

The Fit with Other Legislation

Revision to *Emergency Preparedness*,
Chapter 19

Chapter 19 (The Fit with other Legislation) of *Emergency Preparedness Revised Version*

This guidance has been developed to complement Emergency Preparedness, the statutory guidance which supports the Civil Contingencies Act 2004 (CCA).

Summary

- As responders fulfil their duties under the *Civil Contingencies Act 2004* and accompanying regulations, *The Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005* (the “Regulations”), it is important that they consider how this interfaces with their duties under other civil protection legislation. As outlined in *Emergency Preparedness* ([paragraphs 1.37 – 1.38](#)), ‘responders may use the Act regime to support or supplement these separate regimes where they consider this appropriate. For example, if Category 1 responders wish to include COMAH risks in the Community Risk Register, this is acceptable. They can also make information requests under the Regulations to support the COMAH duties.’ However, the CCA does not supersede pre-existing sector-specific civil protection legislation which was brought in before 2004 to deal with specific hazards, some as a result of European Directives. Nor does it take precedence over, and/or negate the requisite of site specific requirements under legislation other than the CCA.

WHAT THE ACT AND THE REGULATIONS REQUIRE

- 19.1. This guidance considers how key duties under the CCA link with those contained in other site specific legislation concerned with industrial emergency planning legislation and safety at sports grounds and events. It also aims to raise awareness of the following key considerations when aligning activity under different legislative regimes:
- o Extendibility of Plans;
 - o Warning and Informing the Public; and
 - o Command and Control.
- 19.2. The guidance covers these main areas at a high level but does not provide detailed information on the requirements of other legislative regimes. It does however provide extensive reference to the other websites where further information can be found.
- 19.3. A separate section, 'Generic Considerations' is also included and is intended to remind emergency planners of the need to consider the Human Rights Act 1998, The Corporate Manslaughter and Corporate Homicide Act 2007, and the Working Time Regulations 1998 in their work.

The Civil Contingencies Act 2004 and Other Site Specific Legislation

19.4. This section of the guidance deals with the following legislation regarding industrial emergency planning and safety at sports grounds and events:

- o [Control of Major Accident Hazard Regulations 1999 \(COMAH\) \(as amended 2005 and 2008\)](#)
- o [Radiation Emergency Preparedness and Public Information Regulations 2001 \(REPPIR\)](#)
- o [Nuclear Installations Act 1965](#)
- o [The Ionising Radiations Regulations 1999](#)
- o [The Pipelines Safety Regulations 1996 \(PSR\)](#)
- o [The Energy Act \(Carbon Capture and Storage\) 2008](#)
- o [Safety of Sports Grounds Act 1975](#)
- o [Fire Safety and Safety of Places of Sport Act 1987](#)
- o [The Health and Safety at Work Act 1974](#)
- o [The Flood and Water Management Act 2010](#)

Duties Under the Civil Contingencies Act 2004 and the Fit with Other Site Specific Legislation

Risk Assessment

Requirements Under the CCA

19.5. Risk assessment is the first step in the emergency planning and business continuity planning processes.

The CCA and associated Regulations place duties on all Category 1 responders listed in the schedule to the Act to:

- o assess the risk of an emergency within, or affecting, a geographical area for which each Category 1 responder is responsible;¹
- o co-operate with each other and with Category 2 responders through the Local Resilience Forum (LRF) in maintaining a Community Risk Register ([CRR](#));²
- o update the CRR “from time to time” or “as often as necessary”;³ and
- o publish their risk assessment.⁴

19.6. [Chapter 4](#) of [Emergency Preparedness](#) gives guidance on the risk assessment duty.

Requirements Under other Legislation

19.7. Under COMAH,⁵ PSR⁶ and REPPIR,⁷ site operators are required to undertake risk assessments when proposing new developments or changes to existing arrangements. The appropriate regulatory authority and the site operator are required to ensure that any changes to on-site risk assessments that impact on off-site emergency planning arrangements, are notified to the appropriate organisations (mainly Category 1 and 2 agencies). In addition, event managers and sports ground management are also required to undertake risk assessments and to consult the relevant authorities.⁸

¹ CCA s. 2 (1) (a)-(b), Regulation 13

² CCA Regulation 15

³ Paragraph 4.8 of [Emergency Preparedness](#)

⁴ CCA s. 2 (1) (f)

⁵ Regulation 7 Safety Report

⁶ Regulation 23 Risk Assessment

⁷ Regulation 5 Risk Assessment

⁸ See Guide to Safety at Sports Grounds, 3.3e and The Event Safety Guide, paragraph 41.

