principle, therefore, emergency regulations under the CCA could be used to deal with all types of incident within the CCA’s definition of emergency which, if the relevant thresholds are met, could include situations of civil unrest as well as natural disaster. Emergency regulations can only be made in limited, defined circumstances\textsuperscript{21} and consideration of the need for such regulations is based upon the actual or potential consequences of an emergency rather than the nature of the emergency itself. The principal conditions for making emergency regulations are that an emergency has occurred, is occurring or is about to occur and that it is necessary to make urgent provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.\textsuperscript{22}

If emergency regulations under the CCA are required, they must specify the parts of the United Kingdom (i.e. whether England, Wales, Scotland or Northern Ireland) or the region(s) in relation to which the regulations have effect.\textsuperscript{23} Since the provision in any regulations must be appropriate and proportionate, the effect is that the emergency regulations apply in respect of the smallest area necessary, which cannot be geographically smaller than a ‘region’.\textsuperscript{24} In principle, different provision could be made in different parts or regions of the UK.

In addition, the Government has asserted that Royal Prerogative powers can still be relied on in place of the CCA in particularly extreme and urgent circumstances and on a

\textsuperscript{17} Cabinet Office, Responding to Emergencies: The UK Central Government Response: Concept of Operations (updated April 2013) Annex A. (CONOPS).

\textsuperscript{18} Emergency regulations have been made on 10 occasions. E.g. emergency regulations were made under the Emergency Powers Act 1920 following proclamations of a state of emergency and the Energy Act 1976, but only in respect of industrial action. See the discussion in C. Walker and J. Broderick, The Civil Contingencies Act 2004 - Risk, Resilience and the Law in the United Kingdom (Oxford, 2006), p.39.

\textsuperscript{19} CCA, s.23.

\textsuperscript{20} See further, CCA, ss.27(1) and 22(5).

\textsuperscript{21} CCA, s.19(1). Descriptions of events or situations which threaten damage to human welfare or the environment are found in s.19(2) and (3).

\textsuperscript{22} CCA, s.21(1) to (4). The requirements of ss.21(5) and (6), and 23(2), must be met also.

\textsuperscript{23} CCA, s.23(2).

\textsuperscript{24} ‘Region’ is defined in CCA 2004, s.31(2) by reference to the Regional Development Agencies Act 1998, which, although now repealed, identified the following regions of England: East Midlands, Eastern, London, North East, North West, South East, South West, West Midlands and Yorkshire and the Humber.
strictly time-limited basis in the event of a grave national emergency including those to enter upon, take and destroy private property.\textsuperscript{25}

2. **Institutional arrangements**

2.1. **Structure**

Part 1 of the CCA identifies the organisations responsible for emergency planning and response (referred to as ‘responders’) and sets out their functions to prepare for emergencies, coordinate with other agencies in the local resilience area, provide information, and warn and inform the public in an emergency situation. ‘Responders’ are listed in Schedule 1 to the CCA\textsuperscript{26} and are divided into two categories:

(a) *Category 1 responders* which are principally the emergency services (police, fire, and ambulance), local authorities, health bodies, the Environment Agency and the Secretary of State for Transport in so far as his or her functions relate to responding to maritime and coastal emergencies; and

(b) *Category 2 responders* which are organisations responsible for critical infrastructure such as electricity, gas water and telecom providers, rail and tube operators, airport operators, harbour authorities, the Health and Safety Executive, strategic highways companies and the Secretary of State when acting in effect, as a highway authority.\textsuperscript{27}

The CCA sets out seven emergency management duties. For example, Category 1 responders are required to carry out risk assessments.\textsuperscript{28} In addition, Category 1 responders which are local authorities must provide business continuity advice and assistance to the commercial sector and voluntary organisations.\textsuperscript{29} The main duties on Category 2 responders, which apply equally to Category 1 responders, are to cooperate and share information.\textsuperscript{30} More detailed provisions which prescribe how responders should carry out their broad duties under the CCA are set out in the CP Regulations.\textsuperscript{31}


\textsuperscript{26} CCA, s.13. Section 13 permits a Minister of the Crown (or Scottish Ministers) to amend the list of Category 1 and 2 Responders by adding or removing an entry or moving an entry between categories.

\textsuperscript{27} CCA, Schedule 1.

\textsuperscript{28} CCA, s.2(1).

\textsuperscript{29} CCA, s.4.

\textsuperscript{30} CCA, s.2(5)(h) and (i). CP Regulations (n3) and CP Regulations (Scotland)(n4), Parts 2 and 8.

\textsuperscript{31} See especially CP Regulations 4, 5, 9, 13, 15-17, 19 and 24.
Specific sectoral legislation also identifies, for example, the persons responsible for the preparation of emergency plans or disseminating risk information. Thus, under the Flood and Water Management Act 2010, the Environment Agency (in Wales, the Welsh Ministers) must develop, maintain, apply and monitor the national flood and coastal erosion risk management strategy. Lead local flood authorities (principally local authorities) perform similar functions in respect of local flood risk management strategies. Under COMAH, operators must take all measures necessary to prevent major accidents and limit their consequences, prepare a major accident prevention policy and prepare internal emergency plans. Local authorities must then prepare maintain, review and test external emergency plans.

It should be noted that all the duties, apart from warning and informing, under Part 1 of the CCA relate to emergency planning and preparedness. The CCA does not itself impose duties on responders to respond as such. These instead will usually be found under the legislation establishing the responder or setting out its functions, or where conferred upon it by order of the Secretary of State. For example, fire and rescue authorities must make provision for the purposes of removing chemical, biological, or radio-active contaminants from people in the event of an emergency involving the release or potential release of such contaminants and rescuing people who may be trapped and protecting them from serious harm, to the extent that it considers it reasonable to do so.

2.2. Coordination mechanisms

Coordination mechanisms are in place at both the national and local level. Only local level coordination - the LRF (in Scotland, RRP) - is set out in legislation.

2.2.1. Local coordination

Category 1 and Category 2 responders in a local resilience area are under duties to cooperate with each other to support Category 1 responders to deliver their responsibilities

32 Flood and Water Management Act 2010, ss.7 and 8.
33 Ibid, ss.9 and 10.
34 Control of Major Accident Hazards Regulations 2015 (COMAH), S.I. 2015/483, regulation 5(1).
35 COMAH, regulation 7.
36 Ibid, regulation 12.
38 See, e.g., Fire and Rescue Services Act 2004, s.7.
40 Fire and Rescue Services (Emergencies) (England) Order 2007, regulations 2 and 3.
under the CCA. Most importantly, general Category 1 responders which operate in a particular local resilience area must cooperate together in a single forum, the LRF/RRP. LRFs are generally based on local police areas (in Scotland, the three RRP are based on local council areas), and bring together all the organisations that have a duty to cooperate under the CCA along with others who would be involved in responding to an emergency.

Some co-operation and co-ordination take place between organised groups of LRFs. This brings together representatives of local response organisations, supported by resilience advisers from the Department for Communities and Local Government. These groups work together on larger-scale civil protection issues. In London, emergency responders from all the boroughs work together to coordinate activity through a single London Resilience Forum which is supported by the London Resilience Team at the Greater London Authority.

Apart from coordinating emergency planning, the LRFs form the basis of coordinated response to an emergency, the key members of the LRF forming the multi-agency Strategic Co-ordinating Group which will respond to an emergency at a local level.

In Scotland, the structures for co-operation equivalent to LRFs are the three Regional Resilience Partnerships which are subdivided into 12 Local Resilience Partnerships. In Northern Ireland where the number of responders is limited and the CCA, as explained above, applies somewhat differently, there are emergency preparedness groups comprising both responders and a range of stakeholders.

2.2.2. National coordination

The CCA itself does not set out the basis for national coordination; instead, this is found in Government guidance and policies, most notably Emergency Preparedness, Emergency Response and Recovery, and the Concept of Operations (CONOPS).

At the heart of national emergency planning and response is the Cabinet Office’s Civil Contingencies Secretariat (CCS), which forms part of the National Security Secretariat.

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41 CCA, s.2(1) and CP Regulations (n3), regulation 4; CP (Scotland) Regulations (n4), regulations 3 and 4.
42 CP Regulations (n3), regulation 4(2)(b) and (3); CP (Scotland) Regulations (n3), regulation 3(2)(b) and (3).
43 For more detailed provision regarding the coordination of responder activities and cooperation, see the CP Regulations, supplemented by guidance in Emergency Preparedness (n5), (notably ‘Chapter 19: The Fit with Other Legislation’).
46 Cabinet Office, Emergency Preparedness (n5).
47 Cabinet Office, Emergency Response and Recovery (n7).
48 Cabinet Office, CONOPS (n1).
(NSS). Its role is to guide and co-ordinate the activity taking place across government departments and wider stakeholders to ensure that the UK is resilient to any event which could pose a disruptive challenge to the welfare and day to day activities of the UK. The CCS also acts as the secretariat to Cabinet committees which may be involved in disaster management, principally the National Security Council (Threats, Hazards, Resilience and Contingencies) Sub-Committee whose terms of reference are ‘to consider issues relating to security threats, hazards, resilience and civil contingencies; and report as necessary to the National Security Council.’ 49 The CCS also plays a central role in the co-ordination of disaster response in the event of any serious emergency.

Applying principles of subsidiarity, most emergencies in the UK are handled at the local level by Category 1 responders with no direct involvement from UK central government departments. However, in some instances, the scale or complexity of an emergency is such that some degree of UK central government support or co-ordination becomes necessary. 50 In such circumstances, a designated LGD will be made responsible for the overall management of the government response, for example ensuring the availability of adequate resources. A pre-designated list of LGDs is maintained covering leadership of planning, response and recovery phases to a wide range of emergencies. 51 In the most serious circumstances, such as a major national emergency, this could involve the activation of Cabinet Office level intervention chaired by the Prime Minister to facilitate rapid co-ordination and collective decision-making. 52 If an emergency affects the business of a number of government departments, a collective response will be required, led by the LGD. Collective decision-making within central government is delivered through the Cabinet committee system and decision-making during emergencies follows the same pattern.

The devolved administrations, within their area of competence, play a full role in response to an emergency requiring government involvement. Their role will depend on two things: whether the incident affects Scotland, Wales or Northern Ireland; and whether the response to the emergency includes activity within the competence of the administration. The devolved administrations have similar mechanisms in place for emergencies and related issues within devolved competence, although the precise balance of activity will depend on

50 See further, CONOPS (n17), para.s 1.7 and 1.8, which provide additional details regarding levels of emergencies.
51 See, Cabinet Office, Guidance: List of lead government departments’ responsibilities for planning, response and recovery from emergencies (January 2011) (List of LGDs responsibilities).
52 See further, e.g., Cabinet Office, Emergency Response and Recovery (2013) (n7), para.13.4.
where responsibilities lie between a devolved administration and the UK government in relation to the particular emergency. In areas of reserved responsibility, the UK LGD will lead the response, working closely with the relevant devolved administration.

2.2.3. Responsibility for technological incidents

With respect to the coordination of incidents attributable to technological factors rather than to a natural disaster, under the LGD approach, responsibility for responding to an incident and dealing with the recovery phase is assigned in advance to particular government departments. Lead responsibility for dealing with a cyberattack rests with the Home Office and the Centre for the Protection of National Infrastructure; a major software failure with the Cabinet Office, if not covered elsewhere; and technological attacks disrupting the supply chain or causing transport accidents with the identified LGD.

Since the UK adopts an all risk approach under the CCA, the same plan and process should apply to technological incidents, such as systems failures and cyberattacks.

2.3. Non-governmental entities

The list of statutory responders under the CCA include some private sector entities where, typically, they are responsible for aspects of critical national infrastructure. So, for example, Category 2 responders include private organisations responsible for operating railways, airports and maritime ports and providing gas, electricity, water and telecommunication services. Such organisations are under duties to cooperate and provide information, and can participate in the LRFs.

If not listed as Category 2 responders, an organisation, whether private sector, voluntary or community, has no obligations under the CCA, but neither does it have any right to participate in the planning arrangements. However, in maintaining emergency plans under the CCA, Category 1 responders must have regard to the activities of voluntary organisations which carry on activities in an LRF area and are relevant in an emergency. Further, in Emergency Preparedness there is express guidance on the role of and involvement in emergency planning of the voluntary and other sectors.

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53 See, Cabinet Office, List of LGDs responsibilities (n51); Cabinet Office, The Lead Government Department and its role- Guidance and Best Practice (March 2004) (LGD Guidance and Best Practice).
54 CCA, Schedule 1, Parts 2 and 4.
55 CP Regulations (n3), regulation 23; CP (Scotland) Regulations, regulation 17.
57 Cabinet Office, ‘Chapter 15: Other sectors that should be involved in Emergency Planning’, Emergency Preparedness (October 2011) (n5).
2.4. **Methods of delivering humanitarian relief in disaster settings**

The CCA framework assumes that both planning and response will be undertaken by civilian bodies, with the military having no formal role. There has, however, been recent recognition of the importance of military assistance in responding to UK emergencies, especially in response to flooding. The powers to deploy military personnel on urgent work of national importance in England, Wales and Scotland (but not Northern Ireland) can be found in the Emergency Powers Act 1964.\(^{58}\) Hence, the armed forces are included among the other sectors that should be involved in emergency planning in *Emergency Preparedness*, with the clear qualification that they cannot make a commitment that guarantees assistance to meet specific emergencies.\(^{59}\) The support that may be provided is governed by Military Aid to the Civil Authority (MACA) arrangements and the Ministry of Defence (MoD) *Joint Doctrine Publication 02*.\(^{60}\)

2.5. **Prior training for disaster rescue and relief personnel**

The CP Regulations provide that each Category 1 responder must include provision for carrying out exercises and for training personnel to ensure that an emergency plan is effective.\(^{61}\) Similar exercises and training are required to ensure that the arrangements for warning, informing and advising the public are effective.\(^{62}\) The legislation itself does not set more detailed exercising and training requirements, although the regulations are supplemented by guidance in *Emergency Preparedness*.\(^{63}\)

As part of the CCA Framework, the Government developed the National Resilience Capabilities Programme (NRCP),\(^{64}\) the aim of which is to build capability to deal with the consequences that are common to most types of emergency, regardless of whether those

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58 Emergency Powers Act 1964, s.2 which makes permanent the provisions in the Emergency Laws (Repeal) Act 1959 enabling the temporary employment in agricultural work or other work, being urgent work of national importance, of military personnel.
60 CP Regulations (n3), regulation 25; CP (Scotland) Regulations (n4), regulation 19.
61 CP Regulations (n3), regulation 31; CP (Scotland) Regulations (n4), regulation 25.
62 Cabinet Office, ‘Chapter 5: (Emergency Planning)’, *Emergency Preparedness* (October 2011) (n5), see paragraphs 5.107 and 5.133 to 5.170., and Box 5.9 (which applies inter alia to devolved administrations).
63 Cabinet Office, *Guidance- Preparation and planning for emergencies: the National Resilience Capabilities Programme: Guidance on who responds to what in the event of an emergency and advice on being prepared for a crisis* (20 February 2013, last updated 27 January 2014) (NRCP); Cabinet Office, *Expectations and Indicators of Good Practice Set for Category 1 and 2 Responders: The Civil Contingencies Act (2004), its associated Regulations (2005) and guidance, the National Resilience Capabilities Programme, and emergency response and recovery* (revised October 2013) (Expectations and Indicators of Good Practice).
emergencies are caused by accidents, natural hazards or man-made threats and to identify, challenge and monitor the current levels of capability. In addition, between 2012-2014 the Joint Emergency Services Interoperability Programme (JESIP) was initiated, which was designed to ensure that police, fire and rescue, and ambulance services work together when responding to major multi-agency incidents. It also contains a joint learning platform for the co-ordination of lessons from major incidents.\(^6^5\) Although there are no compulsory qualifications for the role of emergency planner, National Occupational Standards have been developed specifically related to civil contingencies\(^6^6\) and Skills for Justice offer development opportunities for personnel in Category 1 responders.

