



Emergency Planning Laws and Policy

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CANADA

EMERGENCY PLANNING LAWS AND POLICY

Introduction

Canada does not have a Home Office similar to that of the United Kingdom. On October 1, 2001, a special Cabinet-level committee was established to combat terrorism. This committee was described in press reports as being similar to the new Homeland Security Office in the United States,¹ but seems to be designed for purposes that are less ambitious and more transitory. The committee is headed by the Minister of Foreign Affairs and includes the ministers of Defense, Transport, Finance, and Justice, National Revenue, Intergovernmental Affairs, and Citizenship and Immigration as well as the Deputy Prime Minister and the Solicitor General. This amounts to a “mini-Cabinet” that is composed of the heads of most of the most important departments in the Federal Government.

The Canadian Government has been anxious to respond strongly and quickly to the events of September 11. Many Canadians believe that it has been too easy for terrorists to enter and operate within the country. Others fear that a failure to take decisive action could lead the United States to take border security measures that would threaten Canada-U.S. trade. Approximately 80 percent of Canada’s exports go to the United States, and the balance of trade under the North American Free Trade Agreement has been substantially in Canada’s favor.

In order to enact appropriate legislation by the end of this year, the Government recently limited debate on its omnibus Anti-Terrorism Bill.² Despite containing a number of provisions that were sharply attacked by opposition members in the House of Commons, Bill C-36 was approved by an overwhelming majority of that body on November 28, 2001. The bill must now be passed by the Senate before it can be signed into law and brought in force. The Senate is an appointed body that has voted against Government bills on very few occasions in recent years. Thus, the Government expects to meet its goal of responding to the attacks in the United States by the end of the year.

As omnibus legislation, Bill C-36 required substantial cooperation between the various ministries involved. The bill envisions a continuation of this approach as it does not provide for the creation of a Home Office or Homeland Security Department.

¹ Tom Cohen, *Cabinet sets up Cabinet-level security panel headed by foreign affairs minister*,” AP, Oct. 1, 2001. See Appendix I.

² Bill C-36, 37th Parl. 1st Sess.

The Emergencies Act

In 1988, Parliament enacted an Emergencies Act³ to replace earlier legislation that was thought to contain a number of provisions that may well have been rendered unconstitutional by the adoption of the Canadian Charter of Rights and Freedoms adopted in 1982.⁴ The Emergencies Act contains four different parts dealing with “public welfare emergencies,” “public order emergencies,” “international emergencies.” and “war emergencies.” Despite being so divided, the relevant parts are similar in that the powers they create can all be invoked by a declaration of emergency issued by the Governor General. The Governor General is the formal Head of State who is constitutionally required to act upon the advice of the Prime Minister and his or her Cabinet except in highly unusual situations which are most unlikely to be encountered. Thus, Parliament envisioned declarations of an emergency to originate in the Office of the Prime Minister.

The Emergencies Act authorizes the Government to issue regulations respecting enumerated matters. For example, regulations can be issued for “the regulation or prohibition of travel to, from or within any specified area, where necessary for the protection of the health or safety of individuals” in the case of a public welfare emergency.⁵ Such regulations would not be issued by Transport Canada, but by the Governor General acting upon the advice of the Prime Minister. However, such regulations would almost certainly assign duties, responsibilities, and powers to Transport Canada.

Because the Emergencies Act concentrates emergency regulatory power in the hands of the Prime Minister, subject to Parliamentary review, it makes no attempt to assign duties, responsibilities, or powers to the various departments of the Federal Government. In fact, the Act does not even refer to those departments. Of course, this does not mean that the various departments are not involved in emergency planning. All Government departments invest considerable time and effort in planning of this nature. However, this time and effort is generally required by Government policy or the laws creating the departments rather than by the Emergencies Act.

The Emergencies Act does not require the various Government departments to surrender powers or duties to a Home Office or Homeland Security Department during the existence of an emergency. No office or department has been created for that purpose.

³ R.S.C. ch. 22 (4th Supp. 1989).

⁴ R.S.C. No. 44, Sched. B. (Appendix 1985).

⁵ R.S.C. ch. 22, s. 8(1)(a) (4th Supp. 1989).