Category 1 and 2 responders should note that for nuclear sites, in addition to REPIR, the activities within the site boundary are regulated under the Nuclear Installations Act by the HSE's Nuclear Installations Inspectorate (NII). The NII has a specific role/function in the event of a nuclear accident.

Aligning Risk Assessment Activity

- 19.8. When preparing and updating risk assessments, all responders need to consider the potential for major incidents to occur at COMAH, REPIR and PSR sites, as well as at sports grounds and event sites. Risk assessments should take into account the potential impact on the wider community. This can be achieved by considering site safety reports and site specific risk and impact assessments produced under other regimes as part of the community risk register assessment process for the LRF area. Sites may be noted in the Risk Assessment of the Generic Risks, and risks recorded in the [CRR](#), alongside the control measures needed. It should be noted that risk assessments for fixed nuclear sites are reviewed periodically by HSE's NII to ensure that the Detailed Emergency Planning Zone (DEPZ) remains relevant in the light of any change to the potential hazards on the site.

Role of HSE's Nuclear Installations Inspectorate:

The Nuclear Installations Inspectorate (NII) is that part of HSE's Nuclear Directorate which is responsible for regulating nuclear safety. In the event of an emergency, NII is responsible for monitoring the activities of the operators and advising the Government Technical Advisor and central government and Devolved Administrations. Using its statutory powers, NII would inspect and review the activities of the operators to ensure that they are taking all reasonable steps both to restore the plant to a safe state and to minimise the risk to the general public. On being notified of an emergency, NII would send inspectors both to site and to the appropriate off site facility who would monitor the situation and the steps taken to restore control. If the accident occurred at a nuclear power station site, an NII team would also go to the operators Central Emergency Support Centre (CESC) at Barnwood Gloucester. The Inspectorate would set up its own Incident Suite at Redgrave Court Bootle to provide a technical assessment capability and to support the Chief Nuclear Inspector and the NII inspectors on the site, at the off-site facility or at the CESC. This would allow NII to make independent assessments of the likely course of the accident and its consequences, and to consider any implications for other nuclear installations. These assessments would be passed by telephone or otherwise transmitted to the Chief Nuclear Inspector at the Nuclear Emergency Briefing Room located in Whitehall at the Offices of the Department of Energy and Climate Change (DECC), or if a Scottish Site at the Scottish Government Resilience Room in Edinburgh. The Chief Nuclear Inspector would act as advisor to central government in nuclear emergencies and would give advice based on NII's assessments to government departments, devolved administrations, HSE, and the operators as appropriate.

- 19.9. Risk assessments should respond quickly to changes in the risk environment and, in line with the regulatory requirements under CCA, and those regulations mentioned in [paragraph 3.7](#), should be regularly reviewed. The recommendations in the Buncefield report and the Pitt Review illustrate the importance of regularly reviewing risk assessments for COMAH sites and areas that frequently flood. Climate change is now a major concern, given the predicted increase in the range of future extremes of weather (as reflected in the Pitt Review recommendation 1 and the Government's response).
- 19.10. In addition to looking at the requirements under the legislation, when preparing risk assessments you should refer to [Chapter 4](#) of the statutory guidance, [Emergency Preparedness](#), and you may find it helpful to refer to the following:
- o [Expectations and Indicators of Good Practice Set for Category 1 and 2 Responders](#) which provides a further checklist of mandatory requirements for individual Category 1 and 2 responders;
 - o *National Risk Register (NRR)*;
 - o [Local Risk Assessment Guidance \(LRAG\)](#);
 - o Government Threat statements;
 - o [Event Safety Guide](#);
 - o [Guide to Safety at Sports Grounds](#);
 - o [The Government and the Competent Authority Response to Buncefield Incident](#);
 - o [Sir Michael Pitt's Review of the Summer 2007 Floods](#);
 - o [Approved Code of Practice and Guidance for the Ionising Radiation Regulations 1999](#);

- o [*A Guide to the Radiation \(Emergency Preparedness and Public Information\) Regulations 2001 Emergency Planning;*](#)
- o [*UK Resilience pages of Cabinet Office website.*](#)