Further, the UK has a long-established Emergency Planning College which delivers resilience training in the UK and worldwide as well as acting as consultant and adviser.

### 2.6. Role of the British Red Cross

There is no explicit reference to the British Red Cross (BRC) in emergency management legislation. As such, it has no statutory role or recognition. That said, the important role of the BRC is acknowledged within emergency management guidance documents.\(^6^7\) Though the BRC does not benefit from any government financial support and/or specific tax exemptions when acting in its auxiliary role to assist persons affected by disaster, it does benefit from those tax exemptions available to all registered UK charities.

Despite this, as a key voluntary organisation, it is one to which Category 1 responders must have regard under the CP Regulations\(^6^8\) and it is clearly referenced in the statutory and non-statutory guidance.

In terms of its independence, the BRC is established by means of a Royal Charter under which the Society is recognised by UK ministers as “a voluntary aid society, auxiliary to the public authorities and particularly to the medical services of the armed forces in accordance with the Geneva Conventions for the Protection of War Victims … and as the only National Red Cross or Red Crescent Society which may carry out its activities in Our Dominions.”\(^6^9\) Although the BRC’s status as an auxiliary is permanent, in practice, it may act in different capacities. As an illustration, when it acts as an auxiliary, it does so in support of and in co-operation with the relevant public authorities or Defence Medical Services. The

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\(^{6^5}\) The JESIP programme, available at: http://www.jesip.org.uk/home.


\(^{6^7}\) See, e.g., Cabinet Office, *Emergency Preparedness* (n5), Part 1, Chapter 14 paras. 14.16 and 14.28 as well as the case study.

\(^{6^8}\) CP Regulations (n3), regulation 23; CP (Scotland) Regulations (n4), regulation 17.

\(^{6^9}\) The Royal Charter of the British Red Cross Society (approved on 22 July 1997, with effect from 1 January 1998, Revised by HM The Queen in Council on 17 July 2003) (BRC Royal Charter), article 3.
BRC acts as an auxiliary in its emergency response role, including related planning and often, recovery.

In undertaking this role, the BRC acts autonomously of the government, in that it has a duty to consider seriously appropriate requests for its assistance and in an emergency, work with the statutory authorities. Indeed, in certain circumstances it could be expected to deploy, though further educational outreach is needed to ensure that its capacity and capability is more readily understood especially at the local level, closing current time gaps in the process. This is always subject to the authorities recognising that the BRC can only act in accordance with the Fundamental Principles of the International Red Cross and Red Crescent Movement.70 In other, non-emergency activities, the BRC may take its own initiatives and act on its own, albeit always within the law. As an illustration, its work to educate people in international humanitarian law (IHL) may be done as an auxiliary or independently.

As a voluntary organisation, the BRC could not self-deploy, rather it needs to be invited in by the authorities.71

With respect to the specific role often played by National Red Cross and National Red Crescent Societies in restoring family links (RFL), no formal legislative role exists. However, in practice, there are long-established links between the BRC and relevant government authorities, including the statutory services, which enable it to carry out such a role. The BRC’s RFL work is facilitated and supported by its links with the International Red Cross and Red Crescent Movement RFL network world-wide.

Similarly, in practice, however, mutual aid arrangements do exist within and between many of voluntary sector organisations, for activation as required, particularly across boundaries. In the event of a major or international emergency, voluntary sector support may be accessed through the head offices of the relevant voluntary organisations. The Voluntary Sector Civil Protection Forum (VSCPF) can help to facilitate this, if necessary. In extreme circumstances, times of conflict support may be provided by the National Voluntary Aid Society Emergency Committee (NVASEC). This is a standing committee that will be convened by the British Red Cross at the request of the MoD, Department for Health and the CCS.72 In incidents where a large volume of calls from the public may be reasonably anticipated, the police service may request support from the BRC through activation of its multi-agency telephone support line service. This is most commonly used to supplement the casualty bureau.73

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70 See, BRC Royal Charter (n69), art.4.
71 Matthew Weaver, ‘Grenfell Tower fire: we could have done more, says Red Cross chief’ The Guardian (London, 5 September 2017).
72 Cabinet Office, Emergency Response and Recovery (n7), para. 3.4.16.
73 Ibid, para. 7.5.11.
Although again non-statutory in nature, the BRC has also recently introduced a Community Reserve Volunteer Project to create a pool of volunteers willing to help in the event of a large-scale crisis.

3. Information systems

3.1. Information sharing about disasters with relevant actors

Emergency management requires information sharing: (i) between responders to facilitate emergency planning and response and (ii) with the public to inform, warn and advise. The CCA and the CP Regulations seek to cover both.

In many cases, responders have general powers to share information for the purposes of carrying out emergency planning functions. However, regulations under the CCA may specifically permit or require a responder to provide information to other responders for the purposes of assessing risk and maintaining emergency plans. Information is shared routinely as part of the collaboration and cooperation between responders and through LRFs with the CP Regulations setting out when responders must provide information, the procedure for requesting information and how sensitive information (i.e. personal data or information the disclosure of which could adversely affect national security, public safety, commercial confidentiality) should be shared and handled. Responders are encouraged to establish protocols which facilitate cooperation, including information sharing. Where these more informal protocols have been agreed, the statutory duties can be varied to enable local responders to adopt the arrangements that work best for them.

Separately, responders are under a general duty to maintain arrangements to warn the public and to provide information and advice to the public if an emergency is likely to occur or has occurred. Furthermore, the NRR (see Introduction, section 3) not only provides both responders and the public with an updated government assessment of the likelihood and potential impact of a range of different civil emergency risks, but it also provides information regarding how the UK government and local responders manage these emergencies, together with guidance on what members of the public can do to prepare for these events. The public

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74 CCA, s.2(5)(i).
75 CP Regulations (n3), Part 8; CP (Scotland) Regulations (n4), Part 8. For further guidance see HM Government, Data Protection and Sharing - Guidance for Emergency Planners and Responders: Non-statutory guidance to complement Emergency Preparedness and Emergency Response and Recovery (Data Protection and Sharing Guidance) (February 2007).
76 CP Regulations (n3), regulation 7(4) and (5).
77 CCA, s.2(1)(g).
can also find information about risks to their local area through their Community Risk Register.

In relation to sector specific legislation, similar measures are in place which should enable the public to be informed about risks and be warned if an emergency occurs. For example, certain specified procedures to alert and advise the public exist should a radiation emergency occur.\textsuperscript{78} Similarly, under COMAH, the competent authority must make information available to the public, including by electronic means, providing details of establishments where hazardous activities are undertaken and procedures for informing and advising the public in the event of a major accident.\textsuperscript{79}

In operational terms, sharing of information occurs through ResilienceDirect an online restricted ‘network’ which ‘enables civil protection practitioners to work together – across geographical and organisational boundaries – during the preparation, response and recovery phases of an event or emergency [and] … helps organisations to fulfil [their CCA] duties by supporting the adoption of common working practices, and ensuring that key information is readily and consistently available to users’. ResilienceDirect helps to facilitate multi-agency collaboration in many ways, for example, by sharing emergency plans and situation reports.\textsuperscript{80}

The gathering, storing and sharing of personal data is subject to general data protection laws, principally the Data Protection Act 1998\textsuperscript{81}, and in future under the recently proposed new Data Protection Bill\textsuperscript{82} and the EU General Data Protection Regulation (GDPR) due to come into force from May 2018.\textsuperscript{83} Although no specific exemptions are provided for tracing activities, general powers and exemptions should enable such activities to continue.\textsuperscript{84}

3.2. Information sharing about disaster response
The legal powers for responders to share information during the response phase are normally found in the legislation setting out the responders’ functions. The general emergency

\textsuperscript{78} Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPIR) S.I. 2011/2975, regulation 16 and Schedule 9.
\textsuperscript{79} COMAH, regulation 17.
\textsuperscript{80} Cabinet Office, Guidance- Resilient communications: How responders can reduce the risk of communications disruption during emergencies by using ResilienceDirect, HITS and Telecoms Sub-Groups (20 February 2014, last updated 13 March 2017), available at: https://www.gov.uk/guidance/resilient-communications.
\textsuperscript{81} Data Protection Act 1998
\textsuperscript{82} Data Protection HL Bill (2017-19) [74].
\textsuperscript{83} European Parliament and Council of the European Union, Council Regulation 2016/679 ‘on the protection of natural persons with regard to the processing of personal data and on the free movement of such data’, and repealing Directive 95/46/EC (General Data Protection Regulation)’ (27 April 2016) L 119/1. (GDRP).
\textsuperscript{84} See also, HM Government, Data Protection and Sharing Guidance (n75).
management powers set out above will also facilitate information sharing at this stage. Operationally, much sharing of information will be through ResilienceDirect.  

The response to the 7 July 2005 terrorist attacks, however, demonstrated a lack of awareness of the information and data sharing powers, or perhaps more pertinently what were incorrectly perceived as legal obstacles to sharing data. This led to the issue of specific guidance, endorsed by the Information Commissioner: Data Protection and Sharing Guidance for Emergency Planners and Responders. Among its key principles are statements that: ‘Emergency responders’ starting point should be to consider the risks and the potential harm that may arise if they do not share information’, balancing the potential damage to the individual against the public interest in sharing the information. The Guidance also reminds responders that they should be ‘robust in asserting their power to share personal data lawfully in emergency planning, response and recovery situations’ and that ‘the consent of the data subject is not always a necessary pre-condition to lawful data sharing.’

4. Funding sources

4.1. Overview of current funding arrangements
Under the Local Government and Housing Act 1989, the UK government may establish a scheme (known as a Bellwin Scheme). This provides dedicated emergency financial assistance to local authorities (including fire and police authorities) in England and Wales where (a) an emergency or disaster occurs involving destruction of or danger to life or property; and (b) as a result, one or more local authorities incur expenditure on, or in connection with, the taking of immediate action to safeguard life or property, or to prevent

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85 For an example of the establishment of an information sharing mechanism for recovery, see the Manchester Resilience Hub, available at: https://www.penninecare.nhs.uk/your-services/manchester-resilience-hub/.
86 ‘Limitations on the initial collection and subsequent sharing of data between the police and humanitarian support agencies hampered the connection of survivors to support services like the Assistance Centre. The concern at the time was that the Data Protection Act might prevent the sharing of personal data without the explicit consent of those concerned. As a result, there were delays in information reaching survivors about the support services available’. Extract from HM Government report on Addressing Lessons from the Emergency Response to the 7 July 2005 London Bombings, quoted in HM Government, Data Protection and Sharing Guidance (2007) (n75).
87 HM Government, Data Protection and Sharing Guidance (n75).
89 Ibid.
suffering or severe inconvenience, in their area or among its inhabitants. Similar schemes apply in the devolved administrations. 

Such assistance is usually provided in response to an emergency caused by the weather, in the UK principally by flooding, but relief may also be available in other circumstances. Substantial funding was provided under the scheme to compensate for the effects of the floods of late 2014 and early 2015. In recent years, the scheme has also been activated in respect of the explosion at the Buncefield fuel depot (2005), extensive flooding in Yorkshire, the Midlands, Cumbria and the North West during the 2000s, and for costs associated with the riots in the summer of 2011. Emergency funding was also made available in this way following the Grenfell Tower fire in June 2017.

This form of financial support may be further supplemented by public appeals, such as those coordinated by the BRC following the London Bridge, Manchester and Grenfell Tower incidents in 2017. This included the creation of a new UK Solidarity Fund which is intended to 'support people who have been injured, bereave or traumatised by terror attacks in the UK, helping to alleviate immediate suffering and ensure that victims and their families do not face short-term financial difficulties'.

Specific financial reserves are not identified in the emergency management legislation. Insurance is generally a matter for insurer and the insured. However, to address concern at the inability of private residents to secure buildings and contents insurance in flood prone areas, the Government has established a flood reinsurance scheme, known as Flood Re, under the Water Act 2014. This scheme, in addition to allowing insurers to pass on the flood risk element of home insurance policies and impose an annual levy on insurers authorised to write home insurance, also provides information to consumers about how to increase their understanding of their level of flood risk and how they can take action to reduce that risk. A protocol has also been agreed, the Role of the Insurance Industry in Dealing with Civil Emergencies, which sets out a framework for co-operation between the insurance industry, police services, fire and rescue services and local authorities in the event of an emergency.