Provincial Coordination

Federal powers are generally more limited in Canada than they are in the United States, and Canadian provinces are generally reluctant to surrender powers that have not been assigned to the Federal Government. There is no question that the Federal Government can expand its normal jurisdiction in the case of national emergencies, but many questions respecting what powers would remain with the provinces even in the case of an emergency have never been answered. In order to appease the provinces and to meet legal objections that might arise if emergency powers were assumed by the Federal Government, the Emergencies Act contains several qualifying provisions. The first of these states that the Federal Government shall not act “in a manner that will...unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province...”⁶ A subsequent subsection of the Act states that the Federal Government shall act “with the view of achieving, to the extent possible, concerted action with each province with respect to which [a] power, duty or function is exercised or performed.”⁷ Other sections of the Act require consultation with the provinces during periods of emergency.⁸

One additional provision imposing restraints on Federal emergency powers under the Emergencies Act states that powers invoked by an emergency declaration “shall not be exercised or performed for the purpose of terminating a strike or lockout or imposing a settlement in a labour dispute.”⁹

Areas that would likely remain principally a provincial responsibility even in the event of a public welfare emergency are firefighting, mass care, and health and medical services. Almost all firefighting units in Canada are organized either directly by the provinces or indirectly through municipal ordinances. Nearly universal health care coverage is provided through provincial health insurance programs. Health Canada is primarily involved in planning, coordinating activities, and sharing relevant information. For example, the Minister of Health recently created a National Advisory Committee to advise him on how Canada should prepare for and respond to bio-terrorism events.¹⁰ Urban search and rescue is also normally a provincial function though Federal involvement in this area would be injected through any use of Canadian troops. This is because while Canada’s regiments are organized province by province, all Canadian soldiers are under provincial jurisdiction.

⁶ *Id.* s. 8(3)(a)(i).

⁷ *Id.* s. 8(3)(a)(ii).

⁸ *Id.* s. 14.

⁹ *Id.* s. 8(3)(b).

¹⁰ [Http://www.hc-sc.gc.ca/english/archives/releases/2001/2001_120e.html](http://www.hc-sc.gc.ca/english/archives/releases/2001/2001_120e.html). See Appendix II.

Of the other areas in which the United States' Office of Homeland Security will have functions, the one that falls most fully under Federal jurisdiction in Canada is communications. To help it fulfill its responsibilities and meet its objectives, the Federal Government has created a special Communications Security Establishment. This bureau is separate from Canada's national police force, the Royal Canadian Mounted Police, and Canada's intelligence agency, the Canadian Security Intelligence Service. The Communications Security Establishment is part of the Department of National Defense and has responsibilities for acquiring foreign signals intelligence, protecting Government electronic information, and providing technical and operational assistance to federal law enforcement and security agencies.¹¹ This bureau helps to protect electronic information by, among other things, analyzing vulnerabilities, approving equipment, developing security products, and providing consulting.¹²

On October 19, 2001, the Government of Canada announced that in addition to giving the Canadian Security Intelligence Service a special allocation of Can\$47 million, it was giving the Communications Security Establishment a special allocation of Can\$37 million "to augment and retool existing systems and to accelerated planned projects."¹³ Of this, Can\$26 million was earmarked to upgrade information technology capabilities to enhance processing and analysis.

Nuclear energy is also a Federal responsibility. Since September 11, the Canadian Nuclear Safety Commission has implemented enhanced security measures.¹⁴

In conclusion, the events of September 11 have not resulted in significant government reorganization in Canada or legislated expansions of departmental responsibilities. However, virtually all departments have been involved in the Government's anti-terrorism plan. Additional funds have been allocated for specific purposes and intergovernmental cooperation has been increased through coordinating groups and expanded programs.

Prepared by Stephen F. Clarke
 Senior Legal Specialist
 Western Law Division
 Directorate of Legal Research
 Law Library of Congress
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¹¹ [Http://www.cse.dnd.dnd.ca/en/about_cse/about_cse.html](http://www.cse.dnd.dnd.ca/en/about_cse/about_cse.html). See Appendix III.

¹² *Id.*

¹³ Http://pm.gc.ca/default.asp?Language=E&P...m&Sub=FactSheet&Doc=csis.20011019_e.html. See Appendix IV.

¹⁴ <Http://www.nuclearsafety.gc.ca/eng/media/speeches/faq.html>. See Appendix V.