Emergency Planning

Requirements Under the CCA

- 19.11. The chief requirement of the CCA in regard to emergency planning is for Category 1 responders listed in the schedule to the Act to maintain plans for preventing emergencies; reducing, controlling or mitigating the effects of emergencies; and taking other action in the event of emergencies.⁹ The Regulations require an emergency plan to include provision for carrying out exercises and training staff, or other people, to ensure the plan is effective.¹⁰ The plan should also contain a statement about the nature of the training and exercising to be provided and its frequency.¹¹ [*Chapter 5*](#) of [*Emergency Preparedness*](#) provides guidance on the emergency planning duty.

Requirements Under other Legislation

- 19.12. There is a requirement under COMAH,¹² REPIR,¹³ PSR,¹⁴ the Safety of Sports Grounds Act, 1975, and the Event Safety Guide¹⁵ (which brings together information to satisfy the requirements of the Health and Safety at Work Act 1974) to produce on-site and off-site emergency plans and procedures. Each legislative regime has its own testing and exercising requirements.

⁹ CCA s. 2 (1) (d)

¹⁰ CCA Regulation 25

¹¹ [*Emergency Preparedness, paragraph 5.41*](#)

¹² Regulation 9 On Site Emergency Plan, Regulation 10 Off Site Emergency Plan, Regulation 11 Testing.

¹³ Regulation 7 – On-Site Emergency Plan, Regulation 9 – Off-Site Emergency Plan, Regulation 10 – Review and Testing of Emergency Plans, and Regulation 13 – Implementation of Emergency Plans.

¹⁴ Regulation 25 Emergency Plans

¹⁵ Chapter 1, Planning and Management

Aligning Emergency Planning Activity

- 19.13. This section includes consideration of both the extendibility of plans and Command and Control.

Extendibility of Plans

- 19.14. Emergency response and recovery plans should interface with the requirements of each regulatory regime; site specific on and off-site plans, developed under industrial emergency planning legislation or under the guidance for Safety at Sports Grounds and Event Safety Planning guidance, should link with multi-agency emergency plans required under the CCA. This is because a scenario or incident may develop beyond the pre-designated areas (e.g. Public Information Zones (PIZs) in the COMAH regulations, Detailed Emergency Planning Zones (DEPZs in REPPiR), sports stadia or event sites). Off-site plans prepared under other legislation should, in addition to dealing with pre-designated areas, link in to other multi-agency plans prepared under CCA to provide a framework for the scalability of the response to deal with consequences of the emergency that go beyond the site and the pre-designated area.
- 19.15. DECC has produced a guidance document, [*Nuclear Emergency Planning Liaison Group: Consolidated guidance*](#), which includes a Chapter on Extendability ([*Chapter 9*](#)). This chapter provides guidance on the extent of extendability planning that is deemed necessary in the nuclear sector and what factors should be considered. Category 1 and 2 responders and other organisations are encouraged to adopt this approach when preparing extended plans for COMAH sites and emergency plans prepared under the PSR.

Such plans should address the:

- o responsibilities and functions of the organisations which would respond would respond to an emergency;
- o arrangements for the provision or receipt of aid from neighbouring emergency services and local authorities (for further guidance, see [*Mutual Aid – A Short Guide for Local Authorities*](#));
- o arrangements for communication between organisations involved in the response, including a register of all communications facilities and equipment;
- o warning and informing the public;
- o arrangements for media handling;
- o community information – population, transport availability, hospitals, schools;
- o reception centres; and
- o recovery plans, which should dovetail into off-site plans.

19.16. By considering and including all of the above in off-site emergency planning, COMAH emergency planning arrangements can transpose into the wider Major Incident Plans of responding agencies as the scenario or incident unfolds. This framework may also usefully complement the [*Guide to Safety at Sports Grounds*](#) and the [*Event Safety Guide*](#).

19.17. Under the COMAH regulations, local authorities can make a charge on a company for the preparation of off-site plans. It is not possible to make an additional charge to site operators for additional work to extend the plan beyond the requirements of the COMAH regulations.