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91 See, e.g., Local Government and Housing Act 1989 s.155(2).
92 See, e.g., Department for Communities and Local Government, Flood Support Schemes- Guidance Note: Updated December 2014 (December 2014).
95 Association of British Insurers, The Chartered Institute of Loss Adjusters, aviation insurers’ representatives, The Role Of The Insurance Industry In Dealing With Civil Emergencies: A protocol between the Association of British Insurers, The Chartered Institute of Loss Adjusters, aviation insurers’ representatives Air Accidents
As a member state in the European Union (EU) the UK is in principle eligible for emergency support from the EU under Council Regulation 2016/369 of 15 March 2016 on the provision of emergency support within the Union.\textsuperscript{96} The high monetary threshold to be crossed means, however, that such provision is likely to be rare.\textsuperscript{97} The UK has also been a beneficiary of the EU Solidarity Fund on two occasions (floods in 2007 and 2015).\textsuperscript{98} The Fund was established to respond to major natural disasters and to express European solidarity to disaster-stricken regions within Europe.\textsuperscript{99}

4.1.1. Ex-ante financing

Schemes exist also for ex-ante financing, i.e. where funds are set aside prior to the occurrence of an incident.

Since 1993, insurance of commercial property against damage, and resultant business interruption, attributable to act(s) of terrorism has been possible. The insurance sector (through Pool Reinsurance Limited - Pool Re) shares the risk of potentially significant losses with the Government. In 2002, exclusions relating to chemical, biological, radiological or nuclear attack were removed. If Pool Re's resources were ever exhausted,\textsuperscript{100} it would draw funds from the UK Government to meet its existing obligations. For this facility, Pool Re pays a premium to the Government and would be required to repay any funds received from its future income.\textsuperscript{101} This is a private sector solution to a public policy objective.

With respect to homes at high risk of flooding, since 2000 flood insurance has been available to otherwise uninsurable properties through a series of voluntary agreements between the Government and members of the Association of British Insurers (ABI). Since such agreements did not address the affordability of the home insurance provided, a 'flood re-insurance' scheme - known as Flood Re - was created to support those households at the greatest risk of flooding. An important part of the Flood Re scheme is to provide information

\textsuperscript{96} Council of EU, Council Regulation 2016/369 ‘on the provision of emergency support within the Union’ (16 March 2016) OJ L. 70/1.

\textsuperscript{97} See further, EU Council Regulation 2016/369, art.1(1).


\textsuperscript{100} It would be able to draw on over £8 billion before seeking HM Treasury assistance.

\textsuperscript{101} See further, PoolRe, available at: https://www.poolre.co.uk/who-we-are/about-pool-re/.
to consumers about how to increase their understanding of their level of flood risk and how they can take action to reduce that risk.\textsuperscript{102}

4.2. Allocation of funding

The CCA does not address the apportionment of available funding across risk reduction, preparedness or response activities. That said, the ability to incur some additional related expenditure does, however, exist. For example, in addition to post emergency funding under Bellwin Schemes, responders have powers to incur expenditure on emergency management tasks. Local authorities, for instance, are specifically empowered to incur expenditure in taking contingency planning action which is calculated to avert, alleviate or eradicate in their area or among its inhabitants the effects or potential effects of an emergency or disaster involving destruction of or danger to life or property.\textsuperscript{103} The calculation of funding allocations rests within the general legislation dealing with the funding of responders.

Similarly, there is no specific provision within the emergency management legislation for financial support to be given to communities and civil society, including for such purposes as preparedness actions and the provision of relief. Recourse would have to be sought under general legislative provision. Local authorities have a discretion to offer an exemption or discount from council tax in respect of properties affected by events such as flooding with additional financial support from the Government.

The UK government does not engage in forecast based financing per se, though weather forecasts can be a determining factor in the allocation of funds on a case by case basis.

5. Contingency planning

5.1. The UK's process and framework for contingency planning

As previously noted (Introduction, section 3), the overarching framework for contingency planning in the UK\textsuperscript{104} is contained in the CCA. This is augmented by the associated


\textsuperscript{103} Local Government Act 1972, s.138.

\textsuperscript{104} In the UK’s overseas territories, contingency planning is primarily covered by local disaster management legislation, e.g.: Disaster Management Act 2007 (Anguilla); Disaster Management Act 2011 (British Virgin Islands); Disaster Preparedness and Hazard Management Law 2016 (Cayman Islands); and Civil Contingencies Act 2007 (Gibraltar) - see Annex below.
regulations - the CP Regulations and, in Scotland, the CP (Scotland) Regulations.\(^{105}\) In addition, statutory guidance is issued - *Emergency Preparedness*,\(^{106}\) and its equivalent for Scotland, *Preparing Scotland*\(^{107}\) - to which responders must have regard.\(^{108}\) The BRC has advocated for Northern Ireland to have its own CCA legislation.

The framework adopts an all risks approach imposing duties on Category 1 and, to a lesser extent, Category 2 responders in relation to ‘emergencies’. For these purposes ‘emergencies’ are (a) events or situations threatening serious damage to human welfare\(^{109}\) or to the environment\(^{110}\) or (b) war, or terrorism, which threatens serious damage to the security of the United Kingdom.\(^{111}\)

The contingency planning obligations imposed on Category 1 responders at the local level (usually based on police areas) comprise a number of duties, notably to assess the risk of potential emergencies; to produce and publish risk registers drawing on these assessments; to make and maintain appropriate emergency plans; and to ensure adequate arrangements are in place to warn and inform the public.\(^{112}\)

The CCA regime does not, however, supersede pre-existing sector specific legislation which requires planning in respect of specific hazards, often as a result of European law. Nor does it take precedence over site-specific requirements under existing or future legislation.\(^{113}\) Consequently, the general framework is complemented by a number of hazard - or industry - specific laws requiring operators and/or local authorities to maintain emergency plans including industries forming part of the critical national infrastructure such as nuclear installations and pipeline and reservoir operators.\(^{114}\)

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105 CP (Scotland) Regulations (n4).
108 CCA, s.3(3).
109 “An event or situation threatens damage to human welfare only if it involves, causes or may cause- (a) loss of human life, (b) human illness or injury, (c) homelessness, (d) damage to property, (e) disruption of a supply of money, food, water, energy or fuel (f) disruption of a system of communication, (g) disruption of facilities for transport, or (h) disruption of services relating to health” - CCA 2004, s.1(2).
110 “An event or situation threatens damage to the environment only if it involves, causes or may cause- (a) contamination of land, water or air with biological, chemical or radio-active matter, or (b) disruption or destruction of plant life or animal life” - CCA 2004, s.1(3).
111 CCA, s.1(1).
112 CCA, s.2(1).
114 These include: COMAH, see especially regulations 12-13; the Pipelines Safety Regulations 1996, S.I. 1996/801, see especially regulation 23; the Animal Health Act 1981 (in respect of England and Wales), see especially section 14A in respect of foot and mouth disease or such other diseases as may be specified; also Avian Influenza and Newcastle Disease (Contingency Planning) (England) Order 2003, S.I. 2003/2036, and Avian Influenza and Newcastle Disease (Contingency Planning) (Wales) Order 2005, S.I. 2005/2840; the Nuclear Installations Act 1965 (c.57), see especially section 4(3)(c); REPPIR 2001, see especially regulation 7; Section 293(2)(za) of the Merchant Shipping Act 1995 and Merchant Shipping (Oil Pollution Preparedness, Response and Cooperation Convention) Regulations 1998/1056 (OPRC 1998), see especially regulation 4; The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009, S.I. 2009/1927; in Scotland, see the Management of Extractive Waste (Scotland)
The UK framework requires both sector specific and multi-hazard contingency planning to be brought together under the framework established by the CCA. The limitations associated with having so many separate contingency planning regimes were, however, identified in, among others, The Pitt Review: Learning Lessons from the 2007 Floods: ‘The events of summer 2007 exposed the fact that emergency responders had an inadequate understanding of the location of critical sites, their vulnerability to flooding, the likely consequences of their loss and interdependencies between sectors.'\textsuperscript{115} The Review's key findings included the need for a better understanding of partners’ priorities and plans, and improved information sharing to ensure that individual responders’ arrangements are fully linked with those of the wider emergency management community. In response, the UK Government revised its guidance, Emergency Preparedness, to include a new chapter, ‘The Fit with Other Legislation,’ to address such shortcomings.\textsuperscript{116}

5.2. Periodic reviews

This framework should be reviewed periodically. This is reflected in the main duties to assess and plan contained in section 2 of the CCA, which require responders to ‘from time to time’ assess the risk of an emergency occurring and to consider whether such an assessment makes it necessary or expedient to add to or modify emergency plans.\textsuperscript{117} The duty to maintain emergency plans is also a continuing one.\textsuperscript{118}

As part of the cycle of emergency planning, plans should be reviewed after a Minister or devolved administration issues new or revised guidance or an assessment with regard to the risk of an emergency. Category 1 responders must then consider whether that makes it necessary or expedient for them to revise their plans.\textsuperscript{119}

Similarly, most hazard specific legislation also requires emergency plans to be reviewed and updated periodically.\textsuperscript{120} For example, the functions of the Secretary of State in respect of oil pollution include the review of any national contingency plan\textsuperscript{121} and a person

\bibliography{sample.bib}

\begin{thebibliography}{120}
\bibitem{117} CCA, s.2(1)(a), (b) and (c).
\bibitem{118} See further, Cabinet Office, ‘Chapter 5: (Emergency Planning)’, \textit{Emergency Preparedness} (n5) paras. 5.15 and 5.16.
\bibitem{119} CP Regulations (n3), regulation 14; also see, Cabinet Office, ‘Chapter 5: (Emergency Planning’, \textit{Emergency Preparedness} (2011) (n5), para. 35; CP (Scotland) Regulations (n4), regulation 11.
\bibitem{120} See, e.g., the Pipelines Safety Regulations 1996, regulations 23(1) and 25(3); and REPPIR 2001, regulation 10; and COMAH, regulations 12(6) and 14(1). Each of these regulations require that a review occurs at suitable intervals not exceeding 3 years.
\bibitem{121} Merchant Shipping Act 1995, s.293(2)(za).

\end{thebibliography}
required to submit an oil pollution emergency plan must review it no later than 5 years after submission of the plan and re-submit a plan within that period.\textsuperscript{122}

\textbf{5.3. Inclusiveness of public authorities and other civil society actors}

The duties to plan or participate in the contingency planning process under the CCA are imposed on the principal public authorities or private organisations responsible for key infrastructure or transport provision. These are set out in Schedule 1 to the CCA (and orders adding further responders). Category 1 responders are under a duty to assess risks and maintain contingency plans\textsuperscript{123} and to cooperate with each other in connection with the performance of their duties. Category 2 responders must co-operate\textsuperscript{124} with category 1 responders in the areas in which they operate and provide information which is reasonably required by other responders (subject to national security and confidentiality conditions).\textsuperscript{125}

Other actors (civil society or private sector) have no statutory defined role in contingency planning, but in performing their duties to maintain contingency plans Category 1 responders must have regard to the activities of voluntary organisations which carry on activities (a) in the area in which the responder exercises its functions and (b) which are relevant in an emergency.\textsuperscript{126}

Beyond this there is no statutory requirement to involve other agencies. However, \textit{Emergency Preparedness} has chapters on the ‘Role of the Voluntary Sector’\textsuperscript{127} and ‘Other Sectors that should be involved in Emergency Planning.’\textsuperscript{128} Government guidance on evacuation also recognises that ‘[t]he voluntary sector and community organisations (including faith-based organisations) can play a significant role in managing an evacuation and in providing humanitarian assistance during an emergency.’\textsuperscript{129}

Organisations falling into this category include the armed forces (which are not within the CCA, but see further section 2.4), retail companies, insurers, bus, road haulage, airline and shipping companies, general practitioners and chemists, offshore oil and gas industry and

\begin{footnotes}
\item[122] OPRC 1998, regulation 4(5)(a) and (b).
\item[123] CCA, s.2.
\item[124] Amendments to the CP Regulations were made in 2012 (England and Wales) and 2014 (Scotland) to improve the cooperation between responders. The 2012 amendments were subject to post-implementation review in March 2017; see, Cabinet Office, \textit{Report of the Post Implementation Review of the Civil Contingencies Act (2004) (Contingency Planning) Regulations 2005} (March 2017) (2017 Post Implementation Review).
\item[125] CP Regulations (n3), regulations 45 to 53; CP (Scotland) Regulations (n4), regulations 39 to 47.
\item[126] CP Regulations (n3), regulation 23; CP (Scotland) Regulations (n4), regulation 17.
\item[128] Cabinet Office, ‘Chapter 15: Other Sectors that should be involved in Emergency Planning’, \textit{Emergency Preparedness} (n5) See, e.g., para. 15.6.
\item[129] Cabinet Office, \textit{Evacuation and shelter guidance: Non-statutory guidance to complement Emergency preparedness and Emergency response and recovery} (January 2014) (Evacuation and shelter guidance) para.3.9. Also see, Cabinet Office, ‘Chapter 15’, \textit{Emergency Preparedness} (n5), para. 15.3.
\end{footnotes}
the operators of other critical services or infrastructure. Although not included in the
guidance, Victim Support, an independent charity which supports those affected by crime and
traumatic events, now contributes towards emergency response and recovery and has
established a major incident response team for this purpose. Recently, the Government has
also produced guidance on community resilience aimed at communities, businesses and
individuals, including how they may contribute to preparing for, responding to and
recovering from ‘disruptive challenges’. 132

5.4. Forecast information and climate services
The contingency planning legislation does not make any express provision for the inclusion
of the national weather service (through the UK Meteorological Office, ‘the Met Office’) in
national contingency planning. That said, the Met Office - which is part of government,
sitting under the Department for Business, Energy and Industrial Strategy - provides the
National Severe Weather Warning Service. This gives advance notice of weather which could
affect public safety as well as providing tailored advice and services to help a range of clients
begin adapting to the consequences of climate change. In addition, the Environment
Agency, which works closely with the Met Office, is classified as a Category 1 responder.

5.5. Evacuation

5.5.1. Contingency planning
The UK’s emergency management legislation does not address evacuation planning other
than in site-specific circumstances. Each LRF though has its own local evacuation plans.
Examples include requiring arrangements to be made for coordinating evacuation from
offshore installations, and implicitly in the emergency procedures established in respect of
a pipeline carrying dangerous fluid. The Safety of Sports Grounds Act 1975 and the Fire Safety and Safety of Places of
Sport Act 1987 govern the safety of spectators who visit sports grounds for sporting and other

130 Cabinet Office, ‘Chapter 15’, Emergency Preparedness (2011) (n5) paras. 15.3 and 15.4.
131 See, Victims support, available at: https://www.victimsupport.org.uk.
132 Cabinet Office, Community resilience framework for practitioners (26 October 2016), available at:
134 Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015, S.I. 2015/398,
regulation 30.
135 Pipelines Safety Regulations 1996, regulation 24; also see, REPPIR 2001, regulations 7(2), 8(2) and 9(2) and
Schedule 7; and COMAH, regulations 12 and 13 and Schedule 4.
events (such as pop concerts). These set out local authority responsibilities in relation to the inspection of sports venues, including the emergency evacuation procedures in place.