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FRANCE

HOMELAND SECURITY

France addresses “homeland security” through the use of security plans. To discourage or hinder terrorist actions, the Government can trigger its standing anti-terrorist security plan, *Vigipirate*. The *Vigipirate* plan was originally conceived in 1978 when Europe faced numerous terrorist attacks. It was activated for the first time in 1985; it was reactivated in 1986, in January 1991 (for four months, during the Gulf War), and several others times, in particular in 1995 after the terrorist attacks that took place in the Paris metro.

Vigipirate has two levels, *vigipirate simple* and *vigipirate renforcé* which call for the participation of the armed forces. The reinforced plan allows the deployment of paratroopers, soldiers, and gendarmes at airports, train and metro stations as well as at any sensitive public areas to check identity papers and investigate any suspicious activity. In Paris, about 900 soldiers and 1300 gendarmes have been called in to reinforce the capital’s regular police and more troops have been put in a state of alert. The reinforced plan also provides for the reinforcement of the air defense.¹ For example, fighters planes at five airbases are ready to take off within two to four minutes and radar associated with the Crotale anti-aircraft missiles system were deployed around the La Hague nuclear reprocessing site.²

Vigipirate is a government plan and is classified “confidential defense.” The Prime Minister decides when the plan should be carried out. The plan may be enforced throughout France. It is implemented under the responsibility of the Ministry of Interior by each prefect who takes into account the situation in his/her department.³ Several hours after the terrorist attacks on the United States on September 11, 2001, the French Government implemented the full-scale *vigipirate* plan.⁴

In addition to *vigipirate*, on October 5, France’s Health Minister Bernard Kouchner unveiled the main elements of a three-pronged plan aimed at tackling any threat of a biological, nuclear or chemical attack. Up to that date, the existence of the plan, called *Biotox*, had been kept

¹ <<http://www.premier-ministre.gouv.fr>>

² <<http://www.defense.gouv.fr>>

³ France is divided into 96 départements. Each département has a préfecture, headed by a préfet. They represent the central government, and are responsible for most central government functions such as internal order and security within the départements [L. Neville Brown & J.S. Bell, FRENCH ADMINISTRATIVE LAW (Oxford, Clarendon Press, 1993)].

⁴ *Supra* note 1

classified. The details of the plan, however, remain classified. It defines the responsibilities of each Ministry concerned and in particular the responsibilities of the Ministries of Interior, Defense and Health which will be the most concerned. A panel will be set up to coordinate the work of the various ministries. Its three phases are:

(1) Prevention: French laboratories where viruses and germs are stored or used for pharmaceutical research will come under the *Vigipirate* plan. In addition, there will be tighter controls on the storage and transport of germs and viruses. The drinking water supply will be also placed under *Vigipirate* patrols, and there will be additional checks to ensure water purity.

(2) Health monitoring: Anthrax was added to the list of diseases that doctors, hospitals and laboratories must report. They must also report any other unusual health-related phenomena. Two specialized military laboratories may be mobilized around the clock.

(3) Crisis response: Biotox provides for a geographic division of France with, for each zone of defense, designated hospitals where decontamination teams will be deployed in the event of any chemical attack. Health professionals are given additional training and information on how to cope with biological and chemical agents.⁵

The authorities have also updated the inventory of vaccines and medicines in storage, and set up with the help of pharmaceutical manufacturers a procedure to ensure and, if need be, to draw upon the stocks of the main antibiotics. France is also seeking an intensification of European cooperation, in the area of prevention as well as the coordination of crisis alerts and response.

Prepared by Nicole Atwill
Senior Legal Specialist
Western Law Division
Law Library of Congress
November 2001.

⁵ LE MONDE, *Le gouvernement français rend public le plan de lutte contre le bioterrorisme*, Oct. 6, 2001, Lexis/Nexis: Presse, Le Monde.

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GERMANY

EMERGENCY PLANNING LAWS AND POLICY

In 1997, Germany reformed its legislation on the management of emergencies by returning most federal functions to the states, and in 1999 Germany abolished the theretofore existing Federal Office for Civilian Protection. The remaining federal role of coordination is now carried out by a much smaller office for civilian protection that is subordinated to the Federal Ministry of the Interior but is no longer a separate agency. The German reform of 1997 was based on the assumption that an emergency apparatus would not be needed after the end of the cold war. The events of September 11, 2001 have led to a change in the German outlook and may lead to reform legislation.