- 19.18. Many local authorities have established multi-agency event safety planning groups which prepare advice and consider emergency preparedness arrangements for proposed major events. Similarly, as part of the requirements of the Safety of Sports Grounds Act 1975 (SSGA), many stadia have multi-agency stadium or ground safety advisory groups. The primary purpose of the sports ground safety advisory group is to provide specialist advice to the local authority so that it may effectively discharge its functions under the SSGA. In practice, it also provides a valuable forum within which the local authority and other agencies can develop a corporate approach, while each exercising their own responsibilities. Appointing local authority Emergency Planning Officers to these safety planning groups will help to ensure the interface between site safety plans and multi-agency emergency plans developed under the CCA.
- 19.19. Extended plans will, of course, require testing to check the interface between on-site and off-site plans, as well as with multi-agency plans prepared under the CCA. This may be achieved as an additional component of the exercising and testing regime of the appropriate regulation or guidance. Clearly there will be efficiencies to be achieved by testing and exercising on-site and off-site components of emergency plans alongside extended emergency plans which have been produced as part of this guidance.
- 19.20. In addition, cross boundary emergency plans should reflect the interface between any different neighbouring LRF (Strategic Co-ordinating Group) command and control structures. This will ensure a more resilient response to cross boundary incidents including a greater understanding of joint response and recovery plans. Such emergency plans should also link with the national emergency plans.

Command and Control

- 19.21. Whilst command and control structures should operate within the framework outlined in the [Emergency Response and Recovery Guidance](#) the interface between CCA and off-site emergency plans should reflect local operational procedures and culture. This means that it is vital in local arrangements for there to be ONE agreed Command and Control structure for responding to emergencies which all Category 1 and 2 responders, industry and voluntary agencies understand, and can agree. This agreed command and control structure should be consistently stated in all off-site emergency plans prepared under these different regimes. There is further advice and information available on command and control contained in [Chapter 4 of the Emergency Response and Recovery Guidance](#).
- 19.22. You should refer to [Chapter 6](#) of the statutory guidance, [Emergency Preparedness](#), and may find it helpful to refer to the following when undertaking emergency planning:
- o [Expectations and Indicators of Good Practice Set for Category 1 and 2 Responders](#) which provides a further checklist of mandatory requirements for individual Category 1 and 2 responders;
 - o [Emergency Response and Recovery Guidance](#);
 - o [Nuclear Emergency Planning Liaison Group: Consolidated Guidance](#);
 - o [A Guide to the Radiation \(Emergency Preparedness and Public Information\) Regulations](#);
 - o [2001 Mutual Aid – A Short Guide for Local Authorities](#);
 - o [Event Safety Guide](#);
 - o [Guide to Safety at Sports Grounds](#); and
 - o [UK Resilience pages of Cabinet Office website](#).

Business Continuity (Including Promotion of Business Continuity)

Requirements Under the CCA

- 19.23. The CCA requires Category 1 responders listed in the schedule to the Act to maintain plans to ensure that they can continue to exercise their functions in the event of an emergency 'so far as is reasonably practicable'.¹⁶ There is a further duty on local authorities to provide advice and assistance to those undertaking commercial activities and to voluntary organisations in relation to business continuity management (BCM) in the event of an emergency.¹⁷ [Chapters 6](#) (Business Continuity Management) and [8](#) (Advice and Assistance to Business and Voluntary Organisations) of [Emergency Preparedness](#) provide guidance on these duties.

Requirements Under other Legislation

- 19.24. It is considered good practice for site operators, event and ground safety operators to have business continuity plans in place. In addition, the Newton report (Buncefield Fire) and Sir Michael Pitt's review of the 2007 Summer Floods strongly recommend this approach. The position in the nuclear sector is monitored and regulated under the Nuclear Installations Act by the HSE's NII.

Aligning Business Continuity Activity

- 19.25. It is important that appropriate Category 1 responders understand the potential impact of an incident on business continuity. Local Authorities should seek to promote the benefits of BCM to site operators. The production of such plans

¹⁶ CCA s. 2 (1) (c)

¹⁷ CCA s. 4

will ensure that each agency and member of the business community, i.e. site operators involved in contingency planning arrangements, are able to maintain a level of response to incidents at all times, taking note of other relevant legislation and the activities of other duty holders.