For more generic events, the Government has issued guidance, *Evacuation and shelter guidance*, to assist local planners to develop flexible plans for evacuation and shelter that can be used in a wide range of scenarios. Although non-statutory, responders would still be expected to consider this guidance in carrying out their planning functions.

### 5.5.2. Rights of evacuated persons

There is no express legislative requirement for all endangered people to be evacuated without discrimination; nor is this issue mentioned in the non-statutory guidance. However, in both planning for and responding to disaster, responders will be subject to general duties not to discriminate under, for example, the Equality Act 2010 or the Human Rights Act 1998.

Nor are there any express duties requiring the rights and dignity of evacuated persons to be respected in situations of compulsory evacuation. Other legislation though, including the general principles underpinning the Human Rights Act 1998, would govern such issues.

### 5.5.3. Evacuated livestock and domestic animals

The CCA is silent on this issue. There are, however, general obligations not to cause unnecessary pain or distress to farm animals on agricultural land and requirements on owners and keepers to take all reasonable steps to ensure the welfare of such animals. Zoos must put in place measures to be taken in the event of any escape of animals and must prevent the release of any non-native species that they may house. Further, non-statutory guidance is given by *Evacuation and shelter guidance*.

### 5.6. Disaster readiness training

Both generic and specific legislative provision is made for those persons likely to be involved in disaster response to undertake relevant training, drills and other forms of simulation.

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141 Cabinet Office, *Evacuation and shelter guidance* (2014) (n129) paras. 4.43 to 4.46.
Under the CCA, regulations may be made that require an emergency plan to include provision for carrying out exercises and for the training of staff or other persons, such as in informing the public.142

In relation to specific hazards, similar requirements are imposed. For example, operators, carriers and local authorities must test the emergency plans prepared under Radiation (Emergency Preparedness and Public Information) Regulations (REPPIR) and take reasonable steps to arrange for the emergency services to participate.143 Local authorities which have prepared external emergency plans under COMAH must at suitable intervals, not exceeding three years, test those plans.144

More general education for the public is not set out in national legislation nor is awareness on emergency preparedness, for example, within the formal school curriculum.

6. Legal facilities

6.1. Treatment and care of the victims (including the dead)
National emergency management legislation does not make specific provision for procedures for handling large numbers of casualties after a disaster. That said, detailed guidance and established procedures exist to deal with such eventualities, including those published by the Home Office and Cabinet Office.145 In addition, the National Health Service has developed a number of major incident plans, and the BRC has its own mass casualty plan.

With respect to the treatment and care of victims who are alive and, e.g., injured, this is discussed in more detail in section 7.1 below. One potentially significant issue of note here is that commonly a gap can exist in the provision of adequate psycho-social care following mass casualty events.

Regarding the care of deceased victims, normal coronial law146 should apply unless and until emergency regulations under Part 2 of the CCA are required. Though there is no express provision regarding mass burial, it is clear from the guidance documents that individual burial or cremation is anticipated, reflecting the deceased's preference where

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142 CCA, s.2(5)(m) and (n). See further CP Regulations (n3), regulations 25 and 31; CP (Scotland) Regulations (n4), regulations 19 and 25.
143 REPPIR, regulation 10(1)(b).
144 COMAH, regulation 14(1).
146 See principally, the Coroners and Justice Act 2009 (England and Wales, and largely applies to Northern Ireland); Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.
possible. Where local capacity (mortuaries, crematoria and so forth) are overwhelmed, it is envisaged that a regional if not central government response will be required, involving devolved administrations where appropriate, including to assess and utilise wide area capabilities.\(^\text{147}\)

No express provision is made by the CCA requiring authorities to make best efforts to identify the remains of deceased persons and notify next of kin. However, the CCA is designed to work alongside existing Coronial law and also Interpol Resolutions on Disaster Victim Identification (DVI).\(^\text{148}\) The UK National Disaster Victim Identification Unit\(^\text{149}\) sits within the National Police Coordination Centre. Its role is to coordinate the national capability of the police service to respond to mass fatality incidents in the UK and, in practice, operates very well. The team works with Interpol, police services, government departments, local authorities and other agencies to do this.

The processes and procedures for recovering and identifying deceased persons and human remains, and the support that is given to family and friends during the identification process, is covered by DVI procedures. In the UK, when Her Majesty's Coroner (England, Wales and Northern Ireland) or the procurator fiscal (Scotland) declares a mass fatality incident, a Mass Fatality Coordination Group (MFCG) may be convened which comprises all key stakeholders (e.g., senior police, pathologist, family liaison, hospital, logistical and legal teams).\(^\text{150}\) Similar local arrangements can exist too, such as those contained in the London Resilience \textit{London Mass Fatality Plan}.\(^\text{151}\)

The guidance documents noted previously make detailed provisions for the identification of the dead, such as the creation of an Identification Commission, chaired by a coroner, responsible for identifying a body or remains. This Commission liaises with other key stakeholders, such as the family liaison co-ordinator concerning the wishes of bereaved families regarding such matters as viewing of bodies and instructions to funeral directors.\(^\text{152}\)

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\(^\text{152}\) Home Office and Cabinet Office, \textit{Guidance on dealing with fatalities in emergencies} (2004), e.g. ss.1.14, 1.19, 2.24, 3.69-3.80.
These guidelines also make basic provision for the care of families, first responders and others affected by the emergency.\textsuperscript{153}

With respect to cultural and religious rights regarding the disposal of human remains, under general laws on burials such factors are taken into account and the Human Rights Act 1998 will apply. Additionally, though there is no specific requirement governing such issues in the CCA, provision is made in the guidance documents for faith, religious and cultural considerations to be taken into account.\textsuperscript{154} Furthermore, in July 2005, the Home Office and Cabinet Office issued specific guidance on these issues in \textit{The Needs of Faith Communities in Major Emergencies: Some Guidelines}.\textsuperscript{155}

\textbf{6.2. Volunteering}

Existing emergency management legislation does not provide for a clear definition of the term 'volunteer' in this context, nor does it give any specific guidance regarding, e.g., the scope of volunteering activities or duties of voluntary organisations.\textsuperscript{156} Depending on their conditions (if any) of service, volunteers should not be treated as employees under general employment law.\textsuperscript{157}

\textbf{6.3. Data privacy}

The gathering, storing and sharing of data regarding, e.g. disaster response, will be subject to general data protection laws, principally the Data Protection Act 1998 (in the future under the recently proposed new Data Protection Bill) and soon, the even more stringent requirements of the EU GDPR due to come into force from May 2018. Although no specific exemptions are provided for tracing activities, general powers and exemptions should enable such activities to continue.\textsuperscript{158}

The GDPR's coming into force in 2018 should be regarded as an educational opportunity to ensure that all key stakeholders, including first responders and supporting institutions, have a correct understanding of the legal requirements. This is important if their emergency management policies, plans and responses are not to be further impeded than can

\textsuperscript{154} Ibid, ss.4.32-4.35.
\textsuperscript{155} Home Office & Cabinet Office, \textit{The Needs of Faith Communities in Major Emergencies: Some Guidelines} (July 2005). This is reflective of Interpol Resolution, ‘Disaster victim identification’ (Resolution No. AGN/65/Res/13) (1996) which recognises that for legal, religious, cultural and other reasons, human beings have the right not to lose their identity after death.
\textsuperscript{156} See though CP Regulations (n3), regulation 23; Contingency Planning (Scotland) Regulations (n4), regulation 17, which requires responders to have regard to the activities of voluntary organisations when producing and maintaining an emergency plan.
\textsuperscript{157} See also, Department for Environment, Food & Rural Affairs (DERFA), \textit{Spontaneous volunteers: Involving citizens in the response and recovery to flood emergencies: Final report FD2666} (July 2015).
\textsuperscript{158} See also, HM Government, \textit{Data Protection and Sharing} (2007) (n75).
currently be the case due to incorrect understanding of legal requirements, such as data sharing.

6.4. Out of normal business hours State-operated offices and services
There is no legislation requiring that State-operated offices and services be available to those involved in disaster relief out of normal business hours. That said, by and large the opening hours of government bodies are not prescribed by law and, although lessons may be learned from the Grenfell Tower disaster, the opening or operating hours of government bodies has not been an issue since most responders within the CCA operate on a 24/7 basis. Where there may be issues are, e.g., where for safety reasons limits may be placed on the working hours of those involved in emergency response or rescue.

7. Rights to assistance, security and protection of vulnerable groups

7.1. Legal framework governing humanitarian assistance

7.1.1. Right to humanitarian assistance or access to essential food/ non-food relief supplies
The existing legal framework does not provide a right to humanitarian assistance or access to essential food and non-food relief supplies to all persons in need due to a disaster or health emergency. But all assistance and access will be subject to general laws against non-discrimination, in particular under the Equality Act 2010 and the Human Rights Act 1998 with the latter also including the right to life and, by extension, right to health in certain cases. It should be noted that emergency regulations under part 2 of the CCA cannot amend the Human Rights Act.

In addition, the non-statutory guidance accompanying the CCA, *Emergency Response and Recovery*, makes provision for humanitarian assistance. This is defined as ensuring that those involved in and affected by a major incident are properly cared for. The exact focus and nature of provision will depend on the type of emergency, the impact it has had on the community, and the needs of those affected. Humanitarian assistance provision may take a

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159 Some important differences still remain between equality legislation in Great Britain and Northern Ireland. See e.g., Equality Commission for Northern Ireland, *Gaps in equality law between Great Britain and Northern Ireland* (March 2014). The 'protected characteristics' under the Equality Act 2010 are wide-ranging.

160 CCA, section 23(5).

number of forms, such as basic shelter, medical assistance/treatment, financial and legal support, psychosocial support, and so forth.\textsuperscript{162}

Furthermore, the nature of many of the Category 1 responders under the CCA, which include ambulance services and health boards,\textsuperscript{163} is such that basic humanitarian assistance, such as medical assistance/treatment, will form an integral part of their emergency response.

\subsection*{7.1.2. Non-discrimination}

Regarding the potential for discrimination with respect to preparation and relief efforts, there is no specific mention of the words ‘discrimination’ or ‘vulnerable groups’ in the CCA. Express provision in emergency management law is not, however, necessary since general anti-discrimination laws extend to relief efforts. The 'protected characteristics' under the Equality Act 2010 are wide-ranging.\textsuperscript{164} Furthermore, Schedule 19 to this Act, which defines 'public authorities',\textsuperscript{165} expressly extends to organisations with responsibilities for health.\textsuperscript{166} A large number of relevant professional regulatory bodies are included.\textsuperscript{167} On devolved matters, such as that of health in Scotland, relevant bodies also fall within the scope of the Act.\textsuperscript{168}

Discrimination may take the form of direct discrimination, indirect discrimination, discrimination arising as a consequence of disability or as a breach of the duty to make reasonable adjustments.\textsuperscript{169} For example, if the distribution of aid was done in a particular way or there was a particular problem regarding diversity of aid (e.g. only one kind of food aid which raised difficulties regarding religious or cultural beliefs) there could be a potential situation of indirect discrimination. However, the difficulty would arise from practice and not from the absence of relevant law.

\begin{itemize}
\item[\textsuperscript{162}] Cabinet Office, \textit{Emergency Response and Recovery} (2013) (n7), para.7.1.1.
\item[\textsuperscript{163}] The CCA requires the National Health Service and providers of NHS-funded care to plan and respond to a wide range of incidents and emergencies that could affect health or patient care, while maintaining services. See, NHS England, ‘Emergency Preparedness, Resilience and Response (EPRR)’, available at: https://www.england.nhs.uk/ourwork/eprr/ (accessed 23 October 2017).
\item[\textsuperscript{164}] Equality Act 2010, s.4; see too section 6 and Schedule 1 regarding disability.
\item[\textsuperscript{165}] The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, S.I. 2012/162, came into force in May 2012 and place specific equality duties on named public authorities in Scotland. The Equality Act 2010 defines 'public functions', which can apply to public, private or voluntary organisations, in the same way as the Human Rights Act 1998.
\item[\textsuperscript{166}] The National Health Service Commissioning Board, the Care Quality Commission, Health Education England, the Health Research Authority, NHS foundation Trust, particular Special Health Authorities, the Health and Social Care Information Centre and the National Institute for Health and Care Excellence.
\item[\textsuperscript{167}] E.g., the General Medical Council, the Office of the Immigration Services Commissioner and the Security Industry Authority.
\item[\textsuperscript{168}] A Health Board/Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.
\item[\textsuperscript{169}] Equality Act 2010, chapter 2.
\end{itemize}
7.1.3. **Vulnerable groups**

Existing legislation does not expressly ensure that needs assessments and relief operations look for and address the specific needs of vulnerable groups. Again, general law will apply in so far as it extends to these issues.

Specific guidance has, however, been issued to emergency planners and responders, especially LRFs, to assist them in the development of local action plans: *Identifying People who are Vulnerable in a Crisis.* This expanded previous guidance regarding vulnerable people given in *Evacuation and Shelter Guidance* and *Emergency Preparedness.* The guidance defines vulnerable people as those ‘that are less able to help themselves in the circumstances of an emergency’ . Importantly, in assessing vulnerability, as the guidance makes clear, care must be taken not to stereotype people. Consequently, vulnerability must be assessed largely on factual issues, such as the type of emergency involved, the type of response required, and the availability of the support that individuals normally receive (e.g. from family or carers). Notably, recent UK legislation has shifted away from the concept of 'vulnerable adults' to 'adults at risk'.

A core element of the guidance is the importance of identifying and building relationships with bodies responsible for vulnerable people so that effective mechanisms are in place prior to the occurrence of an emergency, such as the production of emergency contact lists, data sharing protocols and 'vulnerability maps'. The guidance further recognises the important role of family, friends, neighbours, faith groups and community groups, voluntary organisations in identifying vulnerable people within LRFs. A further source of information are adult and children's social care providers, such as local authorities, private companies and charitable organisations.