Constitutional Framework

The German Constitution vests in the federation the legislative power over the management of war-related emergencies that affect the civilian population¹ and the Constitution allows the federation to implement emergency management legislation either through Federal agencies or through the agencies of the states acting under federal supervision.² The latter mode of operating is not unusual in Germany where the administrative apparatus of the states administers much federal legislation.³

In addition, the German Constitution contains a provision on not-war-related disaster relief that allows each of the states to call upon the assistance of the Federal Border Police, the police forces of other states, and even the German Armed Forces for assistance in natural disasters or major accidents. This intermingling of executive functions was made possible in a constitutional reform of 1968 which enacted a framework of provisions on executive powers in case of war or other disasters, and these provisions aim to balance the need for Federal action with control mechanisms to prevent abuse. Thus, the emergency involvement of Federal institutions in disaster relief must be terminated whenever ordered by the Federal Council⁴ or when the emergency is resolved.

¹ Grundgesetz für die Bundesrepublik Deutschland [GG] May 23, 1949, BUNDESGESETZBLATT [BGBI.], official law gazette of the Federal Republic of Germany at 1.

² GG, art. 87 b, ¶ 2.

³ GG, art. 84.

⁴ The Federal Council [*Bundesrat*] is the second legislative chamber of the German federal legislature and it

Development of Federal Legislation

The constitutionally suggested bifurcation of measures on disaster relief and war-time emergencies led to the enactment of two federal statutes. The first of these was the Civil Protection Statute of 1957⁵ and the second one was the Act on Disaster Relief of 1968.⁶ These two acts were frequently reformed until they were both revoked through the Civil Protection Act of 1997.⁷

Until 1997, the general philosophy of the Civil Protection Act was the necessity of a federal apparatus for protecting the civilian population against threats emanating from the Soviet Union. At the federal level, an Office of Civilian Protection was created and it played a major role in preparing emergency plans, conducted research on emergency matters and granted technical assistance to state authorities. At that time, the construction and maintenance of bunkers was an important concern and this was supervised federally as was the functioning of a national alarm system. In addition, the Civilian Protection Office assisted in various efforts relating to emergency planning and also disaster relief. Other Federal efforts were the leadership role in volunteer organizations, and the operation of a technical institute.

According to the Disaster Relief Act, the municipalities and local communities were responsible for funding and carrying out disaster relief for non-war-related emergencies. They had to live up to the federal mandates provided in the Act and maintain offices for disaster relief that were structured to deal with branches of disaster relief. They had to act in concert with volunteering private charitable organizations, if the cooperation had been cleared both by the Federal Ministry of the Interior and the appropriate state authority. The creation and training of civilian self-help organizations was also an important function, and this was also carried out in coordination with Federal and state authorities.

The Current Legislation

Federal and state roles in overall emergency planning

Although the 1997 reform of civilian protection abolished the Disaster Relief Act, the principles contained in that Act survived the reform. The new Civilian Protection Act of 1997 merges the emergency management of natural disasters and war-time emergencies and places all these measures into the overall competence of the states and local communities

represents the interests of the states .

⁵ Gesetz über den Zivilschutz, Oct. 9, 1957, BGBl. I at 1696.

⁶ Katastrophenhauptschutzgesetz, July 9, 1968, BGBl. I at 776.

⁷ Zivilschutzgesetz , March 25, 1997, BGBl I at 126.

while further emphasizing the principles of volunteer efforts also for war-time emergencies.

As a consequence of the 1997 reform, the Federal Office of Civilian Protection was abolished in 1999, as were its most important functions of building and maintaining bunkers and of operating a national alarm system. The few functions remaining at the federal level were relegated to the new Office of Civilian Protection which is a mere section in the Federal Administrative Office, an agency that houses a miscellany of federal functions and is in turn subordinated to the Federal Minister of the Interior.

The downgrading and downsizing of federal emergency planning was prompted by the end of the cold war which lulled the country into a possibly false sense of security and suggested the benefit of cost-cutting measures. It remains to be seen whether the newly decentralized system would be able to cope with novel kinds of threats, such as major terrorist attacks. The handling of a recent series of anthrax hoaxes in Germany has led to the suspicion that planning and coordination need to be improved. In one instance, it took the various involved authorities several days to deliver a dangerous-looking letter to the federal agency in charge of bacteriological examinations.⁸