19.26. When considering BCM, you should refer to [Chapters 6](#) and [8](#) of the statutory guidance, [Emergency Preparedness](#) and may find it helpful to refer to:

- o [Expectations and Indicators of Good Practice Set for Category 1 and 2 Responders](#) which provides a further checklist of mandatory requirements for individual Category 1 and 2 responders;
- o [UK Resilience pages of Cabinet Office website](#); and
- o [Business Link Website](#).

Co-operation and Information Sharing

Requirements Under the CCA

19.27. The CCA and associated Regulations place a duty on all Category 1 and 2 responders listed in the schedule to the Act to co-operate and share information within their LRF area.¹⁸ [Chapters 2](#) (Co-operation) and [3](#) (Information Sharing) of [Emergency Preparedness](#) provide guidance on these duties.

¹⁸ CCA s. 2 (5) (h)-(i); parts 2 and 8 of the Regulations.

Requirements Under other Legislation

- 19.28. In COMAH, REPIR and PSR, there is a requirement to share information between site operators and Category 1 and 2 responders in order to fulfil the requirements of the duty for risk assessment, warning and informing the public and the preparation of on-site and off-site emergency plans.¹⁹ In addition, under REPIR and COMAH, it should be noted that the local authority has a duty to prepare the off-site plan and to consult with the local community or their local representatives who may be affected by the implementation of the off-site plan.

Aligning Co-operation and Information Sharing Activity

- 19.29. Co-operation and information sharing between site operators and Category 1 and Category 2 responders will ensure that emergency plans prepared under different regulations are 'fit for purpose'.
- 19.30. When considering these duties, you should refer to [Chapters 2](#) and [3](#) of the statutory guidance, [Emergency Preparedness](#), and may find it helpful to refer to:
- o [Expectations and Indicators of Good Practice Set for Category 1 and 2 Responders](#) which provides a further checklist of mandatory requirements for individual Category 1 and 2 responders;
 - o [Data Protection and Sharing – Guidance for Emergency Planners and Responders](#);
 - o *Security Vetting and Protective Markings: A guide for Emergency responders* (available on a restricted basis); and
 - o [Nuclear Emergency Planning Liaison Group Consolidated Guidance](#).

¹⁹ CCA s. 2 (5) (h)-(i); parts 2 and 8 of the Regulations Under REPIR it is Regulations 7(6), 8(7), 9(12) and 11.

Communicating with the Public

Requirements Under the CCA

19.31. Under the CCA, Category 1 responders listed in the schedule to the Act are required to:

- o arrange for publication of all or part of the risk assessments and plans they have made;²⁰ and
- o maintain arrangements to warn the public and provide advice and information to the public if an emergency is likely to occur or has occurred.²¹

19.32. Within this requirement, the wider risk to the whole community should be considered as well as the individual risk.

Requirements Under other Legislation

19.33. Under COMAH,²² there is a requirement for site operators to provide information to people living in the area (Public Information Zone) about their operation and any potential incidents that may arise. Under REPPiR, there are similar requirements for site operators to ensure the public are properly informed and prepared in the unlikely event of an emergency occurring,²³ as well as a duty on local authorities to ensure that those members of the public actually affected by a radiation emergency are informed promptly of the facts and the measures to be taken for their health protection.²⁴

²⁰ CCA s2 (1) (f)

²¹ CCA s2 (1) (g)

²² Regulation 14 public information.

²³ Regulation 16

²⁴ Regulation 17

- 19.34. The HSE has also produced an interim guidance note relating to carbon capture and storage.²⁵ Those involved in the development of such schemes are required to give compliance demonstrations as CO₂ is classified as a dangerous substance/dangerous fluid under the COMAH and PSR regulations.

Aligning Activity to Communicate with the Public

- 19.35. It is important that all Category 1 and 2 responders at LRF and multi-LRF level, as well as site operators, develop joint arrangements for communicating with the public. This is to avoid conflicting advice being published and to ensure that key messages are transmitted to the whole community, including transient populations such as tourists, and not just those in designated areas or sites. These arrangements should be regularly exercised and tested in accordance with the appropriate regulations and /or LRF exercise programme.
- 19.36. Where possible, agencies' websites should be effectively linked to provide public information before, during, and after the emergency. This is crucial, especially when the emergency involves a Strategic Co-ordinating Group (SCG), and central government response to public information.
- 19.37. When preparing plans to communicate with the public, you should refer to [Chapter 7](#) of the statutory guidance, [Emergency Preparedness](#), and you may find it helpful to refer to:
- o [Expectations and Indicators of Good Practice Set for Category 1 and 2 Responders](#) which provides a further checklist of mandatory requirements for individual Category 1 and 2 responders;

²⁵ <http://news.hse.gov.uk/category/carbon-capture-storage/>

- o [*Nuclear Emergency Planning Liaison Group Consolidated Guidance*](#);
- o [*The Ten Step Cycle – an informal guidance note*](#); and
- o [*UK Resilience pages of Cabinet Office website*](#).