In recognition of the effect of emergencies on individuals, the Cabinet Office has also produced dedicated guidance offering information and advice to those involved in planning and delivering activities to ‘address the Human Aspects during and following an emergency’.

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172 Cabinet Office, ‘Chapter 5: (Emergency Planning)’, *Emergency Preparedness* (n 5) particularly paras. 5.97 and 5.98 to 5.103.

173 Ibid. Table 1 for a non-exhaustive list of key groups considered to be vulnerable.

174 See, e.g., Care Act 2014 c.23, s.42 regarding safeguarding adults at risk or abuse or neglect, a trend which may be more widely reflected including in the context of emergencies.

In other guidance documents, such as *Emergency Response and Recovery*, children are clearly identified as a vulnerable group in the event of an emergency. The particularity of the needs, and associated challenges, of children and young people to deal with crises and trauma are recognised.\(^{176}\) In *Wise Before the Event – Coping with crises in schools*,\(^ {177}\) schools are exhorted to develop crisis contingency plans (e.g. for natural disaster events, terrorist acts). Additionally, hazard specific guidance has been developed by non-statutory bodies, such as on *Children, Young People and Flooding: Recovery and Resilience*.\(^ {178}\)

### 7.1.4. Unaccompanied children in disaster settings

Under general child protection legislation, local children service authorities will be responsible for any unaccompanied children in such circumstances.

With respect to the heightened risk of trafficking and child exploitation, though no express legislative provision is made in emergency management law, this will be covered by other general anti-trafficking obligations. The UK is party to international agreements governing trafficking,\(^ {179}\) with the accompanying creation of the UK Human Trafficking Centre to implement the related. Additionally, the scope of the Modern Slavery Act 2015 extends to human trafficking, including provision for the protection of victims.\(^ {180}\)

In Scotland, the Human Trafficking and Exploitation (Scotland) Act 2015 makes provision to protect vulnerable children.\(^ {181}\) The Guide to the Act\(^ {182}\) indicates that any vulnerable child (including a victim or presumed victim of human trafficking or slavery) will be supported by the existing Scottish child protection system. Furthermore, section 11 requires the appointment of an Independent Child Trafficking Guardian to support and represent a child in certain circumstances, acting at all times in the best interests of the child.\(^ {183}\)

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\(^{178}\) M Mort, M Walker, A Lloyd Williams, A Bingley and V Howells, *Children, Young People and Flooding: Recovery and Resilience* (Save the Children and Lancaster University 2016).

\(^{179}\) UN General Assembly, ‘Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nation Convention against Transnational Organised Crime’ (adopted 15 November 2000, entered into effect 25 December 2003); Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings (16 May 2005) CETS No. 197, was also signed and ratified by the United Kingdom and measures were put in place to adopt the protection for the victims of human trafficking in 2009.

\(^{180}\) Modern Slavery Act 2015.

\(^{181}\) Human Trafficking and Exploitation (Scotland) Act 2015; see also, the Scottish Government's 'Trafficking and Exploitation strategy' SG/2017/76 (May 2017) under s.36(5)(d)(i) of the Human Trafficking and Exploitation (Scotland) Act 2015.


\(^{183}\) Where there is any doubt regarding a person's age but there are reasonable grounds for believing them to be a child, the presumption with accompanying support is exercised in the person's favour. Human Trafficking and Exploitation (Scotland) Act 2015, s.12.
There are no special legal protections governing adoptions, whether domestic or international in nature, in the aftermath of major disasters. This would be covered by normal children’s services adoption law.

7.1.5. Gender, including discrimination and violence

With respect to laws or policies regarding the prevention of gender discrimination and/or gender based violence in disaster settings, in addition to the general anti-discrimination legislation which extends to gender discrimination, the UK has a dedicated Minister for Women and Equalities. Additionally, the Equality Act 2010 is supplemented by the Public Sector Equality Duty which covers nine protected characteristics including pregnancy and maternity, sex and sexual orientation.\(^{184}\)

Though non-statutory guidance exists regarding vulnerable people,\(^ {185}\) this does not expressly deal with gender-sensitive needs or considerations in a post-disaster context.

7.1.6. Mechanisms to assure the safety and security of relief personnel

All responding agencies, including the BRC, have a duty of care to their own personnel to carry out a planned or dynamic risk assessment and to change plans according to changing risks. Additionally, foreign relief personnel may be protected under the Geneva Conventions and United Nations Personnel (Protocols) Act 2009.

In terms of applicable legislation, the Emergency Workers (Obstruction) Act 2006 makes it a criminal offence to obstruct or hinder an emergency worker. ‘Emergency worker’ as currently defined would not include relief personnel, but the Act enables the Secretary of State to add others to the definition if necessary.

A Bill is currently before Parliament which aims to increase the sentences imposed on individuals guilty of assaulting emergency workers which would cover those engaged to provide (for payment or not) search services or rescue services. This could therefore potentially extend to relief personnel.\(^ {186}\)

Otherwise, general criminal law will apply.


\(^{185}\) Cabinet Office, Identifying People Who Are Vulnerable (2008) (n170); HM Government, Evacuation and Shelter Guidance (2014) (n129), with the exception of brief recognition of the possible specialist support needed by pregnant women (section 5.22).

8. Shelter

8.1. Provision of shelter in case of disaster related displacement

There is no immediate, direct legal guarantee for the provision of shelter in such circumstances, including under the CCA, though technically an emergency regulation could be adopted if circumstances necessitated it.

That said, a statutory duty exists on local authorities under the Housing Act 1996 (in Scotland, the Housing (Scotland) Act 1987) to provide accommodation for people who are homeless, with priority need, who are not homeless intentionally. Persons rendered homeless ‘as a result of an emergency such as flood, fire or other disaster’ would constitute such a priority need so long as other stated criteria are met. Local housing authorities must take all reasonable steps to ensure that suitable accommodation is provided.

The UK has a number of international obligations, such as the duty under article 11(1) of the International Covenant on Economic, Social and Cultural Rights 1966 to ‘recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing’. Such obligations are, however, not absolute; instead are to be progressively realized, reflective of a State's resources. Currently, the UK is a non Contracting Party to the Revised European Social Charter which complements the European Convention on Human Rights (ECHR) on economic and social rights issues, including the right to housing.

Under LRF emergency plans and under the CCA, all local authorities must plan for emergencies. This includes emergency shelter i.e. rest centres to accommodate people in emergencies. Detailed provision for shelter arrangements are made in non-statutory guidance, notably Evacuation and Shelter Guidance. Furthermore, one of the National Resilience Capabilities Programme’s 22 workstreams includes 'evacuation and shelter'. Led by the Cabinet Office, its principal objective is to ensure that 'flexible evacuation and shelter arrangements are in place across the UK in the event of a major incident'.

187 Housing Act 1996, s.193.
188 Housing Act 1996, s.189(1)(d)).
189 Housing Act 1996, ss.175, 185 and 191.
192 ICESCR, article 2(1).
193 Council of Europe, European Social Charter (revised) 1996 CETS No.163, article 31.
194 HM Government, Evacuation and shelter guidance (2014) (n129) paras. 5.6-5.7.
195 Cabinet Office, NRCP (2014) (n64).
With respect to the physical spaces used to provide shelter to disaster displaced persons, non-statutory guidance anticipates that, following evacuation, suitable buildings for the provision of short-term shelter (up to 72 hours) may include schools and the use of other buildings such as leisure centres or community halls. Where schools are used, contingency arrangements for pupils affected by any such school closure should be made in advance.\textsuperscript{196}

Currently, there are no statutory or non-statutory mechanisms for undertaking necessary relocations. Minimal guidance regarding medium-term shelter considerations is given in \textit{Evacuation and shelter guidance}. This recognises that whilst evacuees may be able to make short-term arrangements, e.g. to stay in hotel accommodation or with friends, this will not be sustainable in the medium term. Where available, such ‘accommodation should be provided as close to the evacuees’ original area of residence as possible’ in order to facilitate their return to their local communities, including employment and schooling. Where such relocation is not possible, local authorities should consider factors such as access to welfare support; schooling; employment support; and access to local services, including medical services.\textsuperscript{197}

\textbf{8.2. Documentation, land and property issues}

There is no express provision under the CCA regarding the loss of records or documentation. Nor does non-statutory guidance on these issues exist. That said, various general statutory and non-statutory mechanisms exist in England and Wales (with similar provision in Scotland and NI) for the recovery of lost documents, e.g. passport, bank account, land title etc., which would apply equally in a post-disaster context. Where the title deeds or other proof of title regarding ownership of property have been lost, for example, a statutory mechanism exists for obtaining proof of ownership from Her Majesty's Land Registry.\textsuperscript{198} Where a legal dispute arises regarding the contents of missing documents, this issue may be determined by the courts including under the law of evidence.\textsuperscript{199} Furthermore, procedures are prescribed by various agencies and entities regarding the replacement of individual documents such as passports, driving licences and bank cards.

Regarding the provision of disaster relief or shelter assistance, under the Housing Act 1996 such help is not prioritised according to whether or not the affected person has land

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\textsuperscript{196} HM Government, \textit{Evacuation and shelter guidance} (n129) paras. 5.6-5.7.
\textsuperscript{197} Ibid, paras. 5.31-5.32.
\textsuperscript{198} Land Registration Act 2002, s.67.
\end{small}
\end{flushright}
title; instead other factors regarding need are considered. Housing assistance is not available if the applicant has alternative suitable continuous accommodation in the UK.\footnote{Waltham Forest London Borough Council v Maloba [2007] EWCA Civ 1281.}

There are no specific prior arrangements in place for reducing the potential for legal issues arising regarding housing, land and property irregularities and disputes following a disaster event. Once again, such issues are covered by existing statutory arrangements.

For land ownership, land title registration under the Land Registration Act 2002 is designed to reduce legal disputes however they arise. Entries in the register of Her Majesty's Land Registry are treated as conclusive proof of ownership. With respect to rented accommodation, following a disaster a tenant or landlord may wish to be released from their obligations to provide accommodation or pay rent, for example if the premises have been rendered uninhabitable. Such situations are likely to be covered by private tenancy agreement contractual clauses, such as regarding \textit{force majeure}. Equally, common law may provide release where a contract is ‘frustrated’, namely where the impact of the disaster has rendered performance of the contract impossible.\footnote{Halsbury's Laws of England, \textit{Contract} (2012) vol.22, paras.468 and 473.}

Where legal disputes do arise, these will be covered by existing statutory arrangements on procedures to be followed. Any dispute over land title may be adjudicated by a dedicated property tribunal.\footnote{See, The First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2013, S.I. 2013/1187.} Furthermore, the High Court or relevant County Court can resolve disputes regarding land held on trust.\footnote{Trusts of Land and Appointment of Trustees Act 1996.}

9. Liability

9.1. Legal protection from liability\footnote{This section deals with the situation in England and Wales. In Scotland, different law will apply although the effect is understood to be broadly similar.}

In relation to legal protection from liability of disaster, rescue and relief personnel (including volunteers), the starting position is that the CCA and other supporting legislation, such as the Fire and Rescue Services Act 2004 and the National Health Service Act 2006, do not limit the liability of responders or their personnel planning for or responding to an emergency.

Where, however, legislation makes provision for damage to be caused by first responders in relation to an emergency situation - such as the forcible entry of premises\footnote{There are some limited exceptions such as under the Fire and Rescue Services Act 2004, s.44.} - then no ‘liability in tort can arise from acts done in pursuance, and within the scope, of
statutory powers where the powers are exercised in good faith, reasonably, without negligence and for the purpose for which, and in the manner which, the statute provides.

Unless the contrary is provided by legislation, the Crown or a public body are liable in tort to the same extent as a private person of full age and capacity. That said, common law and statutory provisions confirm that disaster, rescue and relief personnel are not automatically liable when damage is caused. Instead, such factors as inherent hazards associated with their work, together with the need to prioritise community welfare over individual welfare, are all taken into account in determining whether there has been negligence or other breach of duty to those affected by the disaster.

For example, the courts have held that fire brigades do not owe a common law duty to individuals to protect property since their proper function is to act for the benefit of a community as a whole, which may require them to prioritise their response. In contrast, a fire brigade may be liable where, by its actions, it aggravates rather than improves the emergency situation to which it is responding. It is unclear whether such a rule would apply across other responder emergency services; it does not apply to ambulance or health services.

In deciding whether or not liability exists for any resultant damage or losses caused in such circumstances, a court will take into account all the circumstances including, in England and Wales, whether the defendant ‘was acting for the benefit of society or any of its members’ or ‘was acting heroically by intervening in an emergency to assist an individual in danger’. Furthermore, when examining whether a defendant should have taken steps to avoid causing third party injury or loss, a court may consider the potential impact of a finding of negligence on preventing a ‘desirable activity’ or discourage future action.

When negligence or some other tort can be established, the law does not indemnify such personnel; in such circumstances, responder personnel would look to their employer for indemnity, particularly when the latter is insured, on the basis that the responder employer will be vicariously liable for the acts of its employee. Consequently, e.g. the BRC has third party public liability insurance for its staff and volunteers while they are officially on duty or at work.

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208 See, Capital & Counties Plc v Hampshire County Council [1997] EWCA Civ 3091, para. 25 per Stuart-Smith LJ.
210 Social Action, Responsibility and Heroism Act 2015, s.2.
211 Compensation Act 2006, s.1.
The position is similar in relation to liability protections to governments, National Societies and civil society organisations.

It is possible too for an organisation to be liable for the offence of corporate manslaughter\textsuperscript{212} if, by gross negligence, it causes the death of one of its employees (but not a third party).\textsuperscript{213} At the time of writing, charges of manslaughter have been presented against police officers responsible for crowd control at the time of the Hillsborough disaster.

10. Accountability

10.1. Mechanisms for the prevention of unlawful diversion, misappropriation, or fraud concerning disaster relief operations

Though no specific provision for this is made under the CCA, the general criminal law will apply.\textsuperscript{214} Also of relevance may be the laws relating to charities and fund raising.\textsuperscript{215}

10.2. Mechanisms for ultimate responsibility and accountability in preparation and response to disasters

Legal and political accountability mechanisms that operate during normal times should apply equally to any emergency situation.

The performance of emergency planning functions by local responders is subject to examination by both their own scrutiny arrangements (e.g., the scrutiny committee of local authorities\textsuperscript{216}) and external inspectors (e.g., the new Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services responsible for inspecting police and fire and rescue authorities).