Securing the Infrastructure and Other Essential Functions

Several additional federal acts were created in the 1960s that aim at protecting the infrastructure and the functioning of the basic institutions in emergency situations.⁹ These acts are still in effect, as adjusted by the 1997 reform of emergency planning and earlier reforms, and they are implemented by several major federal regulations. Among these emergency acts is an Act Securing Traffic and Transportation that covers air, rail, maritime, and road traffic,¹⁰ an Act Securing the Functioning of the Economy¹¹ that aims at ensuring the supply of money and essential goods and services, an Act Ensuring Food Supplies,¹² and an Act ensuring the Water Supply.¹³

Generally, these acts delegate regulatory power to the Federal government, the state governments, or individual departments of these governments to issue regulations either of a general preventive nature, or to deal with a specific crisis. Whatever measures are imposed must be proportional to the crisis and may not interfere more than necessary or longer than necessary with the mode of operating in ordinary times. The implementation

⁸ Halter *et al.*, *Gips im Karton*, DER SPIEGEL at 30 (Nov. 5, 2001).

⁹ A breakdown by individual function and further analysis in each category could be provided if requested.

¹⁰ Verkehrssicherstellungsgesetz, Aug. 24, 1965, BGBl I at 927, as amended.

¹¹ Wirtschaftssicherstellungsgesetz, re promulgated Oct. 10, 1968, BGBl. I at 1069.

¹² Ernährungssicherstellungsgesetz, re promulgated Aug. 27, 1990, BGBl. I at 1802.

¹³ Wassersicherstellungsgesetz, Aug. 24, 1995, BGBl. I at 1225.

of any measures is usually entrusted to the agencies that would take care of these matters under ordinary circumstances. Not foreseen under that system is a significant shift of administrative functions to the federal government.

The Act on Securing Traffic¹⁴ may serve as an example on how powers are distributed and delegated. According to section 5 of the Act, the Federal Government has the power to issue regulations on most matters foreseen under the Act. However, the Federal Government may delegate that responsibility to the Federal Minister of Transportation, Housing, and Construction who in turn may delegate the regulatory power to subordinated federal agencies and also to the governments of the states, which may also become empowered to further sub-delegate.

According to section 8 of the Act, the regulations of the Federal Government or the Federal Minister of Transportation may authorize the issuance of orders and instructions by the Federal Transportation Ministry to the involved agencies, including state agencies, in situations where more than one state is involved or when the issuance of instructions through the normal channels would not be timely in view of the emergency situation.

According to section 19 of the Act, the Act is to be implemented by the federation when the matters at issue involve railroads, maritime traffic, national inland waterways except for ports, aviation, and road traffic concerning more than one state. All other matters are to be implemented by the states and the local communities. The states in turn may create special districts for the handling of these matters. In addition, further authorizations are given that allow the Federal Minister of Transportation to involve other agencies, such as those regulating trucking or railroads.

In addition, section 21 of the Act authorizes the involvement of associations representing various transportation interests in the decision-making process and in the actual implementation of measures.

Although this description of implementing powers is complex, it is in fact not much of a deviation from the implementing powers that prevail under ordinary circumstances. Generally, the railroads are under federal supervision as is maritime shipping and major waterways, whereas road traffic is largely administered by the states.

Prepared by Edith Palmer
Senior Legal Specialist
Directorate of Legal Research
Law Library of Congress
December 2001

¹⁴ *Supra* note 10.

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ISRAEL

EMERGENCY PLANNING LAWS AND POLICY

Introduction¹

On November 27, 1955, the government decided to appoint a superior inter-ministerial committee to deal with homeland infrastructure in times of emergency, the vernacular acronym of which is MELACH. Since 1965, the Minister of Defense serves as the chairperson of the committee, members of which include the general managers of government ministries, a senior representative of the Israel Defense Forces, a senior representative of the Israel Police, general manager of the Jewish Agency and representatives of local authorities. In May 1968, the Minister of Defense designated a permanent chairperson for the committee and established a MELACH central headquarters to direct, advise and coordinate all MELACH bodies based on the policy and decisions reached by the superior MELACH committee. The authority of the superior committee to instruct subordinating bodies to act or abstain from acting in accordance with guidelines determined by the superior committee is based on the "Emergency Regulations for Special Authorities," passed by the government. Under a February 13, 2000, government decision, MELACH's infrastructure extends also to emergency events which are not part of actual fighting.

MELACH Roles and Responsibilities

(1) MELACH's role in a time of emergency is to:²

- a. ensure the welfare of the civilian population (in areas such as water supply, food, health, electricity, gas, etc.),
- b. support the war effort (Defense Industry factories),
- c. prevent severe or long term harm to the state economy (main export industries, tourism, etc.,).