Generic Considerations

19.38. When undertaking emergency planning activity as part of fulfilling duties under the CCA, Category 1 and 2 responders should consider their duties under the following legislation:

- o [*Human Rights Act 1998*](#)
- o [*Corporate Manslaughter and Corporate Homicide Act 2007*](#)
- o [*Health and Safety at Work Act 1974*](#)
- o [*Working Time Regulations 1998*](#)

19.39. This guidance draws out particular areas for consideration in emergency planning. When planning for emergencies, Category 1 and 2 responders should obtain their own legal advice if they are concerned about the compatibility of their proposed actions with this legislation.

Human Rights Act 1998 (HR Act)

19.40. Where responders are public authorities, they need to have regard to their general duties under the HR Act and ensure that their actions are compatible with individuals' rights under the Act.

19.41. Human Rights are fundamental rights and freedoms that belong to all individuals regardless of their nationality and citizenship. The HR Act provides for 16 basic human rights (also known as Convention rights). They are concerned with matters of life and death, what a person can say or do, their beliefs, right to a fair trial, and similar basic requirements. The HR Act provides for different categories of rights: absolute rights, such as the right to life; limited rights, such as the right to liberty; and qualified rights where a balance may need to be struck between the rights of the individual and the needs of the wider community or state interest, for example, the right to have your private and family life respected.

19.42. Rights that may be of relevance for responders may include:

- o Article 2: the right to life;
- o Article 3: the right to protection from torture, inhuman and degrading treatment;
- o Article 4: prohibition of slavery and forced labour;
- o Article 5: right to liberty and security;
- o Article 8: right to respect for private and family life;
- o Article 9: freedom of thought, conscience and religion;
- o Article 10: freedom of expression;
- o Article 11: freedom of assembly and association;
- o Article 14: right to enjoy Convention rights and freedoms without discrimination; and
- o Article 1 of the First Protocol: protection of property.

19.43. It is not possible, nor appropriate in this document, to cover every aspect of the HR Act, nor to consider the detailed aspect of each of the above rights. However, responders may find it helpful to consider the following areas when fulfilling their duties under the CCA and any duties under the HR Act:

- o Risk Assessment: Contextualisation²⁶ - what risks are there that human rights may be contravened?
- o Emergency Planning: Vulnerable people, people affected by the emergency, survivors, family and friends.²⁷
- o Communicating with the Public (Warning and Informing): Vulnerable people and those who have difficulty understanding the message.²⁸
- o Information Sharing: Personal information,²⁹ Data Protection and Sharing Information.³⁰

19.44. It is important to remember though that in respect of a number of the Convention Rights, especially qualified ones, interference with an individual's rights may be justified where it is in the general public interest to do so. This is an important consideration where emergencies and issues of public safety are involved.

Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA)

19.45. The CMCHA creates an offence where organisations can now be convicted of manslaughter if, in general terms, the way in which their activities are managed or organised causes a person's death and there has been a gross breach of a duty of care to the deceased.

²⁶ [Emergency Preparedness, paragraph 4.30](#)

²⁷ [Emergency Preparedness, paragraphs 5.98 to 5.106](#) & Chapter 6 Emergency Response and Recovery guidance

²⁸ [Emergency Preparedness, paragraph 7.40](#) and The Ten Step Cycle for Communicating with the Public

²⁹ [Emergency Preparedness, paragraph 3.17](#)

³⁰ Data Protection and Sharing – Guidance for Emergency Planners and Responders

- 19.46. It is not possible, nor appropriate in this document, to consider the detailed effect of the legislation, but in carrying out their functions, responders will need to bear the provisions of the Act in mind, although there are exemptions where management actions involve wider questions of public policy for example, strategic decisions about spending public money or military operations. Other functions, such as police operations and the response of the emergency services are also exempt, other than in respect of duties of care owed by these organisations to employees or in relation to premises they occupy.