Specific and comprehensive powers are given to UK ministers and Scottish ministers to order a Category 1 responder to perform a function of that responder for the purpose of (a) preventing the occurrence of an emergency, (b) reducing, controlling or mitigating the effects of an emergency, or (c) taking other action in connection with an emergency,\textsuperscript{217} with ministers having power to direct responders if there is an urgent need for the responder to take this action.\textsuperscript{218}

\textsuperscript{212} Corporate homicide in Scotland.
\textsuperscript{213} Corporate Manslaughter and Corporate Homicide Act 2007, ss.2(1)(a) and (b), and 6.
\textsuperscript{214} E.g., the Fraud Act 2006, c.35; and the Bribery Act 2010, c.23.
\textsuperscript{215} The scope of the Fraud Act 2006, s.4, means that it applies equally to charitable organisations.
\textsuperscript{216} Established in England and Wales under the Local Government Act 2000.
\textsuperscript{217} CCA, s.5.
\textsuperscript{218} CCA, ss.7 and 8.
All responders’ actions are subject to specific powers given to the Government and Scottish ministers to monitor their performance. They can thus be required to provide information about action taken by them for the purpose of complying with any CCA duty or to explain why they have not taken action for that purpose.\textsuperscript{219} A Minister of the Crown or Scottish Ministers and any Category 1 responder may also bring proceedings in the High Court or Court of Session in respect of a failure by a Category 1 or Category 2 responder to comply with its key duties under the CCA.\textsuperscript{220} In such proceedings a court may grant any relief, or make any order, that it thinks appropriate.

The actions of the Government and public sector responders more generally can be subject to challenge by judicial review and, if the appropriate conditions are met, complaint to the relevant public sector ombudsman.

Any person making emergency regulations must have regard to the importance of ensuring that Parliament, the High Court and the Court of Session are able to conduct proceedings in connection with the regulations or action taken under the regulations,\textsuperscript{221} confirming that the role of the courts in scrutinising emergency measures cannot be ousted.

Although emergency regulations can be made by the Sovereign in Council or in urgent cases by a Secretary of State,\textsuperscript{222} those regulations will lapse unless approved by both Houses of Parliament within seven days of the regulations being laid before Parliament.\textsuperscript{223}

\textbf{10.3. Mechanisms for internal (State actors) and independent (non-State actors)}

Various mechanisms exist for monitoring and evaluating the activities, outputs and impacts of the activities of internal and independent actors. Routinely, and without the need for legislation, debriefing and lessons learned activities are carried out after incidents, an action encouraged by \textit{Emergency Response and Recovery}.\textsuperscript{224}

In addition to the scrutiny mentioned (sections 10.1-10.2), in the event of fatalities during an emergency (section 6.1) a coroner’s inquest (fatal accident and sudden deaths inquiry in Scotland) is likely to be held into the death(s). More generally, the Inquiries Act 2005 provides that a minister (a UK minister or one in Scotland, Wales and Northern Ireland) ‘may cause an inquiry to be held in relation to a case where it appears to him that (a) particular events have caused, or are capable of causing, public concern, or (b) there is public

\textsuperscript{219} CCA. s.9.
\textsuperscript{220} CCA. ss.10 and 11.
\textsuperscript{221} CCA. s.22(5).
\textsuperscript{222} CCA. ss.20(1) or (2).
\textsuperscript{223} CCA. s.27(1).
\textsuperscript{224} Cabinet Office, \textit{Emergency Response and Recovery} (n7) p.105.
concern that particular events may have occurred.\textsuperscript{225} As an example, the recent inquiry into the Grenfell Tower Disaster has been established under section 5 of the Inquiries Act 2005 and will, among other matters, examine the response of the London Fire Brigade to the fire and the response of central and local government in the days immediately following the fire.\textsuperscript{226}

During the passage of the CCA through Parliament, the Government agreed that within a year of the expiry of any emergency regulations made, a senior Privy Councillor appointed by the Government will review the operation of the Act. This review will be published and available to Parliament.\textsuperscript{227}

Other forms of ongoing internal audit, external assurance and validation processes are expected too, as are reflected in The Lead Government Department and its Role – Guidance and Best Practices (2013).\textsuperscript{228} For example, 'There should be clear evidence that lessons from critical appraisal of plans in respect of "near misses", or in debriefs arising from live-incident plan implementation are fully incorporated into the planning and validation processes.'\textsuperscript{229}

\textsuperscript{225} Inquiries Act 2005, s.1.
\textsuperscript{227} Statement by Lord Bassam, HL Deb 18 November 2004, Volume 666 Column 1655.
\textsuperscript{228} See Cabinet Office, LGD Guidance and Best Practice (2004) (n53) paras. 10-13, 17-18, 35-36.
\textsuperscript{229} Ibid. para.37.
PART 2: GOOD PRACTICE, GAPS AND CHALLENGES

1. Introductory comments

1.1. Although the UK is fortunate in not being vulnerable to the most extreme natural disasters (its overseas territories apart), in recent years it has been subject to serious flooding and a number of terrorist attacks which have prompted several reviews, both internal to government and external, of the UK’s emergency management arrangements.

1.2. The process of periodic as well as topic-specific reviews form an integral part of the UK's emergency management system. Indeed, the CCA framework was prompted by a review of the UK’s civil protection arrangements in response to the ending of the Cold War and the move from the concept of civil defence against nuclear attack to wider emergency management; the experience of emergencies such as the fuel protests in 2000, and the Foot and Mouth outbreak in 2001; and the changing security environment post-9/11. The contingency planning aspects of the CCA were reviewed between 2010 and 2012 leading to some minor modifications to the CP Regulations and associated guidance and the Cabinet Office published in 2017 its Post Implementation Review of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (the 2017 Post-Implementation Review).230

1.3. In addition, the government has established independent inquiries into the handling of a number of emergencies since the enactment of the CCA. Thus, it is possible to draw upon the conclusions and recommendations of inquiries such as the Report of the Major Incident Board into the Buncefield Incident of 11 December 2005;231 the Coroner’s Inquests into the London Bombings of 7 July 2005 and the 7th July Review Committee’s report;232 the Pitt Review, Learning the Lessons from the 2007 floods;233 and the Hine Review, The 2009 Influenza Pandemic - An independent review of the UK response to the 2009 influenza pandemic.234 The current review on behalf of the IFRC has been undertaken at the same time as the UK Government has been establishing an inquiry into the Grenfell Tower Fire in

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London in July 2017 which claimed the lives of 71 people. Notably, its List of Issues to be investigated include: the response by central and local government to the recommendations of previous inquiries; the response of the emergency services to the fire itself; and, in the fire’s aftermath, the policies and procedures in place on the part of central and local government for dealing with a major emergency such as the fire and whether the response, including the provision of emergency relief, was adequate. This Inquiry is likely therefore to raise, challenge and make recommendations in respect of many of the issues covered in this report. In addition, some of the UK’s Caribbean overseas territories are still in the process of recovering from the damage caused by Hurricanes Irma and Maria. The experience, criticisms and lessons learned may prompt a review of the disaster management laws in place in those territories.

1.4. Against this background, in this part of the report, the authors have sought to identify good practice within the UK emergency management laws and any potential gaps to inform the development of the IFRC’s Checklist. The IFRC terms of reference originally also sought recommendations on how to strengthen the legal framework. In the absence of evidence from operational stakeholders, the making of any recommendations was not considered to be appropriate. Further research from such organisations may be something the IFRC wish to consider in future phases of this Project. That said, in furtherance of the IFRC’s objectives, where it was considered to be helpful to do so, observations have been made about aspects of the UK’s laws where the authors’ research indicated areas which might benefit from further review.

1.5. The nature of emergency or disaster management laws means that, in effect, they have to achieve the almost impossible, balancing between, on the one hand, flexibility (as both planning and response/recovery need to be adaptable to meet the actual circumstances of an emergency which can be rarely foreseen) and, on the other, certainty (an emergency is not a time for responders to be unsure of their role, the procedures or those directing their actions); between encouraging subsidiarity (with local assessment and planning the essential foundation of effective emergency preparedness) and ensuring national oversight and accountability (to ensure both consistency and the rapid availability of resources if local

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235 The official figure was given on 16 November 2017 as 71 but the inability of the authorities to give a precise number earlier itself gave rise to public criticism.


capacity is exceeded); and between the legal powers needed to give public authorities the freedom to respond to a developing disaster and the legal protections necessary to protect individuals at times when they are at their most vulnerable. As will become apparent this can mean that certain aspects of the framework can be strengths and good practice in certain circumstances, but in others can present as weaknesses or create challenges.

2. **Good practice/ lessons identified**

**Contingency planning**

2.1. **The UK’s legislation is established around the principles of integrated emergency management.** A review of responsibilities for civil contingencies in the early 2000s led to the CCA and a change in approach from one primarily reliant on limited emergency planning and a proclamation of a state of emergency in the event of a serious incident. Now the UK’s framework follows an IEM or ‘business continuity’ model with more extensive duties on responders to plan for emergencies; an expectation that standing or business as usual laws will provide sufficient powers to enable a response to most emergencies; but with a fall back to make wide ranging emergency regulations *in extremis*. This approach potentially has significant benefits. It places the emphasis on planning in advance of an emergency and through its reliance on standing laws should ensure improved familiarity with the arrangements should an incident occur, providing continuity of actors and procedures (especially when combined with the express duty on responders to carry out exercises).

2.2. **The UK framework does not assume that the imposition of duties in legislation is the only way to achieve emergency management objectives.** Instead it achieves a balance between hard law (legislation) and soft law (guidance, both statutory and non-statutory). By setting down framework obligations in legislation but leaving the detail of how to implement those obligations in guidance, the framework is designed to provide flexibility while offering consistency and, also, is intended to make the system easier for responders to understand and apply. The downside is that such a system may make it harder to enforce non-compliance, if responders underperform, but the 2017 Post-implementation Review did not identify problems with the structure itself or the reliance on ‘softer’ measures.
2.3. As part of the IEM model, the legislation ensures that priority is given to the assessment of risk and publication of risk registers. The principle of developing a comprehensive assessment of risk should therefore be embedded at every level of planning – national, regional and local – ensuring that capability and capacity development is proportionate and targeted. By intrinsically linking the various levels interdependencies and gaps can more easily be identified. This supports capability development for both acute shocks and chronic stresses.

2.4 The expressed objectives of the CCA’s contingency planning provisions are to (a) establish a clear set of roles and responsibilities for responders, (b) give greater structure and consistency to local civil protection activity, and (c) establish a sound basis for performance management at a local level.²³⁸

2.4.1. The UK framework therefore not only seeks, but relies on, participation by local responders and imposes duties on those responders - the extent of the duties depending on the category of the responder - to collaborate and cooperate in the preparation of risk assessments and contingency plans. Where this collaboration, especially over knowledge sharing, was shown by the Pitt Review to be inadequate, improvements were made to both the CP Regulations and statutory guidance to secure better relationships and more effective joint working. In 2012, the Civil Contingencies Act Enhancement Programme assessed whether the CCA was working as intended. It found that emergency planning might not have been carried out as effectively as possible and subsequent changes were made to the Regulations to clarify expectations of responders’ duty to cooperate. In the most recent 2017 Post-Implementation Review, although evidence gathered suggested ‘there may be some inconsistency from area to area in how response is organised’ and that further exploration was required, nonetheless it considered that a consistent level of civil protection activity across the country and consistency between Category 1 and 2 responders in the way civil protection activity is carried out was broadly being achieved.²³⁹

2.4.2. In setting the arrangements for local contingency planning, the CCA recognises the need to involve and impose duties on actors other than public authorities. This is no easy task in light of the privatisation of much of the UK’s critical infrastructure over the last 20 years. The UK has sought to ensure that key infrastructure providers (e.g., energy

suppliers, electronic communication network providers and certain transport operators) are required to cooperate with Category 1 responders and can participate in LRFs/RRPs, the principal structures created to enable effective cooperation between responders. By bringing the key responders together through the LRF/RRP at the planning stage, this structure not only enables effective joint working in respect of risk assessment and the creation and maintenance of emergency plans, but should increase their familiarity with each other’s structures and processes and in turn facilitate improved working when the same responders become the Strategic Coordinating Group responsible for managing the local response to an emergency. The Cabinet Office’s 2017 Post-Implementation Review concluded that there was no clear case for reviewing the regulatory framework itself although there may be a need to consider the way in which the CCA, CP Regulations and guidance are being interpreted by central government and responders.  

2.4.3. The CCA’s third objective of performance management at a local level has been met by a combination of duties in the CCA and CP Regulations, soft law such as Emergency Preparedness, but more specifically through the development of a National Resilience Capabilities Programme (NRCP).  

The aim of the NRCP is to build capability to deal with the consequences that are common to most types of emergency, regardless of whether those emergencies are caused by accidents, natural hazards or man-made threats and to identify, challenge and monitor the current levels of capability in each of the areas covered by 22 workstreams. The assessment of capability is overseen by the NRCP Board and, ultimately, by a National Security Council Ministerial Sub-Committee on Resilience. The information gathered on how much capability each workstream has delivered is then used to provide assurance to ministers on how ready the UK is to respond to civil emergencies. The 2015 Strategic Defence and Security Review made a commitment “to develop a new set of resilience standards”. Consequently, the Cabinet Office is leading work (expected to be underway in mid-2017) on the creation of a set of shared expectations for the UK resilience community, which will guide the work of practitioners and aid the assessment of capabilities and performance. The aim is that these standards will be created by the responders themselves (the organisations to which the standards will apply), which will increase their accuracy, relevance, acceptance and eventual uptake, with discussion facilitated by central government. The government has stated that if any governance or legislative issues are uncovered the means of addressing those issues can be fully explored.

241 Cabinet Office, NRCP (2014) (n64); Cabinet Office, Expectations and Indicators of Good Practice (2013) (n64).
2.5. **The legislation also requires Category 1 responders to have regard to the activities of voluntary organisations relevant to emergencies.** Although there is no obligation to cooperate with these organisations, responders are encouraged in *Emergency Preparedness* to involve a wide range of agencies, private sector organisations and not for profit and voluntary bodies in the emergency planning process.\(^{242}\) There may be arguments for some voluntary organisations in particular to be given a more formal role, but this more flexible approach should enable their participation when required or requested but avoids making what are *volunteer* organisations subject to onerous duties or commitments that they may have difficulty supporting.