(2) MELACH Composition

¹ Based on information included in an internal guide of planning for infrastructure in time of emergency. The guide was provided to the author by the Israeli Embassy, Washington D.C., with the understanding that the guide itself should not be distributed.

² [Http://www.moc.gov.il/modh1/melach/melachc.htm](http://www.moc.gov.il/modh1/melach/melachc.htm)

- a. specific bodies designated within government ministries for times of emergency;
- b. superior, central and district MELACH committees;
- c. local authorities.

A. Specific Bodies Designated Within Government Ministries for Times of Emergency

In time of emergency, every government ministry is responsible for carrying on its normal peace-time civilian operations, as part of a plan proposed by the ministry and confirmed by the superior MELACH committee.

Government ministries designate special authorities for specifically defined objectives during times of emergency. These bodies function under the authority of each government ministry, in coordination and close cooperation with other central bodies dedicated to the same objectives. In addition to the designated authorities, the operations of some government ministries are declared essential, and their employees are ordered to continue their work in times of emergency.

The following is a list of designated authorities in government ministries:

<u>Designated Responsible Authority:</u>	<u>Government Ministry</u>
agriculture	Ministry of Agriculture
food and general needs	Ministry of Industry and Trade
workforce	Ministry of Labor and Welfare
assistance to factories	Ministry of Defense
communications, mail & telephone and communications services	Ministry of Communications
environment	Ministry of Environment
hospitalization and health	Ministry of Health
housing and construction	Ministry of Housing and Construction
education	Ministry of Education
evacuation of tourists	Ministry of Tourism

search, rescue, removal of the dead	Ministry of Interior
gas, electricity, water	Ministry of National Infrastructure
land, maritime, aviation transportation ports, railroads, public works, heavy mechanical & engineering equipment	Ministry of Transportation

B. Superior, Central and District MELACH Committees

MELACH committees are in charge of inter-ministerial coordination and direction in the essential areas under the responsibility of the ministries, both in planning as well as in prioritization for budget allocation and coordination with the Israel Defense Forces in times of emergency. The central MELACH headquarters is responsible for implementation of policies and coordination of ongoing activities of all bodies in the system. A think tank of individuals recognized for their knowledge and stature in the state economics and infrastructure are appointed by the central committee, in order to provide advice and assistance in the principal planning areas of MELACH.

C. Local Authorities

Every local authority is responsible in times of emergency to ensure the supply of essential goods and services to the population within its jurisdiction. Each local authority should establish a local MELACH committee headed by the head of the local authority for carrying out during times of emergency all functions it is responsible for in accordance with the government decision and the law of the local authorities.

. Local Public Information Centers

In times of emergency, every settlement should open a public information center which will inform citizens about the supply of essentials, hospitalization or evacuation of relatives, issues of civil defense, etc. Local authorities should publish the telephone number of the information center, which will combine information originating from the mayor's office, MELACH, police and homeland command.

. Homeland Command

The Homeland Defense plan deals with preparation of the homeland for a war by setting directions for protection of shelters, space, sealed rooms, distribution of protective gear (gas masks, etc.) and instruction for use and behavior at time of emergency. The homeland command is responsible for the operation of sirens and operation of rescue units, fire fighting and rescue,

medical units, protection and patrol and units specializing in defense against chemical attacks.³

The Homeland Command has recently completed the preparation of a special instruction program for the public, especially for the educational institutions, in the event of a missile attack on Israel. This instruction program includes an educational program for elementary school children according to which students will learn about the nature of chemical and biological warfare and how to protect themselves against it. Some of the materials will be in the form of CD Roms, which will include a computer game format. Among the CD Roms is software that explains what anthrax is.⁴

Due to the multi-cultural nature of Israeli population, the Army has developed an explanatory program in several languages for use in all media concerning emergency preparedness and response.⁵

Prepared By Ruth Levush
Senior Legal Specialist
Eastern Law Division
Directorate of Legal Research
Law Library of Congress
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³ [Http://www.idf.il/hebrew/organization/homefront/pakar1.stm](http://www.idf.il/hebrew/organization/homefront/pakar1.stm)

⁴ A. Rappaport, *IDF prepared explanatory preparedness kit for the public*, YEDIOT ACHARONOT 8 (Nov. 29, 2001) in Hebrew.