Human Resources

- 19.47. In the planning phase for emergencies, unrealistic expectations may be placed on management and personnel. It is important that all Category 1 and Category 2 responders build proper consideration for the welfare of employees into emergency plans. When identifying human resources requirements as part of the emergency response, responders should consider their duties under the Health and Safety at Work Act, 1974 and Working Time Regulations, 1998.

Health and Safety at Work Act 1974

- 19.48. Employers have a duty to manage the risks to their employees that arise from their work. This includes those employees whose work includes responding to emergencies.
- 19.49. Managing risks means assessing the significant risks to employees (and others who might be affected by their work) and identifying suitable measures to control those risks. Such measures might include setting out safe systems of work which

specify appropriate control measures, including the equipment to be used and the competences that workers are required to have. The risk control measures identified as necessary should be put in place. The findings of the risk assessment, and the control measures implemented, should be communicated to employees.

- 19.50. Risk assessments do not need to be overly bureaucratic but they should be robust, carefully considered, and their findings effectively implemented.

Working Time Regulations 1998 (WTRs)

- 19.51. The WTRs relate to the number of hours that an employee can work during a single week, unless a workforce agreement is sought. During an emergency event, responders may need to make use of the special measures and the full flexibilities contained within the WTRs.
- 19.52. It may be that some of the extra work pressure can be absorbed by inviting relevant groups of workers to enter into an opt-out agreement which would permit the normal weekly maximum working time of 48 hours to be exceeded (permitted under Regulations 4 and 5 of the WTRs). However workers cannot be forced to sign an opt-out. Without any further special measures (as below), this would allow a 78 hour maximum (allowing for 11 hours rest per day x 6 days and a weekly rest of 24 hours per week = 168 hours – 90 = 78 hours).
- 19.53. Regulations 21 and 24 of the WTRs give a degree of flexibility where the worker's activities are affected by special circumstances.

Regulation 21 makes special provisions, generally for less serious situations, allowing the non-application of rights to:

- o restrictions on length of and protections connected with night work;
- o daily rest (normally 11 hours per day);
- o weekly rest periods (24 hours per week or 48 hours per fortnight); and
- o rest breaks (at least 20 minutes per six hours)

19.54. The circumstances in which these provisions might be brought into play during an emergency include where:

- o a worker's activities are located distantly from his place of residence (for example, specialist teams might be deployed at locations in the UK far from their home addresses - see regulation 21(a));
- o a worker is engaged in security activities requiring a permanent presence to protect persons or properties (for example, where security requirements arise because of an emergency, e.g. security around quarantine sites or around sensitive or vital public buildings or locations – see regulation 21(b)); and
- o there is a need for continuity of service or production due to the emergency in one or more of the following activities:
 - hospitals;
 - transport; and
 - civil protection services (e.g. police, fire service, ambulance service).

- o where workers' activities in Category 1 and 2 response organisations, government departments (and supporting industries as appropriate) are affected by:
 - an occurrence due to unusual and unforeseeable circumstances beyond the control of the worker's employer;
 - exceptional events, the consequences of which could not have been avoided; or
 - an accident or the imminent risk of an accident.

19.55. Regulation 24 of the WTRs provides that where normal rest entitlements have been abridged or lost, the worker should be allowed to take compensatory rest. Compensatory rest is normally a period of rest the same length as the period of rest, or part of a rest period, that a worker has missed. This means that the worker gets their rest entitlement later than normal.

19.56. Regulation 24(b) provides that there may be **exceptional** circumstances where it is not possible to grant such rest periods. In these circumstances, the employer should still take steps to safeguard the worker's health and safety.

19.57. Under Regulation 18 (2) of the WTRs, some provisions under the WTR, including the 48 hour maximum and the various rest periods (e.g. daily, weekly and breaks at work), may be excluded where the armed forces, the police and certain civil protection activities (i.e. ambulance service, fire service and other Category 1 and 2 responders) are engaged in a manner that will "inevitably conflict with the provisions" of the WTR. In the event of a full scale national emergency, these services might have to be deployed free of these legislative burdens.

19.58. For further information please contact the Civil Contingencies Act Enhancement Programme team: ccact@cabinet-office.x.gsi.gov.uk