2.6. **The UK framework makes specific provision in legislation for the sharing of information between responders for emergency planning and has recognised and sought to overcome obstacles to sharing information during response and recovery.** A key element of cooperation for the purposes of emergency management is information sharing, but this is not without its difficulties when considering the nature of some information required for an all risk emergency planning system. The CP Regulations accordingly recognise that difficulties can be encountered in sharing information between responders where it comprises information that is personal data, commercially confidential or classified on national security grounds. But to enable effective information sharing and to overcome such difficulties, the CP Regulations put in place a procedure for identifying such information, making requests as between responders and resolving disputes. The 2017 Post-Implementation Review identified that despite the remaining challenges in accessing information, there was extensive evidence of good practice at the local tier implying that the principles of responder engagement had at least been partially adopted.\(^{243}\)

2.6.1. **Specific guidance has been issued in an attempt to overcome problems with sharing information, especially personal data.** The reluctance of some health bodies to share the personal data of victims of the 7 July 2005 bombings highlighted other issues around information sharing between responders. The perception of many especially in the health sector was that the law - the Data Protection Act 1998 and patient confidentiality - prevented the sharing of vital information. In fact, the law was not at fault; the problems were due to misunderstandings about its effect. As a result, the Cabinet Office worked with the

\(^{242}\) Cabinet Office, *Emergency Preparedness* (n5).

Information and Data Protection Commissioner to produce *Data Protection and Sharing - Guidance for Emergency Planners and Responders*, guidance specifically targeted at emergency planners and responders. Misperceptions still remain and the introduction of the stricter new EU GDPR may increase these difficulties, although conversely, its introduction may provide the opportunity to explain how data protection law should not be an obstacle to emergency planning or response.

2.7. The CCA makes provision for peer-monitoring by other responders and monitoring by the Secretary of State (or Scottish Ministers) to monitor compliance and the necessary measures are implemented in a consistent manner.244 As part of this, a Resilience Capabilities Survey of England and Wales (formerly known as the National Capabilities Survey) is carried out by the Cabinet Office which gathers data from Category 1 and 2 responders. The survey asks members of the resilience community about their activities, experiences and needs. The last survey was carried out in 2014.

Response and recovery

2.8. The IEM or business continuity model with the focus on preparedness and the detailed duties on responders to, e.g., exercise the arrangements beforehand, has so far enabled the UK to respond to emergencies without recourse to making emergency regulations under the CCA. The move away from a model of proclamation of a state of emergency therefore means that the UK system does not rely on what, almost by definition, will be exceptional arrangements parachuted in during an incident. It also reduces the need to go to ‘a state of emergency’ unless a situation is truly exceptional avoiding both the political and legal issues that are potentially raised by such a scenario. The framework nonetheless retains the ability to make emergency regulations in extreme situations and, according to the Government, to use Royal Prerogative powers to fill any gaps where the CCA may not operate effectively.

2.9. If a situation deteriorates to a point where emergency regulations are required, the CCA provides powers to make these rapidly and to cover a very broad range of functions. However, the CCA imposes checks on these powers.

2.9.1. Emergency regulations are subject to the so-called triple lock. This is intended to ensure emergency powers will only be available if: (1) an emergency that threatens serious

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244 CCA, s.9.
damage to human welfare, the environment or security has occurred, is occurring or is about to occur; (2) it is necessary to make provision urgently in order to resolve the emergency as existing powers are insufficient and it is not possible to bring forward normal legislation because of the need to act urgently; and (3) the emergency regulations sought are proportionate to the aspect or effect of the emergency to which they are directed.

2.9.2. The measures that may be included within emergency regulations are restricted. For example, any amendment to the Human Rights Act 1998 is prohibited as is forced military service or any provision preventing strike action.

2.9.3. Scrutiny and monitoring of the making and exercise of the regulations must be undertaken. This is achieved, first, through parliamentary scrutiny, which is required within 7 days of the regulations being laid in Parliament, with the regulations lapsing if they are not approved. Second, the regulation maker is required to have regard to the importance of ensuring that Parliament and the courts are able to conduct proceedings in relation to the regulations or any action taken under them. Finally, the Government undertook to Parliament that any use of emergency regulations would be subject to review by a senior Privy Councillor.

3. Gaps and challenges

3.1. The recent 2017 Post-Implementation Review did not find any evidence for suggesting that major legislative change is required, although there may be a need to consider the way in which the CCA, CP Regulations and associated guidance are being interpreted and applied in practice. Nonetheless, in any emergency or disaster management framework there are always going to be challenges and potential gaps: to paraphrase Von Moltke, no emergency plan ever survives contact with an emergency; no disaster laws can ever foresee or address all eventualities presented by a disaster. In this section, therefore, the authors set out observations on potential omissions and difficulties in the existing legislation based on the findings in Part 1 of this report. As indicated earlier in this report (Introduction, section 2), without having had the opportunity to speak to responders, they can be no more than that but are expressed in the hope that they may encourage further discussion and, in some cases, review.

Contingency planning

3.2. As outlined above, a strength of the CCA is the manner in which it hands responsibility for planning for and responding to most emergencies to local responders. The risk of such an approach, though, is that it assumes local responders (a) have the necessary powers, and (b) the capacity (covering both resources and competency) to use them. If neither exist in the circumstances of a particular emergency, the response and recovery may fail.

3.3. The provisions of the CCA (Part 2 apart) and the CP Regulations focus on the local arrangements for civil protection and within that contingency planning. It therefore sets out the duties on responders to plan for their response, rather than setting out the response duties themselves. These, warning and informing apart, are presumed to be set out in the legislation containing the responders’ standing functions. Part 1 of the CCA’s focus on emergency planning also means that although the guidance on emergency planning under the CCA is statutory in nature, the *Emergency Response and Recovery, Data Protection and Sharing - Guidance for Emergency Planners and Responders* and the *Evacuation and Shelter* Guidance is described as non-statutory. Whether in practice the distinction has any effect is worthy of further exploration, but it may nonetheless create the impression that less regard has to be paid to the response and recovery guidance than the planning guidance. The 2017 Post-Implementation Review identified potential ‘inconsistency from area to area in how response is organised’ and that further exploration was required. The authors suggest that any further examination includes consideration of whether the CCA’s focus on planning might lead not only to that inconsistency in approach, but also too much focus on the planning phase at the expense of the response and recovery phases.

3.4. The duties in the CCA are directed at ensuring a responder can perform its functions ‘to prevent an emergency, reduce control or mitigate its effects or take other action in connection with it’. It is noticeable that there is no express reference to ‘recovery’ in the CCA. Even within the *Emergency Response and Recovery* guidance, the primary focus is on response, with limited reference to recovery beyond that in the immediate aftermath. Whether

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246 In Northern Ireland, it should be noted that statutory provision is not made and so emergency arrangements are dependent on organisations accepting their responsibilities.
247 CCA, s.2.
249 CCA, s2(1)(d).
this may therefore lead to an imbalance between emergency planning which prepares for a response as opposed to planning which prepares for recovery is something that would warrant further analysis.

3.5. Further, although the specific Evacuation and Shelter Guidance addresses short-, medium- and longer-term shelter requirements, it is non-statutory and primarily concerned with evacuation and more immediate shelter needs. In the absence of clear duties to provide accommodation under housing law to victims of emergencies (see Section 5) - there must be a question whether the existing legislation adequately addresses the needs of victims and the requirements of responders in relation to the provision of accommodation during, in particular, the recovery phase.

3.6. More specifically, (and the Grenfell Tower Inquiry will no doubt address this) in relation to housing, in light of the transfer of many housing functions from local authorities to housing associations and similar arm’s length organisations, it would seem appropriate to review whether such organisations are sufficiently involved in the emergency management process (whether it be planning, response or recovery) including whether they should be added to the list of specified responders in the CCA.

3.7. The UK system seeks to achieve a balance between hard law (legislation, primary or secondary) and soft law (guidance) in recognition of the principle that there can be alternate or better ways of securing an objective than by imposing statutory duties. This can though pose risks.

3.7.1. First, although the split and balance is well received and well-accepted among the resilience community, it can lead to inconsistency - however many efforts are made e.g. through the NRCP to avoid this- and the danger of variable levels of performance, which without a system of assurance, may not become evident until an emergency occurs. (Monitoring and assurance are considered further below, section 3.12).

3.7.2. Second, as noted above, guidance on emergency planning is statutory in nature, but guidance directed at response and recovery is described as non-statutory. The distinction may be explained on the basis that as the CCA is concerned with contingency planning, guidance going beyond that - i.e. on response and recovery which is governed by different legislation - would be ultra vires the CCA, but the distinction seems hard to justify as guidance on, e.g., the resources available for response or the means to ensure sustainable recovery could well
be a factor in any emergency plan. If in a time of tight budgets, a responder focuses on its core statutory duties and gives less priority to what are seen as discretionary functions or those which it is only guided to do, it is conceivable that key elements of the emergency management framework could be overlooked or deprioritised because they are not statutory duties as such. And so, that guidance may become less effective. This too might be a reason for the 2017 Post-Implementation Review’s comment that ‘there may be some inconsistency from area to area in how response is organised’ (emphasis added).  

3.8. Although these concerns may be already being addressed following the 2017 Post Implementation Review, if there is such inconsistency, it would appear worth considering whether (a) the split between hard and soft law ensures that responders are subject to appropriate clear and enforceable duties and (b) the status of emergency management guidance is (i) clearly understood and (ii) appropriately identified as statutory or non-statutory.

3.9. Although local responders are subject to statutory duties, apart from the specification of the Secretaries of State responsible for health, highways and maritime and coastal emergencies as Category 1 responders, the government is otherwise under no express duty in the CCA. This is in part due to the nature of central government’s role in emergency planning and response and the constitutional position and powers of the Crown, but it does mean that central government’s functions (and to an extent that of the Scottish Ministers) are left to soft law guidance and policy statements such as concept of operations (CONOPS) and the documents on the LGD approach. The lack of statutory duties on the government appears not to have been an issue in the various inquiries but there seems a question whether this may create uncertainty among local responders as to what central government might do or provide in an emergency, when an emergency exceeds local capacity.  

3.10. The funding powers raise two potential challenges: first, although there is power enabling local authorities to incur expenditure on emergency planning, there is no ring-fenced funding for this purpose. Second, although there is a clear funding mechanism under the

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Local Government and Housing Act 1989 to reimburse local authorities for expenditure incurred in dealing with a significant emergency, the discretion over what costs can be claimed and the amounts to be provided rests with the Secretary of State. There are guidance notes as to what expenses might be expected to qualify for funding, but this arrangement does not guarantee funding and the claims that may be accepted will normally be determined retrospectively after an authority has committed the expenditure. Does this potential uncertainty impact on a responder’s ability to decide to deploy resources or delay such decision making while the prospects of recovery are assessed?

3.11. The list of organisations or categories of bodies which are named as responders is extensive, as this report has revealed, and credit should be given for the inclusion of private sector bodies upon whom public law duties are rarely imposed. Nonetheless, apart from the omission of the Crown and with it the military, some important gaps appear to remain which may not be filled by the encouragement to involve them contained in Emergency Preparedness. Some, especially voluntary organisations, may prefer voluntary participation in, for example, an LRF, but there are a number for whom an enhanced status might be thought to benefit the emergency management process, such as the British Red Cross, St John’s Ambulance, Salvation Army, Samaritans, Royal National Lifeboat Institute, Mountain Rescue, Victim Support, Royal Society for the Prevention of Cruelty to Animals, and land based search and rescue organisations. There are also others which, with changing circumstances and in particular changing ‘ownership’ of what were previously public functions, should perhaps be brought within the statutory duties in the CCA. Housing bodies have been mentioned above; the Met Office, although already a key and keen participant, might appropriately be subject to clearer duties; as more innovative approaches are adopted by insurers, insurance companies may be helpful contributors - it is noted that e.g. Flood Re has not been specified as a responder. Care needs to be taken as voluntary bodies especially might not welcome a more formal role accompanied by duties and the benefit of specification, with consequent obligations to, e.g., cooperate and participate in LRFS/RRPs would need to be balanced against the costs. Nonetheless, the last specific change to the list of responders was in 2012 and a further review would seem timely.

3.12. This report has identified the regime for monitoring of responders’ performance in the CCA. It is not clear, beyond the NRCS, how effective these measures are. A concern is


253 CCA, ss.9 and 10.
that the means of securing assurance or enforcement under the CCA, namely taking a fellow responder to court, might be regarded as so disproportionate and potentially draconian, that responders who need to preserve good working relationships are unlikely to use the process. The legislation was drafted in this manner to, in part, address constitutional concerns, for example, over ministers directing police officers. But if, as indicated above, the IEM system relies on local responders without a continuous assurance that they have the capacity and capability to perform, there is a significant in-built risk. It is hoped that assurance can be provided without the need for enforcement action, but the measures in the CCA do not seem suitable for establishing a QA system nor, if necessary, securing effective compliance without resort to legal proceedings.

Response and recovery

3.13. A number of the observations made above apply equally to the response and recovery phases, but turning to more specific elements of these, the following observations are made.

3.14. Although obviously a risk with any emergency management model during the response phase, the IEM/business continuity model - with its reliance on local responders with escalation as necessary - is at particular risk of failure if there is unforeseen inadequacy in standing laws, incapacity or inadequacy in the performance of functions by individual responders (see section 3.12) or delay before the necessary action at a higher level can be agreed and taken.254

3.15. The full range of the powers permitted by the CCA and especially the power to make emergency regulations have never been fully tested. To some extent, this could be seen to reflect the success of the UK’s approach, i.e. that the emergencies which have occurred have been handled by responders relying on their powers under standing laws. The fact remains though that as the escalation of a response through to the making of emergency regulations has to date, fortunately, not been required, the workability and effect of Part 2 of the CCA has not been examined.

3.16. As, therefore, emergency regulations under the CCA have not been made there remains uncertainty over their potential content. To a certain extent that follows from the

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254 As an example, the Government has recognised that the time needed for emergency regulations to be made and brought into effect could be a minimum of six hours or possibly a number of days, Cabinet Office, Emergency Response and Recovery (2013) (n7) para. 14.3.2.
nature of the instrument: there must always be flexibility and no pre-prepared legislation is likely to fit every, or even any developing emergency. Nor has the Government published draft emergency regulations. Given the need for any emergency regulations to reflect the specific situation, doing so might achieve little anyway, but in their absence, there remains uncertainty which can fuel concern over what the regulations might contain. Walker has suggested that given the disinclination of the government to use Part 2 anyway, preferring instead either to rely on standing powers and/or to legislate specifically to address particular threats, if Part 2 is seen as too much of a blunt instrument, it might be replaced by comprehensive ‘soft emergency’ law to better ‘secure the dynamic qualities necessary of civil contingencies laws’.