⁵ *Id.*

UNITED KINGDOM

EMERGENCY PLANNING LAWS AND POLICY

Legislative Framework

There is at present a patchwork of statutory measures to deal with emergency planning and services in times of civil and natural disasters. A new law to remedy the situation has been proposed and is discussed later.

The Emergency Powers Act 1920 authorizes the issuance by the Crown of a proclamation of emergency when events have occurred, or are about to occur, that are of such a nature as to be calculated to "deprive the community... of the essentials of life."¹ Among the essential services specifically mentioned are the supply and distribution of food, water, fuel, light or means of transportation. The proclamation remains in force for one month and must be communicated to Parliament. Section 2 empowers the issuance of regulations by Orders in Council which are limited in duration to seven days unless continued by resolution of both Houses of Parliament. The regulations may confer or impose on a government department such powers as are deemed necessary to secure and regulate the supply of the above-mentioned services and for any other purposes essential to the public safety and life of the community. The regulations may provide for the trial by the courts of summary jurisdiction (magistrates courts sitting without a jury) of persons guilty of offenses against the regulations.

A further statutory basis for handling civil emergencies is provided in the Civil Defence Act 1948,² allocating civil defense functions to ministers, local government and police authorities. In section 1(1) among the functions of the designated minister are:

- (a) the organization, formation, maintenance, equipment and training of civil defense forces and services;
- (b) the organisation, equipment and training for civil defence purposes of police forces, fire brigades and employees of local or police authorities employed primarily for purposes other than civil defence purposes.

The Civil Defence Act 1939 authorizes the appropriate government department to serve a notice in writing on any public utility requiring that it provide a report in writing stating what measures have been taken or are proposed to secure the due functioning

¹ 10 & 11 Geo. 5, ch. 55, §1.

² 12, 13 & 14 Geo. 6, ch. 5.

of the utility in the event of hostile attack.³ The department may also oblige the utility to implement specified measures that concern the security of the utility.⁴

The Civil Defence (Armed Forces) Act 1954⁵ provides for the training in civil defense matters of members of the armed forces.

The Civil Protection in Peacetime Act 1986⁶ enables local government authorities to use any of their civil defense resources, i.e. personnel (whether employees or volunteers), premises, equipment, services and facilities, to avert, alleviate or eradicate the effects of an emergency or disaster, even if the emergency or disaster may be unconnected with any form of hostile attack by a foreign power.

The Emergency Law (Re-enactments and Repeals) Act 1964, authorizes the Treasury to prohibit payments in gold or securities to any foreign government or persons residing outside the United Kingdom if the payment is likely to be to the detriment of the economic position of the United Kingdom.

Guidance on “Dealing with Disaster”

The current arrangements for the management of emergency services are included in the guidance provided in a publication of the Home Office, *Dealing with Disaster*.⁷ The publication notes the variations from one part of the United Kingdom to another in the roles and responsibilities of central and local government, but it also states the principles that are universally applicable. It also incorporates the best practices and the lesson learned from disasters during recent years. *Dealing with Disaster* provides a framework of the plans of emergency service, including civil protection arrangements, integration of emergency arrangements, command, control and co-ordination, care and treatment of disaster victims, providing information to the media, voluntary agencies, the lead departments in central government and a combined approach to planning, training, and exercising.

³ 2 & 3 Geo. 6, ch. 31, §36.

⁴ *Id.* §37.

⁵ 2&3 Eliz. 2, ch. 66.

⁶ Ch. 22.

⁷ A copy of selected sections is appended. The entire text is available at:
www.co-ordination.gov.uk/contingency/dwd/index.htm The publication is protected by Crown copyright.

Dealing with Disaster, chapter 2, describes the roles and functions of the following emergency agencies or services working at the scene of a disaster:

The Police Service
The Fire Service
The National Health Service
 Health Authorities
 Hospitals
The Ambulance Service
HM Coroner
HM Coastguard Agency
Local Government Authorities
Volunteers
Military
Central Government
The Environment Agency

Civil Contingencies Secretariat

Following the re-election into office of the Government in June 2001, as part of changes to the machinery of government, the responsibility for planning for civil emergencies was moved from the Home Office to a new Civil Contingencies Secretariat (CCS), the ministerial responsibility of which has been transferred to the Cabinet Office. The majority of the functions of the Emergency Planning Division (EPD) in the Home Office have been assigned to the Cabinet Office. The aim of these changes is to improve the resilience of Government in dealing with disruptive challenges, which would otherwise lead to crisis.⁸ The new CSS defines the concept of “resilience,” as the ability “at every relevant level to detect, prevent, and, if necessary, to handle disruptive challenges.”⁹