3.17. In part, presumably for this reason, the Government still asserts that Royal Prerogative powers, outside of the CCA, could be used where there may be insufficient time to put statutory provisions in place. However, as Blick has suggested, the existence of Prerogative powers in this area may be doubted as a matter of principle anyway given the coverage of the field by the CCA, possibly even more so following R (on the application of Miller) v Secretary of State for Exiting the European Union. But perhaps more importantly, as a matter of practice, as Eburn asks, is it wise to rely on laws which the Government acknowledges only ‘appear’ to remain and the extent of which only a court can determine subsequently, to support powers required as a matter of urgency and which may involve interference with individuals’ rights?

3.18. The word ‘recovery’ does not appear in Part 2 of the CCA. Whilst the actions inherent within the recovery phase may be covered implicitly, the concern is that, together with the treatment of this phase in the Emergency Response and Recovery guidance, this could mean that this aspect of the emergency management cycle is overlooked. In the same way that it has been suggested that planning for recovery may need to be more specifically addressed as part of the contingency planning provisions, there seems a need to consider whether - if Part 2 of the CCA were ever to be used- it contains sufficient flexibilities and powers

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258 R (on the application of Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5.
259 Michael Eburn, Managing ‘civil contingencies’ in Australia (February 2014) 18 The International Journal of Human Rights, pp.143-158.
(accompanied by appropriate protections) to enable effective immediate and longer-term recovery operations.

3.19. As Walker has identified there appears a reluctance to use Part 2 of the CCA. That may well be a strength of the CCA: other legislation suffices and the CCA’s wide powers are truly to be used only in extremis. But in relative terms, it is now a considerable time since the CCA was enacted and circumstances have changed significantly: the threats from and responses to both natural disasters and terrorism are very different to those prevailing in 2003/2004. For example, the risk and the potential impact of cyberattack in 2004 were far less then today; a changing climate year on year is affecting the nature and severity of climate related disasters; and new threats, such as those posed by antimicrobial resistance, now feature in the NRR. Part 2 may still serve its purpose but as the Cabinet Office recognised in its 2017 Post-Implementation Review, it is good practice for legislation to be reviewed after certain periods of time. That is indeed a strength of the UK’s general regulatory system and one that could be adopted elsewhere; Part 1 of the CCA has been subject to such exercises. Given the purpose of the powers in Part 2 of the CCA, their nature, and the changing circumstances since the CCA’s enactment, as Walker has indicated, a review of Part 2 now would seem appropriate.

3.20. Finally, both law and practice has meant that scrutiny in some form invariably follows an emergency, whether a coroner’s inquest where fatalities have occurred and/or through an independent inquiry, now under the Inquiries Act 2005. When the 2005 Act was introduced, the Parliamentary Joint Committee on Human Rights expressed concern that certain aspects of the legislation risked compromising the independence of an inquiry, potentially breaching Article 2 of the ECHR where the subject matter of the inquiry concerned the right to life.260 However, the discretionary nature of the latter, though offering flexibility, may also lead to uncertainty as to its remit and over, for example, procedure, attendance, participant status and legal representation, as evidenced by the circumstances around the establishment of the Grenfell Tower Inquiry.261

PART 3. CONCLUSION

In conclusion, and mindful that the primary purpose of this review is to contribute toward the preparation of a Checklist providing guidance to law and policy makers, in this final section a number of elements from the UK’s emergency management framework have been selected which it is suggested should be considered for inclusion. These are:

- The adoption of the IEM or ‘business continuity’ model as an alternative to one reliant on declarations of states of emergency. This model imposes specific duties on local responders to plan for emergencies; creates the expectation that standing or business as usual laws will provide sufficient powers to enable a response to most emergencies; but offers the fall back to make wide-ranging emergency regulations if an emergency is too severe to be handled using standing laws;

- Adopting principles of IEM, the UK framework emphasises the need for risk assessments at all levels, involving all responders. This helps ensure capability and capacity development is recognised and targeted in an appropriate and proportionate manner;

- The CCA framework (1) sets out the roles and responsibilities for responders in legislation (supported by more user-friendly guidance), (2) gives greater structure and consistency to local civil protection activity, and (3) establishes a sound basis for performance management at a local level;

- To achieve the last objective, the establishment of a NRCP which identifies, challenges and monitors the current levels of capability, and builds new capabilities, supported by regular national capability surveys;

- Following criticism from inquiries that the responder community was not sufficiently joined-up, (1) the creation of the LRF/RRP to enable cooperation between local responders, and (2) the imposition of statutory duties on responders to cooperate with each other, including recognition that public law duties should be imposed on private sector entities which have a key role in the critical national infrastructure;

- Recognising that information sharing is a key aspect of effective emergency planning and vital in the response and recovery phase, the creation of a statutory regime to make provision for the sharing of information between responders, including addressing how to handle sensitive material, and the production of guidance addressing misunderstandings over the law on the sharing of personal data;

The creation of a system of peer monitoring and monitoring by Ministers which with the National Capabilities Programme seeks to encourage compliance by responders.
Annex A: Overseas Territories and Crown Dependencies

The UK has three Crown Dependencies (Guernsey, the Isle of Man and Jersey) and 14 Overseas Territories which have their own governments but in respect of which the UK retains responsibility for security, defence and international relations.

Many of the British Overseas Territories are vulnerable to disaster due to their location and the destruction caused recently (August/September 2017) by Hurricanes Irma and Maria in the Caribbean has focussed attention on disaster management in the UK’s overseas territories (and to a lesser extent, its Crown Dependencies). A brief explanation of the relevant laws in the Overseas Territories and Crown Dependencies is therefore set out below although a detailed analysis of these disaster and emergency laws is outside the scope of this report.

A.1. Overseas Territories

Each Overseas Territory is a constitutional unit separate from the others and the UK. Each has its own executive headed by a Governor, Commissioner or Administrator appointed by the Sovereign, but most having a council of local politicians acting as ministers, forming the local government upon whose advice the Governor will, in most cases, act. Most governmental functions are devolved onto the local government but the UK retains responsibility for defence and security. It also is internationally responsible for ensuring the Overseas Territories’ compliance with treaty obligations extended to them.

The laws of each Overseas Territory are typically a combination of (a) UK legislation made or enacted in the UK which has been extended to an Overseas Territory, and (b) laws locally enacted by an Overseas Territory's legislature. The latter are made under powers conferred on the Overseas Territory’s legislature to make laws for its peace, order and good government under its constitution. This applies particularly to disaster management laws which are found in a combination of local laws and UK orders in council, although there is no consistency of approach across the Overseas Territories.

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262 There are 14 British Overseas Territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, (British) Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Dacie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, and the Turks and Caicos Islands.

263 E.g. in 1989 Hurricane Hugo left Montserrat with 90% of its structures destroyed, including the island's hospital and virtually all the homes of its 12,000 residents; in 1995 a volcano eruption followed, which left Montserrat's capital under 50ft of volcanic material and caused some two-thirds of the island's population to leave.
Many Overseas Territories have their own disaster management laws: e.g., some deal solely with disaster response, e.g. the Bermuda Emergency Powers Act 1963;\(^{264}\) some with both planning and response, e.g. Anguilla’s Disaster Management Act;\(^{265}\) some with recovery, e.g. the Turks and Caicos Hurricane Relief Ordinance 1946;\(^{266}\) and some with all aspects of disaster management including declarations of states of emergency, e.g. the British Virgin Islands’ Disaster Management Act 2003,\(^{267}\) the Montserrat Disaster Preparedness and Response Act 2002,\(^{268}\) and the Cayman Islands’ Disaster Preparedness and Hazard Management Law 2016.\(^{269}\) A number of Overseas Territories with limited local measures in place may also rely as a fall back on powers given to the Governor, etc. in the Emergency Powers (Overseas Territories) Order 2017\(^{270}\) (the 2017 Order) to proclaim an emergency and make emergency regulations.

Where local disaster management laws are in place, these can contain features not present in the UK legislation. For example, Anguilla’s Disaster Management Act, apart from establishing a National Disaster Management Committee,\(^{271}\) requiring the preparation annually of a national disaster plan,\(^{272}\) requiring a list of premises available to provide shelter,\(^{273}\) and making provision for disaster alerts,\(^{274}\) includes measures providing immunities and privileges to personnel from the Caribbean Disaster Emergency Response Agency\(^{275}\) and to assisting states (e.g., granting such a state exemption from taxes on equipment brought into Anguilla for the purpose of rendering assistance)\(^{276}\) and protects personnel exercising functions under the Act from liability.\(^{277}\) The British Virgin Islands’ Disaster Management Act 2003, as another example, provides for National Alert and National Emergency Broadcast Systems,\(^{278}\) requires the Director of the Department of Disaster Management to establish a liaison with private sector organisations for the purposes of establishing communication links with them in relation to the disaster management

\(^{264}\) Bermuda Emergency Powers Act 1963  
\(^{266}\) Hurricane Relief Ordinance 1946, Chapter 18.05 (TCI).  
\(^{267}\) Disaster Management Act 2003 (British Virgin Islands).  
\(^{268}\) Montserrat Disaster Preparedness and Response Act 2002.  
\(^{269}\) Cayman Islands’ Disaster Preparedness and Hazard Management Law 2016 (Law 46 of 2016).  
\(^{271}\) Disaster Management Act (Anguilla), s.6.  
\(^{272}\) Disaster Management Act (Anguilla), s.8.  
\(^{273}\) Disaster Management Act (Anguilla), s.10.  
\(^{274}\) Disaster Management Act (Anguilla), s.26.  
\(^{275}\) Anguilla, like Montserrat, Turks and Caicos and Virgin Islands, participates in the Caribbean Disaster Emergency Management Agency.  
\(^{276}\) Disaster Management Act (Anguilla), ss.27-34.  
\(^{277}\) Disaster Management Act (Anguilla), s.35.  
\(^{278}\) Disaster Management Act 2003 (British Virgin Islands), ss.21 and 22.
procedures of those organizations and makes specific provision for the establishment of an
Emergency Disaster Fund which is to be applied towards recovery efforts and the adoption
and promotion of preventative measures before, during and after a disaster emergency, as
well as assisting other countries or territories affected by a disaster.

When a disaster occurs either local laws make specific provision for the response or, in those Overseas Territories to which it applies, the 2017 Order. In contrast to the
position in the UK, under the 2017 Order, the Governor, Commissioner or Administrator retains a residual power to make a ‘Proclamation of Emergency’ if satisfied that a state of public emergency has occurred, is occurring or is about to occur. Where such a
Proclamation has been made and provided prescribed conditions are met, the Governor can make regulations for the purpose of preventing, controlling or mitigating an aspect or effect of that state of public emergency.

Overseas Territories should be self-financing, raising their own revenue. The UK can provide financial assistance in the form of ‘development assistance’ under the International Development Act 2002 and International Development (Official Development Assistance Target) Act 2015, whether this is likely to contribute to a reduction in poverty or not. Only Montserrat, Pitcairn and St Helena were eligible for such assistance. The remaining Overseas Territories had to rely on other Foreign and Commonwealth Office funding. The recent hurricanes have, however, highlighted the reliance of the affected Overseas Territories on relief by the UK and financial support and there was criticism that the existing OECD criteria for providing assistance prevented the UK government from supporting the most badly affected Overseas Territories from its overseas development aid budget. In response, the OECD Development Assistance Committee has been reported to have agreed a process to enable previous aid recipients to receive temporary overseas development assistance in the event of a humanitarian crisis.

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279 Disaster Management Act 2003 (British Virgin Islands), s.15.
280 Disaster Management Act 2003 (British Virgin Islands), Part X.
282 Defined in the 2017 Order (n270), art.4.
283 The 2017 Order (n270), art.5(1).
284 The 2017 Order (n270), arts.6-8.
A.2. **Crown Dependencies**

The Crown Dependencies comprise the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. They are not part of the UK but are self-governing dependencies of the Crown with their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The UK Government is responsible for the defence and international relations of the Islands and is ultimately responsible for ensuring their good governance. The Islands’ legislatures make their own legislation although UK legislation can, but rarely does, extend to them.

In Jersey, emergency planning and response is governed by the Emergency Powers and Planning (Jersey) Law 1990 which establishes a States of Jersey Emergencies Council and prescribes the Council’s functions in an emergency. These are to ‘Coordinate the planning, organisation and implementation generally of measures which are designed to guard against, prevent, reduce, mitigate or overcome the effects or possible effects of any happening event or circumstance that causes or may cause loss of life or injury or distress or hardship to persons or that in any way endangers or may endanger the health or safety of the community or that in any way threatens to deprive the community of the necessities of life.’ The Law enables competent authorities by order to take action in the event of an emergency and enables the Lieutenant-Governor to declare that a state of emergency exists if it appears to him or her that events of such a nature as to threaten the national defence or the safety of the community have occurred, or are about to occur, either inside or outside Jersey. While a state of emergency is in place, the Emergencies Council may make wide ranging orders for securing the essentials of life.

In the Isle of Man, the Civil Defence Act 1954 sets out the civil defence functions of public bodies, and the Emergency Powers Act 1936 provides for the issue of proclamations of emergency and the making of emergency regulations when such a proclamation has been made.

In Guernsey, by contrast, the laws have been updated to be more comparable to those in the UK. The Civil Contingencies (Bailiwick of Guernsey) Law, 2012 establishes a Civil Contingencies Authority with power to order specified organisations to risk assess and plan and monitor their performance. In a similar fashion to the CCA in the UK, the Law enables the Authority to make emergency regulations if an emergency is of sufficient seriousness and

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287 Within the Bailiwick of Guernsey there are three separate jurisdictions: Guernsey (which includes the islands of Herm and Jethou); Alderney; and Sark (which includes the island of Brecqhou).
288 Emergency Powers and Planning (Jersey) Law 1990, art.2(1).
289 Ibid, art.11.
290 Emergency Powers Act 1936 (Isle of Man), ss.3 and 4.
such regulations meet conditions as to necessity and urgency. As in the UK, no proclamation of a state of emergency is required.

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