Proposed New Legislation

In developing the changes in emergency planning, the Cabinet Office issued in August 2001 a document for discussion on *The Future of Emergency Planning in England and Wales*, which set the closing date for consultations at October 31, 2001.¹⁰ To summarize the discussion document, the Government has concluded that the Civil Defence Act 1948 no longer provides an adequate framework for emergencies and proposes the enactment of new emergency planning legislation. Greater consistency is needed in the delivery

⁸ www.homeoffice.gov.uk/epd/index.htm

⁹ www.co-ordination.gov.uk/contingency/dwd/index.htm

¹⁰ A copy is appended.

of emergency planning services across England and Wales. Lacking an appropriate statutory framework, service has been developed at the initiative of local government authorities and other partner organizations. The resulting differences in approaches are being consolidated at all levels, and there is a danger that a patchwork of inconsistent policies and programs will become the norm. The legislation is proposed to:

- extend to all levels of local government;
- require local government to perform a community leadership role in developing emergency planning arrangements with partner agencies; and
- impose a duty on local government authorities, emergency services, health authorities, the Environment Agency, privatized utilities, transport operators and government departments to enter into partnership arrangements.

The purpose of the legislation would be:

- to place a responsibility on local government to assess and identify the main hazards in their area and to prepare or cooperate in the preparation of emergency plans which address those hazards;
- to require local government to take the initiative in bringing together partner agencies to prepare or cooperate in the preparation of plans;
- to ensure that local government chief executives and departments attach a proper priority to preparing and maintaining plans, training staff, and to responding effectively to disasters; and
- to provide a statutory basis for the preparation of national guidelines which will help in the development of performance standards and achieve greater consistency in emergency planning practice across the country.

Funding

The discussion document also addresses the issue of funding of emergency planning services. Currently, local government authorities receive specific grants from the Home Office in order to carry out their civil defense duties.¹¹ Additionally, under the "Bellwin Scheme," named after a formula drawn up by Lord Bellwin a former minister, local government is reimbursed for extraordinary expenditure incurred for emergency work not normally insurable. The Government has now concluded that specific grants should now be replaced by the Standard Spending Assessment (SSA) made during the national budget process for the delivery of local services. If the SSA funding is implemented local government

¹¹ Civil Defence (Grant) Regulations, 1953, as amended.

will be free to determine how much they allocate to emergency planning service, subject to overall guidelines and monitoring to ensure that appropriate service standards are achieved. The allocation in the SSA will be based on the recognition of the new duty of local government to exercise community leadership and to extend the duty to cover all its levels.

Workshops

As part of the consultative process to consider the new proposals, a series of Workshops have taken place throughout England and Wales. The participants at the Workshops discussed the proposals and put forward their views on the new legislation. Ironically, one such Workshop was held on September 11, 2001, attended by 37 delegates from local government, emergency services, central government departments, utilities and devolved assemblies.¹² Three groups out of four in the Workshop unanimously agreed to endorse in broad terms the proposals for new legislation, in particular, the proposal for a new emergency planning duty to fall on a range of partner bodies, with local government required to exercise community leadership. The proposal to support emergency planning through the SSA was agreed upon by a majority of the groups present.

To reflect the changes in the law and policy on civil emergency planning, a new publication will replace the guidelines in *Dealing with Disaster*.

European Union

The European Commission has lately adopted a position on the financing of civilian crisis management operations.¹³ The document describes civil crisis management to cover a variety of activities, including economic aid, civilian emergency assistance, rehabilitation, reconstruction, infrastructure development, human rights and diplomatic action. The Commission has proposed the establishment of a new flexible instrument for funding civil crisis interventions and to streamline management procedures for such interventions.

Prepared by Kersi B. Shroff
Chief, Western Law Division
Directorate of Legal Research
Law Library of Congress
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¹² Cabinet Office Review of Emergency Planning, Workshop 02, Easingwold, Sept. 11, 2001. A copy of the report is appended as illustrative of the key issues arising from the proposed legislation and funding of emergency services.

¹³ FINANCING OF EU CIVILIAN CRISIS MANAGEMENT OPERATIONS, IP/01/1684, Brussels, Nov. 28, 2001.